



STATE OF SABAH

I assent,



TUN DATUK SERI PANGLIMA HAJI AHMADSHAH BIN ABDULLAH,
Yang di-Pertua Negeri.

31ST DECEMBER, 2004.

No.14 of 2004

An Enactment to make ammend the Environment Protection Enactment 2002.

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

Short title and commencement

1. This Enactment may be cited as Environment Protection (Amendment) Enactment 2004 and shall come into force on such date the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Environment Protection Enactment 2002 [*En.No.12 of 2002*] which in this Enactment is referred to as the “principal Enactment” is amended by inserting, immediately after the definition of “pollution”, the following new definition:

“produce” means timber, earth, minerals, sand, sandstones, rocks, limestone, silica, marble and other natural resources;”.

Amendment of section 4

3. Section 4 of the principal Enactment is amended –

- (a) in the English Language text by substituting for the word “hold” in line 2, the word “holds”; and
- (b) by substituting for the word “replacement” in line 3, the word “reappointment”.

Amendment of section 27

4. Section 27 of the principal Enactment is amended-

- (a) by inserting, immediately after the word “plant” in line 1 of paragraph (d), the words “or any produce”; and
- (b) by inserting, immediately after the word “plant” in line 2 of paragraph (g), the words “or any produce”.

Amendment of section 38

5. Section 38 of the principal Enactment is amended-

- (a) by inserting, immediately after the word “plant” in line 2 of paragraph (2)(d) the words “or any produce”; and
- (b) by inserting, immediately after the word “plant” in line 3 of paragraph (2)(e) the words “or any produce”.

Amendment of section 40

6. Section 40 of the principal Enactment is amended –

- (a) by substituting subsection (1), the following:

“40. Power of entry, seizure and arrest.

(1) The Director, any authorised environmental enforcement officer or any police officer may, without warrant –

- (a) require any person to furnish any approval or licence for any act done or committed by such person or his servants or agents for which such approval or licence is required under this Enactment;
- (b) arrest any person who he has reason to believe has committed an offence under this Enactment;
- (c) seize any equipment, machinery, conveyance, tools, produce, documents or other things for which he has reason to believe that such equipment, machinery, conveyance, tools, produce, documents or other things has been used in the commission of any offence or in the relation to which any offence has been committed under this Enactment; or
- (d) enter and search any place or premise which he has reason to believe that an offence under this Enactment is about to be or has been committed.”; and

(b) by deleting subsection (3).

Amendment of section 41

7. Section 41 of the principal Enactment is amended –

(a) by substituting section 41, the following:

“41. Temporary return and list of things seized.

(1) Where anything has been seized under this Enactment, the Director may temporarily return the thing seized to the owner thereof or to the person from whose possession, custody or control it was seized, subject to such terms and conditions as the Director may impose and subject, in any case, to sufficient security being furnished to the satisfaction of the Director that the thing seized shall be surrendered to him on demand and that the said terms and conditions, if any, shall be complied with.

(2) Where any seizure is made under this Enactment, the Director, authorised environmental enforcement officer or police officer making the seizure shall prepare a list of any equipment, machinery, conveyance, tools, produce, documents or other things seized and of the place or premise in which it is found and shall sign the list.

(3) The list prepared in accordance with subsection (2) shall be delivered immediately to the occupier, or his servants or agents present in the place or premise where the equipment, machinery, conveyance, tools, produce, documents or other things seized are found.

(4) Where the seizure is made in or from any place or premise which is unoccupied, the Director, authorised environmental enforcement officer or police officer shall whenever possible post a list of the things seized conspicuously at such place or premise.”; and

(b) by inserting, the following new section 41A:

“41A. Forfeiture and disposal of things seized.

(1) Any equipment, machinery, conveyance, tools, produce, documents or other things seized pursuant to this Enactment shall be liable to forfeiture.

(2) Where there is no prosecution with regard to any equipment, machinery, conveyance, tools, produce, documents or other things seized in exercise of any powers conferred under this Enactment, the same shall be taken and deemed to be forfeited at the expiration of one calendar month from the date it was seized unless a claim thereto is made before that date in the manner hereinafter set forth.

(3) Any person asserting that he is the owner of any equipment, machinery, conveyance, tools, produce, documents or other things seized under this Enactment and that the same are not liable to forfeiture may personally or by his agent authorised in writing by him give written notice to the Director of his claim.

(4) On receipt of a notice under subsection (3) the Director who may, after such enquiry as may be necessary, direct that any equipment, machinery, conveyance, tools, produce, documents or other things seized be returned or forfeited or refer the matter to the Court for decision.

(5) The Court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of any equipment, machinery, conveyance, tools, produce, documents or other things seized and the person from whom they were seized to appear before it and upon appearance or default to appear, due service of the summon being proved, the Court shall proceed to the examination of the matter and on proof that an offence under this Enactment or rules made thereunder has been committed and that such equipment, machinery, conveyance, tools, produce, documents or other things seized was the subject matter or was used in the commission of such offence, shall order the same to be forfeited or may, in absence of such proof, order the return of such equipment, machinery, conveyance, tools, produce, documents or other things seized to the person entitled to it.

(6) The Court shall upon conviction of an offence, order anything seized to be forfeited and disposed of in accordance with the provisions under this Enactment.

(7) Where anything has been forfeited under this Enactment, the Director shall dispose such thing by way of auction or tender and the proceeds of sale shall be deposited into the Environment Protection Fund.”

Amendment of section 43

8. Section 43 of the principal Enactment is deleted and substituted for the following:

“43. “Power to investigate.

(1) The Director, any authorised environmental enforcement officer, any police officer not below the rank of Sergeant and any officer in charge of police station may without the order of the Public Prosecutor exercise all or any of the special powers in relation to police investigations given by the Criminal Procedure Code in any seizable offence under this Enactment.

(2) The Director, any authorised environmental enforcement officer, any police officer not below the rank of Sergeant and any officer in charge of police station may, in any non-seizable offence under this Enactment exercise the special powers in relation to police investigations given by the Criminal Procedure Code after obtaining an order to investigate from the Public Prosecutor.”

Amendment of section 46

9. Section 46 of the principal Enactment is amended by inserting, immediately after subsection (6), the following new subsection (6A):

“(6A). If a member of the Appeal Board is unable to attend an appeal proceeding due to illness or because of incapacity, the Minister may appoint a replacement member and such appointed member shall be provided with the notes of proceeding and all other related documents submitted before the Appeal Board.”

Amendment of section 51

10. Section 51 of the principal Enactment is amended-

(a) by inserting, immediately after the word “who” in line 1, the words “carries out any prescribed activity without submitting an environmental impact assessment report and obtaining an approval from the Director under section 12(3) or”; and

(b) by substituting the marginal notes, the following:

“Failure to submit Environmental Impact Assessment report or comply with terms of agreement.”

Amendment of section 53

11. Section 53 of the principal Enactment is amended –

(a) by inserting, immediately after the word “who” in line 1, the words “carries out any prescribed activity without a licence issued by the Director under section 17 or”; and

- (b) by substituting the marginal notes, the following:
“Failure to obtain licence or comply with conditions.”

Amendment of section 54

12. Section 54 of the principal Enactment is amended –

- (a) by inserting, immediately after the word “who” in line 1, the words “carries out any prescribed activity without submitting a proposal for mitigation measures and obtaining an approval from the Director under section 12(3) or”; and
- (b) by substituting the marginal notes, the following:
“Failure to submit proposal for mitigation measures or comply with conditions.”

New sections of 56A and 56B

13. Section 56 of the principal Enactment is amended by inserting, the following new sections 56A and 56B:

“56A. Failure to surrender on demand things seized.

Any person who fails to surrender to the Director on demand anything seized which has been temporarily returned to such person or fails to comply with or contravenes any of the terms and conditions imposed under section 41(1) shall be guilty of an offence and shall on conviction be liable to –

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

56B. General penalty for breach of Enactment or regulations.

(1) Any person who contravenes or fails to comply with any of the provisions of this Enactment or any of the regulations made hereunder for which no penalty has been provided for, shall be guilty of an offence and shall on conviction be liable to –

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

(c) both fine and imprisonment.

(2) Any person who abets the commission of an offence punishable under this Enactment or any of the regulations made hereunder shall be punishable as if he had committed the said offence.”

Amendment of section 58

14. Section 58 of the principal Enactment is amended by substituting, the words “section 55 and 56” in line 2 of paragraph (1)(d), the words “sections 55, 56, 56A and 56B.”

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 2nd. day of December, 2004.

DATUK HAJI JUHAR BIN HAJI MAHIRRUDDIN,

Speaker,

State Legislative Assembly.