



**ENVIRONMENTAL LAW AND POLICY IN SABAH:  
FROM RIDGE TO REEF**

**VOLUME 9: ENVIRONMENTAL PROTECTION**

# DRAFT FOR PEER REVIEW

## Disclaimer, Acknowledgements and Call for Inputs

**Disclaimer:** This legal brief is intended as a means to engage with the relevant law and policy, and should not replace a thorough reading of the official documents themselves, which can be found online.

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**Call for inputs:** We welcome further comments on content, format, and the brief's potential development and uses. Please email Holly Jonas ([holly@foreversabah.org](mailto:holly@foreversabah.org)) and Harry Jonas ([harry@foreversabah.org](mailto:harry@foreversabah.org)).

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**Cover photo:** Harry Jonas



## OVERVIEW

Although there are other Sabahan and Federal laws that address specific issues relevant to the protection of elements of the environment, such as Parks and Forest Reserves, these laws are developed in detail in separate legal briefs. This legal brief focuses on the Environment Protection Enactment and related legislation.

There are five main pieces of legislation that together provide the overarching regulatory framework on environmental protection in Sabah. These laws include:

- [Environment Protection Enactment \(2002\)](#),
- [Environment Protection \(Prescribed Activities\) Order 2005](#),
- [Environment Protection \(Prescribed Activities\) \(Environment Impact Assessment\) Order 2005](#),
- [Land Acquisition Ordinance \(1950\)](#), and
- [Ports and Harbours Enactment \(2002\)](#).

In addition to the Sabah laws listed above, the following Federal legislation regulates environmental protection in Malaysia:

- [Environmental Quality Act \(1974\)](#).

The next sections of this legal brief provide an overview of each law, the details of the institutional arrangements, and the relevant case law relating to Sabah's environment. With the exception of the Environment Protection Enactment and the Environment Protection Orders, all laws referenced in this brief are set out in chronological order and do not reflect the order of importance.

## 1. ENVIRONMENT PROTECTION ENACTMENT

### Purpose

The *Environment Protection Enactment (2002)* was established to protect Sabah's environment, with an emphasis on managing pollution on Sabah's land and natural resources.<sup>1</sup> The *Environment Protection Enactment* repealed the *Conservation of Environment Enactment (1996)*.

### Environment Regulation

The *Environment Protection Enactment* provides the foundation for the implementation of policies and plans regulating activities potentially harmful to the environment.

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<sup>1</sup> Environment Protection Enactment, 2002.

## Environment

The term *Environment* is defined to include any of the following meanings:

- a. The external physical surroundings and conditions influencing development and growth of people, animals or plants and includes social, living or working conditions,
- b. All natural and physical resources,
- c. Ecosystems, which may include people and communities, and
- d. Amenity, aesthetic and cultural values.<sup>2</sup>

## Pollution

In ensuring protection of the Environment, the *Environment Protection Enactment* provides for the regulation and management of Pollution. The term *Pollution* is defined as an activity that adversely alters the Environment through the acts of discharging, emitting or disposing of waste or Pollutants. Pollutants or waste that create harm or a hazard to the public health and safety or welfare to people may be subject to regulation.<sup>3</sup> Beyond regulating the potentially hazardous impact of Pollution imposed on the human population, the Enactment regulates Pollution threats towards animals, birds, fish, aquatic life or plants.<sup>4</sup>

Pollutants include substances that take the form of any liquid, solid, gas or microorganisms and create an adverse impact on the environment, whether directly or indirectly.<sup>5</sup>

## Pollutants

Substances with any of the following characteristics qualify as a Pollutant, including:

- Adversely alters the quality of any environment,
- Poses a hazardous or potentially hazardous threat to health and safety,
- Creates an adverse impact on the environment by altering the temperature or the physical, biological characteristic and quality of the environment, or
- Generates intolerable odours, noise or radioactivity.<sup>6</sup>

## Environmental Protection Plans and Programmes

### a. Purpose of Plans and Programmes

Environment Protection Plans and Programmes may be established under this Enactment to address environmental protection in areas where environment pollution is significant or

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<sup>2</sup> Environment Protection Enactment 2002, Section 2.

<sup>3</sup> Environment Protection Enactment 2002, Section 2.

<sup>4</sup> Environment Protection Enactment 2002, Section 2.

<sup>5</sup> Environment Protection Enactment 2002, Section 2.

<sup>6</sup> Environment Protection Enactment 2002, Section 2.

likely to become significant due to a rapid concentrated growth of populations or human activity in an area.<sup>7</sup>

Any substance or activity that poses a significant risk to the Environment may also be regulated through the development of policies and programmes.<sup>8</sup>

### Significant

The term *significant* is measured by the adverse impact an activity has on the environment, based on any of the following criteria:

- a. Magnitude of the effect in relation to the spatial boundaries,
- b. Permanence of the effect,
- c. Irreversibility of the effect,
- d. Cumulativeness over time of the effect, or
- e. Risks of the effect in relation to health and safety.<sup>9</sup>

### b. *Environment Protection Action Plans*

Areas designated for environmental protection must be established in conjunction with an Environmental Protection Action Plan.<sup>10</sup> This Enactment requires for all Environmental Protection Action Plans to be developed under the framework of a system that utilizes an integrated management approach for environmental protection.

In addition to factoring into the significance of a problem to an area, the integrated management approach should factor in economic, social and environmental conditions into an Environment Protection Action Plan, such as:

- The methods to control pollution from its origin,
- The obtainment and acquisition of land, materials, equipment, tools and appliances necessary for the construction, installation, improvement, modification, repair, maintenance and operation of environment protection facilities,
- Inspection, monitoring and control of pollution, and
- Lists of the costs, charges and expenses needed to carry out the environmental protection action plan.<sup>11</sup>

### c. *Environmental Protection Area*

The Minister of Tourism, Culture and Environment, who serves as the Chairman of the Environment Protection Council has the right to convert both alienated and unalienated

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<sup>7</sup> Environment Protection Enactment 2002, Section 10; The Enactment does not provide a definition for Programmes.

<sup>8</sup> Environment Protection Enactment 2002, Section 24(1)(i).

<sup>9</sup> Environment Protection Enactment 2002, Section 10.

<sup>10</sup> Environment Protection Enactment 2002, Section 10(2).

<sup>11</sup> Environment Protection Enactment 2002, Section 10(3).

land into an Environmental Protection Area. Research is unable to determine how lands converted under this Enactment have been managed or controlled after designation as an Environmental Protection Area.

Notably, the Land Acquisition Ordinance (see below) allows the State to convert alienated land to State land for a public purpose.

#### *d. Prescribed Activities*

Selected development activities that are determined to have a significant adverse effect on the Environment may be identified as a Prescribed Activity in the *Gazette*.<sup>12</sup> Prescribed Activities are listed in the subsidiary legislation of the Environmental Protection Enactment, identified as the Environment Protection Enactment (Prescribed Activities) Order 2005, discussed below.

For any non-prescribed activity, the Director may still require an Environmental Impact Assessment Report (“EIA Report”) or a Proposal for Mitigation Measures for activities that would likely create an adverse impact on the Environment.<sup>13</sup>

#### *e. Licensing Of Prescribed Activities*

Through notification in the *Gazette*, the Minister is allowed to regulate the types and sizes of Prescribed Activities that cause or are likely to cause pollution.<sup>14</sup> A license must be issued for the operation of a Prescribed Activity and is subject to a fee.<sup>15</sup> If there is reasonable basis to believe there was a violation of terms and conditions of a license, the Director also has the authority to revoke a license with given prior notice.<sup>16</sup>

#### *f. Reports relating to Prescribed Activities*

Prior to a person carrying out prescribed activities, a person is required to submit an EIA Report. Alternatively, a person may be required to submit a proposal for mitigation measures in instead of an EIA Report. The Director is responsible for issuing guidelines for the procedures and preparation of an EIA Report.<sup>17</sup>

In situations where a prescribed development activity consists of smaller individual projects, applicants may be required to prepare and submit a Master Environmental Impact Assessment Report and seek approval for individual projects at multiple stages.<sup>18</sup> In evaluating whether the environmental protection is provided for under this type of assessment report, the Director may exercise his discretion in approving either an EIA report or a proposal for mitigation measures.<sup>19</sup>

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<sup>12</sup> Environment Protection Enactment 2002, Section 12(1).

<sup>13</sup> Environment Protection Enactment 2002, Section 13.

<sup>14</sup> Environment Protection Enactment 2002, Section 17 (1)

<sup>15</sup> Environment Protection Enactment 2002, Section 17(2).

<sup>16</sup> Environment Protection Enactment 2002, Section 17(3).

<sup>17</sup> Environment Protection Enactment 2002, Section 15.

<sup>18</sup> Environment Protection Enactment 2002, Section 12C.

<sup>19</sup> Environment Protection Enactment 2002, Section 12D.

The prescribed activities that require an EIA report or proposal for mitigation measure are listed fully in **Annex I**.

*g. Environmental Hazard Zone*

Areas that are polluted or pose a significant risk to human health and safety or the Environment may be gazetted as an Environmental Hazard Zone.<sup>20</sup> Within or around these zones, restrictions may be imposed to reduce the threat of an environmental hazard.<sup>21</sup> The Minister is authorized to revoke portions of or an entire Environmental Hazard Zone once the necessary restrictions are no longer required in an area.<sup>22</sup>

*h. Other Measures for Protection of the Environment*

To carry out environmental protection objectives, the Director may exercise his authority to implement necessary measures or conditions to prevent or mitigate activities that pose an adverse effect on the Environment. The measures for protection may include regulations on activities such as: the use or cultivation of land; land reclamation; cutting of trees; excavation in water courses; or activities relating to production, storage, treatment or disposal of waste.<sup>23</sup>

**Restricted Activities**

*a. Regulation*

In addition to regulating Prescribed Activities, the Director of the Environment Protection Department (“the Director”) may place requirements and restrictions on any activity that creates a significant adverse effect on the Environment. The Enactment regulates the activities, including the use of land, activities along the coastal area, activities affecting the bed of a lake or river, activities affecting water, the discharge of pollutants and activities affecting vegetation.<sup>24</sup> Some of the restrictions on activities that have or are likely to have a significant adverse effect on the Environment are described below. The Director is also authorized to exempt the Government from restrictions and requirements under this Enactment for research purposes.<sup>25</sup>

*b. Use Of Land*

Land cannot be used in a way that has or is likely to have a significant adverse effect on the Environment.<sup>26</sup>

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<sup>20</sup> Environment Protection Enactment 2002, Section 18 (1).

<sup>21</sup> Environment Protection Enactment 2002, Section 18(2).

<sup>22</sup> Environment Protection Enactment 2002, Section 18(3).

<sup>23</sup> Environment Protection Enactment 2002, Section 20.

<sup>24</sup> Environment Protection Enactment 2002, Section 28-33.

<sup>25</sup> Environment Protection Enactment 2002, Section 36.

<sup>26</sup> Environment Protection Enactment 2002, Section 28.



### Restrictions on the Use of Land

- a. Any alteration, erection, extension, placement, removal, use or demolition of any structure or part of any structure in, on, under or over the land,
- b. Any excavation, drilling, tunneling or other disturbance of the land,
- c. Any destruction of, damage to or disturbance of the habitats of plants or animals in, on or under the land,
- d. Any deposit of any pollutant in, on or under the land, or
- e. Any entry of any pollutant onto, or passing across, the surface of the land.<sup>27</sup>

### c. *Activities Along Coastal Area*

Along coastal areas, restrictions are placed on activities that are carried out in a manner that has or is likely to have a significant adverse effect on the Environment, including:

- The act of reclaiming or draining any foreshore or seabed,
- Altering, erecting, demolishing, placemen, reconstructing or removal any structure or any part of a structure that is fixed in, on, under or over any foreshore or seabed,
- Damaging, destroying or disturbing any foreshore or seabed by excavating, drilling or tunnelling in a manner that has or is likely to have a significant adverse effect on the foreshore or seabed, or
- Depositing any Pollutant in, on or under any foreshore or seabed.<sup>28</sup>

### d. *Activities Affecting Bed Of Lake Or River*

Activities that are performed in a manner that has or is likely to have a significant adverse effect in, on, under or over the bed of the river or lake are also restricted.<sup>29</sup> The activities restricted in a coastal area are similarly regulated in, on, under or over the bed of the river or lake.<sup>30</sup> In addition to the restrictions listed above, this provision also regulates the following:

- The act of entering or passing across the bed of any river or lake, and
- The damaging, destroying, or removing any part of any plant or the habitats of any plant or animal in, on or under the bed of any lake or river.<sup>31</sup>

### e. *Discharge Of Pollutants*

The Environment Protection Enactment further regulates the introduction of harmful Pollutants into the Environment.<sup>32</sup> Pollutants cannot be deposited into the water or onto or

<sup>27</sup> Environment Protection Enactment 2002, Section 28.

<sup>28</sup> The lawful harvesting of any plant or animal as recognized under any written law is allowed. The Environment Protection Enactment 2002, Section 29(c).

<sup>29</sup> Environment Protection Enactment 2002, Section 30.

<sup>30</sup> Environment Protection Enactment 2002, Section 29.

<sup>31</sup> Environment Protection Enactment 2002, Section 30.

<sup>32</sup> Environment Protection Enactment 2002, Section 32 (a).



into any land under any circumstances that will allow a pollutant to enter the water.<sup>33</sup> Pollutants derived from an agricultural premise, industrial premise or any other premises and discharged into air or land are also restricted if it has or is likely to have a significant adverse effect on the Environment.

*f. Mitigation Efforts*

Regardless of whether an activity is licensed or authorized under the Enactment, every person is required to take proactive measures to avoid, remedy or mitigate the adverse effect on the Environment that is created by any activity that person carries out.<sup>34</sup>

**Enforcement and Ancillary Powers**

*a. Abatement Notice*

The Director is authorized to issue an Abatement Notice to persons who act in violation of the provisions of the Enactment. An Abatement Notice may further issued for activities which is or likely to be “obnoxious, dangerous, offensive or objectionable” at a level of creating likelihood of an adverse effect on the Environment.<sup>35</sup> A Director is authorized to issue an Abatement Notice with reasonable grounds.<sup>36</sup> If a person fails to abide by the Abatement Notice, the Director may intervene and carry out the terms of the Abatement Notice.<sup>37</sup> The costs needed to carry out the abatement by the Department will be considered debt owed by a person.<sup>38</sup> A person who fails to abide by an Abatement Notice is liable for a maximum fine up to 50,000 ringgit.<sup>39</sup>

*b. Inspection of Premises*

Under the written permission of the Director, an environmental enforcement officer is authorized during reasonable times and with reasonable cause to enter and inspect any place, premise or structure to determine compliance with provisions of the Environment Protection Enactment, including compliance with an abatement notice.<sup>40</sup> An exception is made for entry into a dwelling house.<sup>41</sup>

An environmental officer may enter premises to carry out investigative activities such as: taking samples of water, air, soil or organic matter; taking samples of pollutants; examining equipment or industrial plant on a premise; or examining book records or document on a premise relating to equipment or emission of substances from inspected premises<sup>42</sup>The

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<sup>33</sup> Environment Protection Enactment 2002, Section 32(b).

<sup>34</sup> Environment Protection Enactment 2002, Section 35.

<sup>35</sup> Environment Protection Enactment 2002, Section 37.

<sup>36</sup> Environment Protection Enactment 2002, Section 37(3).

<sup>37</sup> Environment Protection Enactment 2002, 37(6).

<sup>38</sup> Environment Protection Enactment 2002, Section 37(3).

<sup>39</sup> Environment Protection Enactment 2002, Section 37(8).

<sup>40</sup> Environment Protection Enactment 2002, Section 38.

<sup>41</sup> Environment Protection Enactment 2002, Section 38.

<sup>42</sup> Environment Protection Enactment 2002, Section 38(2).

Director or Environmental Enforcement Officer may also acquire the assistance of a governmental authority and police station to perform the inspection of premises.<sup>43</sup>

*c. Power To Arrest And Seize*

The Director and an authorized Environmental Enforcement Officer possess the power to arrest a person without a warrant, as long as there is a reasonable belief that an offense was committed under the Enactment.<sup>44</sup> A person who is arrested should be brought to the nearest police station or be presented before a Magistrate to be prosecuted under the Criminal Procedure Code.<sup>45</sup>

*d. Prosecution Powers*

Only an authorized person, approved in writing by the Public Prosecutor, may conduct a prosecution for violations committed under this Enactment.<sup>46</sup>

### **Offences and Penalties**

The offences and penalties for committing acts in violation of the Environment Protection Enactment are listed in **Annex II** of this legal brief.

### **Institutional Arrangement**

*a. Environment Protection Department, Sabah*

The Environment Protection Department is under the direction of the Minister of Tourism, Culture and Environment. The Department was renamed from the *Environmental Conservation Department* to the *Environment Protection Department* under the passage of the Environment Protection Enactment in 2002, which replaced the Conservation of Environment Enactment (1996).

The Environment Protection Department was formed to enforce the provisions of the Environment Protection Enactment, and regulates subject matters concerning the Environment.<sup>47</sup> The Environment Protection Department is required to collaborate with the Environment Protection Council to provide advice on strategies and environmental management plans.<sup>48</sup>

The following is a list of some of the programmes and plans developed with the involvement of the Environmental Protection Department and other State agencies:

- Sabah Shoreline Management Plan,
- Capacity Building of the Environmental Conservation Department, and

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<sup>43</sup> Environment Protection Enactment 2002, Section 38(4).

<sup>44</sup> Environment Protection Enactment 2002, Section 40.

<sup>45</sup> Environment Protection Enactment 2002, Section 45.

<sup>46</sup> Environmental Protection Enactment 2002, Section 45.

<sup>47</sup> Sabah Environment Protection Department, [http://www.sabah.gov.my/jpas/en\\_index.htm](http://www.sabah.gov.my/jpas/en_index.htm)

<sup>48</sup> Sabah Environment Protection Department, [http://www.sabah.gov.my/jpas/en\\_index.htm](http://www.sabah.gov.my/jpas/en_index.htm)

- Sabah Biodiversity Project.<sup>49</sup>

The Environmental Protection Department has also been involved in the development of the following papers and plans at the State level:

- Sabah Conservation Strategy, 1992,
- Sabah Master Tourism Plan, 1996, and
- Identification of Potentially Protected Areas (Sabah Biodiversity Conservation Project), 1998.

#### *b. Director of the Environment Protection Department*

The Director is allowed to develop appropriate programmes and policies that are deemed necessary for regulating environmental protection.<sup>50</sup> In addition to carrying out the provisions under the Environment Protection Enactment, the Director's responsibility centers on managing adverse effects on the effect.<sup>51</sup> The Director's functions also extend environmental protection to other related matters, as listed below.

#### **The Director's Functions**

- Performing any action necessary to protect, conserve, rehabilitate, restore or maintain sound environmental quality,
- Incorporating measures for environmental protection into the planning of any development activity or utilization of any natural resource,
- Protect sensitive areas for the conservation of biodiversity and maintenance of environmental quality,
- Ensure protection of the aesthetic, natural and scenic environmental quality,
- Support cooperation and collaboration between federal, state and local authorities on the formulation and implement of environmental protection policies and programmes,
- Promote environmental research, science and technology,
- Promote awareness on the importance of environmental protection, conservation and quality, and
- Conduct any survey, research or study on the status of the Environment in Sabah for policy formulation and implementation involving environmental protection.<sup>52</sup>

#### *c. Environment Protection Council*

The Environmental Protection Council was established to provide advice to the State Government on matters relevant to the Environment Protection Enactment.<sup>53</sup> The following

<sup>49</sup> As reported on the Environmental Protection Department Official Website, <http://www.sabah.gov.my/jpas/ecc/default.htm>

<sup>50</sup> Environmental Protection Enactment 2002, Section 10.

<sup>51</sup> Environmental Protection Enactment 2002, Section 24(j).

<sup>52</sup> Environment Protection Enactment 2002, Section 24(a)-(i)

<sup>53</sup> Environment Protection Enactment 2002, Section 3.

list provides an overview of members or their authorized representatives who form the Council:

- The Chairman, assigned as the Minister,
- The Director of Environment Protection Department, assigned as the Secretary to the Council,
- The State Attorney General,
- The Secretary of Natural Resources,
- The Permanent Secretary of The Ministry of Tourism, Environment, Science and Technology,
- The Permanent Secretary of the Ministry of Local Government and Housing,
- The Director of Lands and Surveys,
- The Director of Forestry Department,
- The Director of Drainage And Irrigation Department,
- The Secretary-General of the Federal Ministry of Science, Technology and Environment,
- The Director of Federal Department of Environment (Sabah Region), and
- Three other members, who shall be appointed by the Minister.<sup>54</sup>

The Council is required to meet at least once every four months, where a quorum of at least nine members must be in attendance.<sup>55</sup> Each member of the Council is provided a remuneration allowance for attending a Council meeting.<sup>56</sup> The Director is not allowed to vote at any of the Council meetings.<sup>57</sup>

## 2. ENVIRONMENT PROTECTION (PRESCRIBED ACTIVITIES) ORDER

### Purpose

The *Environment Protection (Prescribed Activities) Order (2005)* provides a list identifying Prescribed Activities under Section 12(1) of the *Environment Protection Enactment*.<sup>58</sup> These Prescribed Activities are further provided in detail in the subsidiary legislation, *Environment Protection (Prescribed Activities) (Environment Impact Assessment) Order (2005)*.<sup>59</sup>

### Prescribed Activities in Certain Areas

Prescribed Activities are identified as restricted development activities in agriculture, forestry, drainage and irrigation, land reclamation, fisheries and aquaculture, resorts and recreational development, mining, construction of dams and hydro-electric power, quarrying, water supply, and housing, commercial and industrial estates, based on the land area and type of activity.<sup>60</sup> Selected activities not gazetted as a Prescribed Activity may still

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<sup>54</sup> Environment Protection Enactment 2002, Section 3.

<sup>55</sup> Environment Protection Enactment 2002, Section 3(6).

<sup>56</sup> Environment Protection Enactment 2002, Section 3(8).

<sup>57</sup> Environment Protection Enactment 2002, Section 3(3).

<sup>58</sup> Environment Protection (Prescribed Activities) Order 2005.

<sup>59</sup> Refer to Annex I.

<sup>60</sup> Environment Protection (Prescribed Activities) Order 2005.

be subject to similar requirements designated as a Prescribed Activity if they are likely to damage or create an adverse impact on the quality of the environment.<sup>61</sup>

### 3. ENVIRONMENT PROTECTION (PRESCRIBED ACTIVITIES) (ENVIRONMENT IMPACT ASSESSMENT) ORDER

#### Description

The *Environment Protection (Prescribed Activities)(Environmental Impact Assessment) Order (2005)* was gazetted to regulate harmful development activity by requiring Environmental Impact Assessment Report (EIA) or Proposal For Mitigation Measures to persons carrying out a Prescribed Activity.<sup>62</sup> The requirements for an EIA Report or Proposal For Mitigation Measures are designated according to the size of land area covered.

#### Required Reports

A detailed list of the designated requirements of Prescribed Activity is available in **Annex I**.

The First Schedule lists Prescribed Activities that require a Proposal For Mitigation Measures. The Second Schedule lists activities that require an Environmental Impact Assessment Report.

### 4. LAND ACQUISITION ORDINANCE

#### Purpose

The *Land Acquisition Ordinance (1950)* provides regulations on the process of acquiring land in Sabah.

#### Land for Public Purpose

The Yang di-Pertua Negeri has the power to acquire alienated land and use it for a Public Purpose.<sup>63</sup> The Land Acquisition Ordinance defines land used for a Public Purpose to include land acquired for conservation, improvement or exploitation of natural resources.<sup>64</sup> In addition, the definition of Public Purpose may extend the rights of the Government or the Federal Government to acquire land for general public use.

#### Temporary Occupation of Unoccupied Land

The Yang di-Pertua Negeri also has the power to determine if the State should temporarily occupy a piece of unoccupied land and use it for a necessary public purpose.<sup>65</sup> Temporary occupation of the land should not be longer than three years.<sup>66</sup>

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<sup>61</sup> Environment Protection (Prescribed Activities) (Environment Impact Assessment) Order 2005.

<sup>62</sup> Environment Protection (Prescribed Activities) (Environment Impact Assessment) Order 2005.

<sup>63</sup> Land Acquisition Ordinance 1950, Section 3(1).

<sup>64</sup> Land Acquisition Ordinance 1950, Section 2, Public Purpose, Subsection h.

<sup>65</sup> Land Acquisition Ordinance 1950, Section 11(1).

<sup>66</sup> Land Acquisition Ordinance 1950, Section 11(1).

## 5. PORTS AND HARBOURS ENACTMENT

### Description

The primary legislation relating to Sabah's ports and harbours is the *Ports and Harbours Enactment (2002)*, which regulates activities within Sabah's Coastal Zone.<sup>67</sup> The *Sabah Ports Authority Enactment (1981)* is also a related piece of legislation, which provides for the establishment of the state statutory body responsible for regulating Sabah's Ports<sup>68</sup> and Harbours.<sup>69</sup>

### Ports and Harbours Regulation

The *Ports and Harbour (Ports, Harbours and Dues) Regulations (2008)* comes under the *Ports and Harbours Enactment (2002)*. This regulation prohibits the discharge of oil or mixtures containing oils into the ports or harbours of Sabah.<sup>70</sup> Pollution derived from land, vessels or apparatuses that transfers oil are both under the regulation of Sabah's *Ports and Harbours Regulations 2008* and the MARPOL Convention.<sup>71</sup>

Financial liability is also imposed for the clearing and cleaning of waters caused by the oil pollution.<sup>72</sup> Liability is placed on the master or owner of a vessel, occupier of the land or individual in charge of the apparatus where the discharge occurs.<sup>73</sup> A person who commits an offense under this regulation is subject to a maximum fine up to 30,000 ringgit, an imprisonment term up to two years or both.<sup>74</sup>

### Institution and Implementation

#### Sabah Ports Authority

In Malaysia, ports are generally under the authority of the Federal or State Government.<sup>75</sup> In Sabah, the State managed ports are regulated under Sabah's Ports Authority, a state-level statutory body.<sup>76</sup> Ports Authority ("the Authority") was originally formed under the *Sabah*

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<sup>67</sup> *Ports and Harbours Enactment 2002 and its subsidiary regulations known as Ports and Harbours Regulation 2008.*

<sup>68</sup> The Ports in Sabah are determined based on declaration in the Gazette, see Sabah Ports Authority Enactment 1981, Section 3.

<sup>69</sup> The Ports Regulation (1968) is a subsidiary legislation under the Sabah Ports Authority Enactment, and was described in James Lam Chee Seng, *Environmental Law In Malaysia (Borneo Edition) 2007*, p. 51-52.

<sup>70</sup> Ports and Harbours Regulation, 2008, Section 39.

<sup>71</sup> Ports and Harbour (Ports, Harbours and Dues) Regulation, Section 39. The MARPOL Convention is the International Convention for the Prevention of Pollution from Ships, and stands for pollution of marine environments, see MARPOL, International Maritime Organization Official Website [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

<sup>72</sup> Ports and Harbours Regulation, 2008, Section 39(1).

<sup>73</sup> Ports and Harbours Regulation, 2008, Section 39(1).

<sup>74</sup> Ports and Harbours Regulation, 2008, Section 39(1).

<sup>75</sup> Federal Constitution, Malaysia, Ninth Schedule List 1 Section 9 and List IIA Section 15.

<sup>76</sup> The Sabah Ports Authority is responsible for implementing regulations, such as the Ports Regulation 1968 (Reprint 1999), which was introduced in James Lam Chee Seng's *Environmental Law in Malaysia*. The book *Environmental Law in Malaysia* describes this regulation as providing measures for regulating pollution activity

*Ports Authority Enactment (1967)*, a law that was repealed and replaced by the *Sabah Ports Authority Enactment (1981)*.<sup>77</sup>

Sabah's Ports Authority is assigned responsibility for managing and regulating port operations in Sabah.<sup>78</sup> The Sabah Ports Authority may also control the development and use of wharves and docks above or below the high water mark located near the boundaries of a port.<sup>79</sup>

Sabah's Ports Authority was assigned to be under the jurisdiction of Sabah's Ministry of Infrastructure and Development.<sup>80</sup> However, it is reported that in September of 2004, Sabah Ports Sendirian Berhad (SPSB) took over commercial management of all port operations from Sabah Ports Authority.<sup>81</sup>

## 6. ENVIRONMENTAL QUALITY ACT

### Purpose

The *Environmental Quality Act (1974)* is a Federal law and was enacted to improve the Environment and to prevent, abate and manage pollution threats in Malaysia.<sup>82</sup>

### The Environment

Under the *Environmental Quality Act*, the *Environment* is defined by physical factors, biological factors and aesthetic factors.<sup>83</sup> The physical factors are determined by the land, water, atmosphere, climate, sound, odour, and taste which surround human beings.<sup>84</sup> The biological factors include animal and plant life, while the social element of the environment factors in the aesthetics.<sup>85</sup>

### Restrictions on Pollution

#### a. Atmosphere

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within Sabah's Ports. A full discussion of the Regulation's provision on pollution is not discussed here, as the authors of this legal brief have encountered difficulties in acquiring a copy of this regulation.

<sup>77</sup> Sabah Port Authority Enactment 1981, Section 4(1). This law was also introduced in James Lam Chee Seng, *Environmental Law In Malaysia (Borneo Edition) 2007*, p. 51-52.

<sup>78</sup> Sabah Ports Authority, Introduction, Official Website, <http://www.lpps.sabah.gov.my/?q=content/introduction>

<sup>79</sup> Sabah Port Authority Enactment 1981, Section 26.

<sup>80</sup> Sabah Ports Authority, <http://www.lpps.sabah.gov.my/?q=content/introduction>

<sup>81</sup> Sabah Ports, Suria Group Official Website, see <http://www.suriagroup.com.my/spsb/about-us/>. Despite this transfer of management, the Sabah Port Authority still has powers to regulate Sabah's ports despite the changes in administration.

<sup>82</sup> Environmental Quality Act 1974, Act 127, Section 1.

<sup>83</sup> Environmental Quality Act 1974, Section 2.

<sup>84</sup> Environmental Quality Act 1974, Section 2.

<sup>85</sup> Environmental Quality Act 1974, Section 2.



Only persons or entities granted a license are allowed to emit or discharge an environmentally hazardous substance, pollutant or waste into the atmosphere.<sup>86</sup> Prohibited acts of discharging of waste into the atmosphere may include any of the following:

- Allowing for matter to be released into the atmosphere,
- Allowing for the discharge of odours that are obnoxious or offensive,
- Burning of wastes from trade, process or industry, or
- Operating a fuel burning equipment that does not contain a properly installed device or control equipment.<sup>87</sup>

#### b. Soil

A person is restricted from polluting or causing pollution to the soil or surface of any land, unless granted a license.<sup>88</sup> Pollutants are further restricted from being placed in a manner in which it may gain access to a soil.<sup>89</sup> In addition, the establishment of a garbage tip, soil and rock disposal site, or other use of land for disposal or repository of waste, that is considered obnoxious or offensive to human beings, interferes with underground water or detrimental to any beneficial use of the soil or surface of the land are also restricted activities.<sup>90</sup>

#### c. Inland Waters

There are also restrictions against acts of emitting, discharging or depositing environmentally hazardous substances, pollutants or wastes into Inland Waters.<sup>91</sup> *Inland Waters* are defined to include, any “reservoir, pond, lake, river, stream, canal, drain, spring or well”.<sup>92</sup> Any part of the sea above the low water line along the coast is also a part of boundary the Inland Waters.<sup>93</sup>

Examples of discharge or depositing of hazardous substances, pollutants or waste inland include:

- Placement of waste where it may directly or indirectly gain access to waters,
- Placement of waste in a position that allows for it to fall, descend, drain, evaporate, be washed, blown into any water bodies, or
- Causing the temperature of the receiving waters to be increased or decreased beyond allowable limits.<sup>94</sup>
- A person may still be liable for committing any of the above acts even when committed negligently.<sup>95</sup>

#### Malaysian Waters

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<sup>86</sup> Environmental Quality Act 1974, Section 22.

<sup>87</sup> Environmental Quality Act 1974, Section 22.

<sup>88</sup> Environmental Quality Act 1974, Section 24(1).

<sup>89</sup> Environmental Quality Act 1974, Section 24(1).

<sup>90</sup> Environmental Quality Act 1974, Section 24(1).

<sup>91</sup> Environmental Quality Act 1974, Section 25(1).

<sup>92</sup> Environmental Quality Act 1974, Section 2.

<sup>93</sup> Environmental Quality Act 1974, Section 2.

<sup>94</sup> Environmental Quality Act 1974, Section 25(2).

<sup>95</sup> Environmental Quality Act 1974, Section 25(2)(b).

The *Environmental Quality Act* additionally regulates the discharge or spilling of any oil or mixture containing oil and wastes into Malaysian Waters.<sup>96</sup> The Act cites to a definition of Malaysian Waters as provided under the *Emergency (Essential Powers) Ordinance (1969)*, which defines the boundaries of the Territorial Sea of Malaysia to extend 12 nautical miles from the low-water mark.<sup>97</sup>

Notably, under the same law, Sabah is allowed to exercise State jurisdiction on land matters in the Territorial Sea of Malaysia within a boundary of 3 nautical miles from the low-water line.<sup>98</sup> Although the *Emergency (Essential Powers) Ordinance* is no longer in effect, the *Territorial Sea Act (2012)* similarly designates the length Territorial Sea of Malaysia off the coast of Sabah to be 3 nautical miles from the low-water line.<sup>99</sup>

The *Environmental Quality Act* additionally regulates the discharge or spilling of any oil or mixture containing oil and wastes into Malaysian Waters. The Act cites a definition of Malaysian Waters as provided under the *Emergency (Essential Powers) Ordinance (1969)*, defining the boundaries of Malaysian waters to extend twelve nautical miles from the low-water mark off the coast.

Notably, under the same law, Sabah is allowed to exercise jurisdiction in Territorial Waters from 3 nautical miles to the low-water line. Although the *Emergency (Essential Powers) Ordinance* is no longer in effect, the *Territorial Sea Act* similarly designates the length of the territorial waters off the coast of Sabah to 3 nautical miles from the low-water line.<sup>100</sup>

In certain situations, special defenses are permitted in the discharge or spilling of environmentally hazardous substances. As long as reasonable care is taken to prevent, reduce or mitigate spilling or discharge, an individual will be exempt from penalty or liability if the discharge is a result of any of the following activities:

- Ensuring the safety of the vessel,
- Saving human life,
- Damage to the vessel,
- Leakage not resulting from negligence, and
- Effluent produced by operation for the refining of oil.<sup>101</sup>

The fine for discharging of either oils and wastes into Malaysia's waters may carry a maximum penalty of 500,000 thousand ringgit, maximum imprisonment term of five years or both.<sup>102</sup>

### Penalties for Pollution Violation

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<sup>96</sup> Environmental Quality Act 1974, Section 27 and Section 28.

<sup>97</sup> Emergency (Essential Powers) Ordinance (1969).

<sup>98</sup> Emergency (Essential Powers) Ordinance (1969).

<sup>99</sup> Territorial Sea Act 2012, Section 3(3).

<sup>101</sup> Environmental Quality Act 1974, Section 29(c)

<sup>102</sup> Environmental Quality Act 1974, Section 26 and 29.

The same penalties and fines are held for acts of pollution or emittance of hazardous substances into the atmosphere, inland, or soil. A violator is subject to a maximum penalty up to 100,000 ringgit, an imprisonment term up to 5 years, or both. Any of these activities that continue despite receipt of notice for abatement, will result in a fine of 1,000 ringgit a day.<sup>103</sup>

For the discharge of wastes or oil into Malaysian Waters, unlicensed persons may be subject to a penalty of up to 500,000 ringgit, imprisonment term up to 5 years, or both.<sup>104</sup>

### Prohibition Order

The Director General is allowed to issue a Prohibition Order to the owner or occupier of any industrial plant or process.<sup>105</sup> The prohibition order may be issued permanently or conditionally to prevent continued operation of an industrial plant or process that releases environmentally hazard substances, pollutants or waste.<sup>106</sup> The Director may further order a person to cease activity and operation of all equipment that release environmentally hazardous substances, pollutants or wastes if the Minister considers the activity to be a threat to the environment, public health or safety.<sup>107</sup>

The penalty for violation of a Prohibition Order is a fine of a fine up to 50,000 ringgit, imprisonment of up to 2 years or both.<sup>108</sup>

### Licensing

The Director General serves as the licencing authority on matters relating to environmental quality, and is responsible for approving licences for industrial plants and equipment used on premises.<sup>109</sup> With the issuance of a licence, the Director General is allowed to attach conditions on the holder of a licence.<sup>110</sup> The imposed conditions may include any of the following: the repair, altering, or replacement of equipment; installation and operation of premises; or conducting a monitoring program to provide the Director General with information on the discharge or deposit of minerals.<sup>111</sup>

### Prescribed Premises

Premises that are categorized as a *Prescribed Premise* cannot operate without a license issued under the Department of Environment's approval.<sup>112</sup>

### Prescribed Activities

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<sup>103</sup> Environmental Quality Act 1974, Section 22(3).

<sup>104</sup> Environmental Quality Act 1974, Section 27(2)C.

<sup>105</sup> Environmental Quality Act 1974, Section 31A.

<sup>106</sup> Environmental Quality Act 1974, Section 31A.

<sup>107</sup> Environmental Quality Act 1974, Section 31A(2).

<sup>108</sup> Environmental Quality Act 1974, Section 31A(3).

<sup>109</sup> Environmental Quality Act 1974, Section 11.

<sup>110</sup> Environmental Quality Act 1974, Section 12.

<sup>111</sup> Environmental Quality Act 1974, Section 12.

<sup>112</sup> Environmental Quality Act 1974, Section 18.

The Minister may designate any activity that has a significant environmental impact on Malaysia's Environment as a Prescribed Activity. Prior to a person carrying out any prescribed activities, a report must be submitted to the Director General an impact assessment report or a proposed measure to control or mitigate the adverse impact on the Environment.<sup>113</sup> The Environmental Quality Act does not use the terms *Environmental Impact Assessment* or *Proposed Measure For Mitigation*, which identify the same type of reports required in Sabah's Environment Protection Enactment.

### Environmental Audit

An Environmental Audit is defined as a periodic, systematic, documented and objective evaluation used to determine three factors, including: the compliance status (of vehicle, ship, or premises) to environmental regulatory requirements; environmental management system; and the overall risk of the premises.<sup>114</sup>

The owner or occupier of any vehicle, ship or premises may be required to conduct an Environmental Audit and submit an audit report.<sup>115</sup> Activities that may have a significant environmental impact may require the submittal of an approved environment audit report.

### Open Burning

The *Environmental Quality Act* may also regulate acts that have an effect on both the soil and atmosphere. Open burning is the act of creating a fire, combustion or smoldering that occurs in the open air without the control of a chimney or stack on a premise.<sup>116</sup> The owner or occupier who has control of a premise is required to abide by open burning regulation.<sup>117</sup>

Open burning may be exempted under the Minister's notification in the *Gazette*.<sup>118</sup> The Director General may also regulate open burning if the air quality in a designated area has reached an unhealthy level and if the act would create a hazard to the environment.<sup>119</sup>

Any person found to perform open burning or cause open burning on any premise may be subject to a fine up to 500,000 ringgit or imprisonment term of no more than 5 years.<sup>120</sup>

### Institution and Implementation

#### a. Environmental Quality Council

The Environmental Quality Council was established to serve as an advisor to the Minister on relevant matters pertaining to the Environmental Quality Act.<sup>121</sup> The Minister is identified as the person responsible for environmental protection.<sup>122</sup>

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<sup>113</sup> Environmental Quality Act 1974, Section 34A.

<sup>114</sup> Environmental Quality Act 1974, Section 2.

<sup>115</sup> Environmental Quality Act 1974, 33A(1).

<sup>116</sup> Environmental Quality Act 1974, Section 29A.

<sup>117</sup> Environmental Quality Act 1974, Section 29B.

<sup>118</sup> Environmental Quality Act 1974, Section 29AA(1)

<sup>119</sup> Environmental Quality Act 1974, Section 29AA(2).

<sup>120</sup> Environmental Quality Act 1974, Section 29A(2).

<sup>121</sup> Environmental Quality Act 1974, Section 4(1) and 4(2).

The Council consists of Ministers from the various Federal agencies and the Ministry of Science Technology and the Environment. In addition to members represented at the federal level, one representative from each of the States of Sabah and Sarawak serves as a member of the Council.<sup>123</sup> Members from the petroleum, oil palm, and rubber industries also represent the Council.<sup>124</sup>

### Department of Environment Malaysia

The Department of Environment Malaysia is a Federal agency responsible for enforcing the Environmental Quality Act and promoting conservation initiatives for Malaysia.<sup>125</sup> The Department of Environment operates under the umbrella of the Ministry of Natural Resources and Environment and works in collaboration with other State departments, including the State of Sabah.

The Department work emphasis is centered on the abatement and prevention of pollution threats in Malaysia, including activity of monitoring water quality in the river and marine water.<sup>126</sup> The Department is also responsible for dealing with matters concerning water resources and coastal management.<sup>127</sup>

## 7. CASE LAW

- a. *Ketua Pengarah Jabatan Alam Sekitar & Anor Kajing Tubek & Ors and other appeals (3 MLJ 23, 1997)*<sup>128</sup>

### Description

In a suit representing 100,000 natives in the State of Sarawak, three respondents opposed the development of the Bakun Hydroelectric Project on land occupied and claimed under native customary rights. At issue was whether the State Government of Sarawak was subject to the regulations of the provisions of the Environmental Quality Act regulating the protection of the environment. The Environmental Quality Act requires the conducting and approval of Environmental Impact Assessment prior to development or construction projects which may pose a significant harm to the environment.

The respondents claimed that were never given an opportunity to include their input of the potential impact to the construction of the hydroelectric project in an Environmental Impact Assessment report, required under the Environmental Quality Act. The Sarawak Government made a counterargument based on the state legislation, the Natural Resources Ordinance 1959 as the applicable law, not the Environmental Quality Act. The Sarawak Government referenced Article 74 of the Federal Constitution read alongside the Ninth

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<sup>122</sup> Environmental Quality Act 1974, Section 2.

<sup>123</sup> Environmental Quality Act 1974, Section 4(f).

<sup>124</sup> Environmental Quality Act 1974, Section 4(g),(gg),(hh).

<sup>125</sup> Department of Environment Malaysia, <http://www.doe.gov.my>

<sup>126</sup> Department of Environment Malaysia, <http://www.doe.gov.my>

<sup>127</sup> Department of Environment Malaysia, <http://www.doe.gov.my>

<sup>128</sup> *Ketua Pengarah Jabatan Alam Sekitar & Anor Kajing Tubek & Ors and other appeals (3 MLJ 23, 1997)*; This case summary was also discussed in James Lam Chee Seng, *Environmental Law in Malaysia (Borneo Ed.)* 2007.

Schedule of the Constitution, which listed the subject of land matters as within the State legislative authority (see Annex on the Ninth Schedule).

### *Rationale*

The outcome of the case determined whether regulations on the environment, under the Environmental Quality Act, subjected the State to compliance to Federal laws. The case went through an appeals process with a finding in favor for the Sarawak Government. The decision of the Appeals court was based on an analysis of where the activity was carried out. The Environment was found to have been within State jurisdiction in context of the construction project because the activities were carried out on land and the river areas, which are within the boundaries of the State. The final decision further included an opinion which mentioned that it was unlikely the intention of the Federal Government to pass the Environmental Quality Act to regulate the entire environment of Malaysia.

### **b. Land Acquisition Case and Environment Protection Enactment Case**

The authors are grateful for the provision of any information relating to case law on land acquisition and environment protection.

## ANNEX I

### Environment Protection (Prescribed Activities) (Environment Impact Assessment) Order 2005

FIRST SCHEDULE	
List of Prescribed Activities Requiring Proposal for Mitigation Measures	
<b>Agriculture</b>	<ul style="list-style-type: none"> <li><i>a.</i> Development of agricultural estates or plantations covering an area of 100 hectares to 500 hectares,</li> <li><i>b.</i> Development of agricultural estates or plantations involving change in type of crops covering an area of 100 hectares to 500 hectares, or</li> <li><i>c.</i> Conversion of wetland forests into agricultural estates or plantations covering an area of 20 hectares to 50 hectares.</li> </ul>
<b>Forestry</b>	<ul style="list-style-type: none"> <li><i>a.</i> Cutting or extraction of timber covering areas ranging from 100 hectares to 500 hectares, or</li> <li><i>b.</i> Development of forest plantation or reforestation covering areas ranging from 100 hectares to 500 hectares.</li> </ul>
<b>Housing, Commercial and Industrial Estates</b>	<ul style="list-style-type: none"> <li><i>a.</i> Development of housing, commercial or industrial estates covering an area ranging from 10 hectares to 50 hectares,</li> <li><i>b.</i> Development of housing, commercial or industrial estates within 200 metres from the high-water mark of the coastal area, or</li> <li><i>c.</i> Conversion of wetland forests into housing, commercial or industrial estates covering an area ranging from 2 hectares to 30 hectares.</li> </ul>
<b>Fisheries and Aquaculture</b>	<ul style="list-style-type: none"> <li><i>a.</i> Conversion of wetland forests into fisheries or aquaculture development covering an area of 10 hectares or more but less than 50 hectares, or</li> <li><i>b.</i> Creation of lakes or ponds for fisheries or aquaculture development covering an area of 10 hectares or more but less than 50 hectares.</li> </ul>
<b>Quarries</b>	<ul style="list-style-type: none"> <li><i>a.</i> Quarrying of aggregates, limestone, silica, quartzite, sandstone, sand, marble or stones within 200 metres from any streams or rivers.</li> </ul>



<b>Resorts and Recreational Development</b>	<ul style="list-style-type: none"> <li>• Development of resorts, recreational or tourism facilities covering an area ranging from 10 hectares to 30 hectares, or</li> <li>• Development of resorts, recreational or tourism facilities within 200 metres from the high-water mark of the coastal area.</li> </ul>
<b>Other Activities Likely To Affect Quality Of The Environment</b>	<ul style="list-style-type: none"> <li>• Construction of buildings for public purposes within 200 metres from the high-water mark of the coastal area, or</li> <li>• Construction of open jetties with a length of 100 metres or more for commercial or public use along rivers or sea front.</li> </ul>

## SECOND SCHEDULE

### List of Prescribed Activities Requiring Environmental Impact Assessment Report

<b>Agriculture</b>	<ul style="list-style-type: none"> <li><i>a.</i> Development of agricultural estates or plantations covering an area of 500 hectares or more,</li> <li><i>b.</i> Development of agricultural estates or plantations involving change in type of crops covering an area of 500 hectares or more,</li> <li><i>c.</i> Conversion of wetland forests into agricultural estates or plantations covering an area of 50 hectares or more, or</li> <li><i>d.</i> Agricultural programmes involving the settlement of 100 families or more.</li> </ul>
<b>Forestry</b>	<ul style="list-style-type: none"> <li><i>a.</i> Felling or extraction of timber covering an area of 500 hectares or more, or</li> <li><i>b.</i> Development of forest plantation or reforestation covering an area of 500 hectares or more.</li> </ul>
<b>Housing, Commercial Or Industrial Estates</b>	<ul style="list-style-type: none"> <li><i>a.</i> Development of housing, commercial or industrial estates covering an area of 50 hectares or more,</li> <li><i>b.</i> Conversion of wetland forests into housing, commercial or industrial estates covering an area of 30 hectares or more,</li> <li><i>c.</i> Conversion of wetland forests into housing, commercial or industrial estates covering an area of 30 hectares or more, or</li> <li><i>d.</i> Development of housing, commercial or industrial estates on hills with slopes having gradient of 20 degrees or more.</li> </ul>
<b>Drainage and Irrigation</b>	<ul style="list-style-type: none"> <li><i>a.</i> Irrigation schemes covering an area of 500 hectares or more, or</li> <li><i>b.</i> Drainage of wetland forests covering an area of 50 hectares or more.</li> </ul>
<b>Land Reclamation</b>	<ul style="list-style-type: none"> <li><i>a.</i> Reclamation of land by the sea or along river banks for development of housing, commercial or industrial estates, construction of major roads, or other public purposes.</li> </ul>
<b>Wetlands</b>	<ul style="list-style-type: none"> <li><i>a.</i> Conversion of wetland forests into fisheries or aquaculture development covering an area of 50 hectares or more, or</li> <li><i>b.</i> Creation of lakes or ponds for fisheries or aquaculture development covering an area of 50 hectares or more.</li> </ul>
<b>Mining</b>	<ul style="list-style-type: none"> <li><i>a.</i> Mining including open cast mining for minerals pursuant to any mining lease – (a) covering an area of 20 hectares or more; or (b) any form of mining which is likely to affect the landscape of the mining area so as to require rehabilitation once the activity is completed, or which involves the use of chemicals or explosives.</li> </ul>

<b>Construction of Dams and Hydro-Electric Power Themes</b>	<p><i>a.</i> Construction of dams and hydro- electric power schemes involving the following-</p> <ul style="list-style-type: none"> <li>• Dams over 15 metres high and ancillary structures covering an area of 40 hectares or more,</li> <li>• Artificial lakes or reservoirs with a surface area covering 50 hectares or more, or</li> <li>• Diversion of streams, rivers or watercourses.</li> </ul>
<b>Quarrying</b>	<p><i>a.</i> Quarrying of aggregates, limestone, silica, quartzite, sandstone, sand, marble or stones for commercial or construction purposes within 3 kilometres of –</p> <ul style="list-style-type: none"> <li>• Any existing settlement, residential, commercial or industrial area, major roads, or any buildings for public purposes, or</li> <li>• Any area for which a licence, permit or approval has been granted for development of settlement, residential, commercial or industries area, major roads, or any buildings for public purposes;</li> </ul> <p><i>b.</i> Earth work involving extraction, removal, filling or dumping of earth with a volume of 40,000 cubic metres or more, or</p> <p><i>c.</i> Excavation or dredging of sand or rock materials from watercourses, streams, rivers, coastal area or sea for commercial or construction purposes.</p>
<b>Resorts, Recreational or Tourism</b>	<p><i>a.</i> Development of resorts, recreational or tourism facilities covering an area of 30 hectares or more,</p> <p><i>b.</i> Development of resorts, recreational or tourism facilities on hills with slopes having gradient of 20 degrees or more, or</p> <p><i>c.</i> Development of golf courses</p>
<b>Water Supply</b>	<p><i>a.</i> Construction of dams, artificial lakes or reservoirs with a surface area of 50 hectares or more for impounding water, or</p> <p><i>b.</i> Development of groundwater supply with a capacity of 4,500 cubic metres or more per day.</p>
<b>Other Activities Likely To Affect Quality Of The Environment</b>	<p><i>a.</i> Construction of buildings for public purposes on hills with slope having gradient of 20 degrees or more,</p> <p><i>b.</i> Construction or upgrading of major roads involving realignment and widening through settlement, coastal areas or wetland forests, or on hills with slopes with gradient of 20 degrees or more,</p> <p><i>c.</i> Construction of port facilities (including warehouses, container yards and cargo storage facilities) for commercial use along rivers or sea front, or sea front; or</p> <p><i>d.</i> Construction of closed landing jetties for commercial or public use</p>

along rivers or sea front.

## ANNEX II

### Offences and Penalties for Violations of Environment Protection Enactment

Under Sections 51 to 58 of the Environment Protection Enactment (2002), any person found in violation of the following offences may be subject to a fine, imprisonment or both upon conviction.<sup>129</sup> Each day an offence continues unabated is considered a separate offence. The Director may compound these separate offences based on a minimum to maximum range. Any debt owed to the State of Sabah for offences committed under the Enactment must be paid into the Environment Protection Fund.

#### Question

Is there an up to date copy of the amended Environment Protection Enactment available? The newly amended Enactment has increased the penalties. However, the February 2013 version posted on SabahLaws.Net does not contain an up to date list of the Fines and Penalties.

Offences	Penalties
Failure to comply with the terms and conditions of an agreement of environmental conditions under section (12)(5). <sup>130</sup>	<b>Maximum Fine:</b> 100,000 Ringgit
	<b>Maximum Imprisonment Term:</b> 5 Years
	<b>Compounding of Offence:</b> Minimum of 5,000 to Maximum of 20,000 Ringgit
Failure to comply with an abatement notice <sup>131</sup>	<b>Maximum Fine:</b> 50,000 Ringgit
	<b>Maximum Imprisonment Term:</b> 2 Years
	<b>Compounding of Offence:</b> Minimum 2,000 to Maximum of 10,000 Ringgit

<sup>129</sup> The Offences and Penalties listed in the Annex may have changed from the recent 2012 amendment to the Environment Protection Enactment. The most recently released copy of the Environment Protection Enactment may not provide the most up to date information on Offences and Penalties.

<sup>130</sup> Section 12(5) refers to failure of an applicant who failed to abide by a signed an agreement of environmental conditions or mitigation declaration. Environment Protection Enactment 2002, Section 51.

<sup>131</sup> Environment Protection Enactment 2002, Section 52.

Failure to comply with the terms and conditions of a licence. <sup>132</sup>	<b>Maximum Fine:</b> 30,000 Ringgit
	<b>Maximum Imprisonment Term:</b> 1 Year
	<b>Compounding of Offence:</b> Minimum of 500 Ringgit to Maximum of 5,000 Ringgit
Failure to comply with the terms and conditions of a mitigation declaration under section 12(5). <sup>133</sup>	<b>Maximum Fine:</b> 50,000 Ringgit
	<b>Maximum Imprisonment Term:</b> 2 Years
	<b>Compounding of Offence:</b> Minimum 2,000 Ringgit to Maximum of 10,000 Ringgit
Possession of a letter of authority without the approval of the Director or impersonating as an environmental enforcement officer. <sup>134</sup>	<b>Maximum Fine:</b> 10,000 Ringgit
	<b>Maximum Imprisonment Term:</b> 1 year
	<b>Compounding of Offence:</b> Minimum 100 Ringgit to Maximum of 10,000 Ringgit
Willful obstruction, hindrance, resistance or deception performed on the Director or any authorized environmental enforcement officer in the execution of any of the following powers under the Enactment. <sup>135</sup>	<b>Maximum Fine:</b> 10,000 Ringgit
	<b>Maximum Imprisonment Term:</b> 1 Year
	<b>Compounding of Offence:</b> Minimum 100 Ringgit to Maximum of 10,000 Ringgit

<sup>132</sup> Environment Protection Enactment 2002, Section 53.

<sup>133</sup> Environment Protection Enactment 2002, Section 54.

<sup>134</sup> Environment Protection Enactment 2002, Section 55.

<sup>135</sup> Environment Protection Enactment 2002, Section 56.

## ANNEX III

### Environment Protection (Prescribed Activities) (Environment Impact Assessment) Order 2005

FIRST SCHEDULE	
List of Prescribed Activities Requiring Proposal for Mitigation Measures	
<b>Agriculture</b>	<ul style="list-style-type: none"> <li><i>d.</i> Development of agricultural estates or plantations covering an area of 100 hectares to 500 hectares,</li> <li><i>e.</i> Development of agricultural estates or plantations involving change in type of crops covering an area of 100 hectares to 500 hectares, or</li> <li><i>f.</i> Conversion of wetland forests into agricultural estates or plantations covering an area of 20 hectares to 50 hectares.</li> </ul>
<b>Forestry</b>	<ul style="list-style-type: none"> <li><i>c.</i> Cutting or extraction of timber covering areas ranging from 100 hectares to 500 hectares, or</li> <li><i>d.</i> Development of forest plantation or reforestation covering areas ranging from 100 hectares to 500 hectares.</li> </ul>
<b>Housing, Commercial and Industrial Estates</b>	<ul style="list-style-type: none"> <li><i>d.</i> Development of housing, commercial or industrial estates covering an area ranging from 10 hectares to 50 hectares,</li> <li><i>e.</i> Development of housing, commercial or industrial estates within 200 metres from the high-water mark of the coastal area, or</li> <li><i>f.</i> Conversion of wetland forests into housing, commercial or industrial estates covering an area ranging from 2 hectares to 30 hectares.</li> </ul>
<b>Fisheries and Aquaculture</b>	<ul style="list-style-type: none"> <li><i>c.</i> Conversion of wetland forests into fisheries or aquaculture development covering an area of 10 hectares or more but less than 50 hectares, or</li> <li><i>d.</i> Creation of lakes or ponds for fisheries or aquaculture development covering an area of 10 hectares or more but less than 50 hectares.</li> </ul>
<b>Quarries</b>	<ul style="list-style-type: none"> <li><i>b.</i> Quarrying of aggregates, limestone, silica, quartzite, sandstone, sand, marble or stones within 200 metres from any streams or rivers.</li> </ul>



<b>Resorts and Recreational Development</b>	<ul style="list-style-type: none"> <li>• Development of resorts, recreational or tourism facilities covering an area ranging from 10 hectares to 30 hectares, or</li> <li>• Development of resorts, recreational or tourism facilities within 200 metres from the high-water mark of the coastal area.</li> </ul>
<b>Other Activities Likely To Affect Quality Of The Environment</b>	<ul style="list-style-type: none"> <li>• Construction of buildings for public purposes within 200 metres from the high-water mark of the coastal area, or</li> <li>• Construction of open jetties with a length of 100 metres or more for commercial or public use along rivers or sea front.</li> </ul>

## SECOND SCHEDULE

### List of Prescribed Activities Requiring Environmental Impact Assessment Report

<b>Agriculture</b>	<ul style="list-style-type: none"> <li><i>e.</i> Development of agricultural estates or plantations covering an area of 500 hectares or more,</li> <li><i>f.</i> Development of agricultural estates or plantations involving change in type of crops covering an area of 500 hectares or more,</li> <li><i>g.</i> Conversion of wetland forests into agricultural estates or plantations covering an area of 50 hectares or more, or</li> <li><i>h.</i> Agricultural programmes involving the settlement of 100 families or more.</li> </ul>
<b>Forestry</b>	<ul style="list-style-type: none"> <li><i>c.</i> Felling or extraction of timber covering an area of 500 hectares or more, or</li> <li><i>d.</i> Development of forest plantation or reforestation covering an area of 500 hectares or more.</li> </ul>
<b>Housing, Commercial Or Industrial Estates</b>	<ul style="list-style-type: none"> <li><i>e.</i> Development of housing, commercial or industrial estates covering an area of 50 hectares or more,</li> <li><i>f.</i> Conversion of wetland forests into housing, commercial or industrial estates covering an area of 30 hectares or more,</li> <li><i>g.</i> Conversion of wetland forests into housing, commercial or industrial estates covering an area of 30 hectares or more, or</li> <li><i>h.</i> Development of housing, commercial or industrial estates on hills with slopes having gradient of 20 degrees or more.</li> </ul>
<b>Drainage and Irrigation</b>	<ul style="list-style-type: none"> <li><i>c.</i> Irrigation schemes covering an area of 500 hectares or more, or</li> <li><i>d.</i> Drainage of wetland forests covering an area of 50 hectares or more.</li> </ul>
<b>Land Reclamation</b>	<ul style="list-style-type: none"> <li><i>b.</i> Reclamation of land by the sea or along river banks for development of housing, commercial or industrial estates, construction of major roads, or other public purposes.</li> </ul>
<b>Wetlands</b>	<ul style="list-style-type: none"> <li><i>c.</i> Conversion of wetland forests into fisheries or aquaculture development covering an area of 50 hectares or more, or</li> <li><i>d.</i> Creation of lakes or ponds for fisheries or aquaculture development covering an area of 50 hectares or more.</li> </ul>
<b>Mining</b>	<ul style="list-style-type: none"> <li><i>b.</i> Mining including open cast mining for minerals pursuant to any mining lease – (a) covering an area of 20 hectares or more; or (b) any form of mining which is likely to affect the landscape of the mining area so as to require rehabilitation once the activity is completed, or which involves the use of chemicals or explosives.</li> </ul>

	<p><i>b.</i> Construction of dams and hydro- electric power schemes involving the following-</p> <ul style="list-style-type: none"> <li>• Dams over 15 metres high and ancillary structures covering an area of 40 hectares or more,</li> <li>• Artificial lakes or reservoirs with a surface area covering 50 hectares or more, or</li> <li>• Diversion of streams, rivers or watercourses.</li> </ul>
<b>Quarrying</b>	<p><i>d.</i> Quarrying of aggregates, limestone, silica, quartzite, sandstone, sand, marble or stones for commercial or construction purposes within 3 kilometres of –</p> <ul style="list-style-type: none"> <li>• Any existing settlement, residential, commercial or industrial area, major roads, or any buildings for public purposes, or</li> <li>• Any area for which a licence, permit or approval has been granted for development of settlement, residential, commercial or industries area, major roads, or any buildings for public purposes;</li> </ul> <p><i>e.</i> Earth work involving extraction, removal, filling or dumping of earth with a volume of 40,000 cubic metres or more, or</p> <p><i>f.</i> Excavation or dredging of sand or rock materials from watercourses, streams, rivers, coastal area or sea for commercial or construction purposes.</p>
<b>Resorts, Recreational or Tourism</b>	<p><i>d.</i> Development of resorts, recreational or tourism facilities covering an area of 30 hectares or more,</p> <p><i>e.</i> Development of resorts, recreational or tourism facilities on hills with slopes having gradient of 20 degrees or more, or</p> <p><i>f.</i> Development of golf courses</p>
<b>Water Supply</b>	<p><i>c.</i> Construction of dams, artificial lakes or reservoirs with a surface area of 50 hectares or more for impounding water, or</p> <p><i>d.</i> Development of groundwater supply with a capacity of 4,500 cubic metres or more per day.</p>
<b>Other Activities Likely To Affect Quality Of The Environment</b>	<p><i>e.</i> Construction of buildings for public purposes on hills with slope having gradient of 20 degrees or more,</p> <p><i>f.</i> Construction or upgrading of major roads involving realignment and widening through settlement, coastal areas or wetland forests, or on hills with slopes with gradient of 20 degrees or more,</p> <p><i>g.</i> Construction of port facilities (including warehouses, container yards and cargo storage facilities) for commercial use along rivers or sea front, or sea front; or</p>

	h. Construction of closed landing jetties for commercial or public use along rivers or sea front.
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