

Keynote Address

Madam Halimah Hassan, Director General of Environment

Distinguished Guests, Ladies and Gentlemen,
Good morning and Salam 1 Malaysia

I am indeed honoured to be here this morning to deliver the keynote address at this Environmental Legislation Seminar 2013 held in conjunction with ENSEARCH's 29th AGM.

On the outset, I would like to congratulate ENSEARCH for successfully organizing this important forum that aims to provide highlights and solicit views from various sectors representing the legal fraternity, industry players and stakeholders from the non-governmental organizations on the implications of the new amendments to the Environmental Quality Act 1974 in force and other environmental regulations in light of current socio-economic development in Malaysia.

This forum I believe will facilitate better understanding of the industries and other stakeholders in fulfilling their obligations under the law with special reference to the EQA 1974. I thank you for giving me an opportunity to be part of this beneficial forum.

Distinguished guests, Ladies & Gentlemen,

Malaysia is notably among the countries in the world that is actively trying to balance environmental conservation with economic development. This has not been an easy road for a developing nation such as Malaysia, struggling with issues of managing change while ensuring a fair and equitable distribution of the nation's wealth. Our greatest strength has been our commitments to be transparent in our approach to environmental management and self-critical of our standards and practices.

For Malaysia, the past three decades have been a period of rapid growth including growth in our manufacturing sector. With the Economic Transformation Program (ETP) introduced in 2010, gearing the nation towards a high income economy will see more investments in the 12 National Key Economic Areas.

The ETP requires Government to play a new role as a facilitator of economic growth – liberalising markets, giving incentives for investment, removing barriers and letting the private sector lead. This role will be critical to mitigate the risks to the programme and to ensure successful delivery.

However, the consequence of this impressive growth is inevitably the utilisation of natural resources, the generation of toxic and hazardous waste and the environmental impacts from development projects.

The Department of Environment under the Ministry of Natural Resources and Environment (NRE) strives to ensure sustainable development, a clean, safe and healthy environment to enhance the quality of life for Malaysians.

Ladies and Gentlemen,

With regards to the state of environment monitored by DOE, the overall air quality for Malaysia in 2011 was between good to moderate levels most of the time. However, the overall number of good air quality days decreased in 2011 (55 % the time) compared to that in 2010 (63 % of the time). The country experienced several short spell of haze episodes due to trans-boundary haze pollutions as a result of forest fires from Central Sumatra and Kalimantan, Indonesia which occurred during the dry period from May to September 2011. These had contributed to the slight deterioration of overall air quality in 2011.

In 2011, out of 464 rivers monitored, a total of 275 (59.3%) were found to be clean, 150 (32.3%) slightly polluted and 39 (8.4%) polluted. The river water quality in terms of Water Quality Classification Index had shown a slight improvement in 2011. The percentage of clean rivers had increased from 51% (2010) to 59% in 2011. The percentage of polluted river had decreased from 13% in 2010 to 8% in 2011.

With regards to enforcement and legal actions, in 2011, a total of 811 offences were prosecuted under the Environmental Quality Act (EQA) 1974 with total fines collected amounting to RM4,093,700. The offences amongst others were related air pollution from motor vehicular emissions, violation of license conditions and effluent discharges exceeding standards. In 2011 a total of 6,078 compounds were issued against premises and companies for various offences under the EQA 1974.

In this regard, with the enforcement of the new provisions of the amendments to the EQA, and with the cooperation of all stakeholders, DOE believes will further improve the effectiveness of enforcement on environmental crime that is becoming increasingly challenging. The Department is also confident of reducing the level of environmental pollution in ensuring a clean, healthy and safe environment for the well-being of the people.

Ladies and gentlemen,

In Malaysia, environmental concerns were initially addressed through the need to control pollution. Environmental policy objectives were then adopted and the Environmental Quality Act was introduced and enforced since 1974. The Act has been the main legislative instrument to prevent, abate and control pollution and to enhance the quality of the environment. Surpassing many obstacles in promoting the concept of sustainable development, we nonetheless take pride that after almost 39 years of environmental management in the country, we have managed to raise public consciousness on the

importance of environmental protection and that it is our collective responsibility to do so.

Industries are encouraged to migrate towards self-regulatory culture in pollution prevention and control, especially amongst the larger firms, which are capable of adopting clean technologies and have the financial resources to do so. However, special consideration will also be given to address the compliance of the small and medium entrepreneurs (SME). Integrated technological, financial and innovative approaches to solving the pollution problems of these industries will be looked at, including options such as application of cleaner production technologies, provision of common treatment facilities, or relocation of such industries into industrial parks with such facilities.

Environmental issues are becoming more complex. In the past, it was enough that industries conformed to acceptable standards set by the regulatory agencies. With the growing environmental consciousness as a result of increased media attention, tougher environmental legislation and green consumerism, industries must integrate environmental factors into industrial operations to achieve compliance with acceptable environmental standards and minimising adverse impact on the environment. Hence by properly implementing an appropriate environmental management system would reduce the environmental risks posed. This approach is the heart of the ISO 14001 standard. In adopting ISO 14000 series, industries would not only comply with environmental legislation in an efficient and

systematic manner but would improve their organisations' profitability through better use of resources and reduction in waste generation. Towards this end, the Department encourages industries to strive for certification.

Ladies and gentleman,

Since its introduction the EQA more than 38 years ago, the scope and strategies has undergone series of amendments to sustain its relevance in facing ever evolving challenges and emerging concerns in environmental governance. These changes provide an indication of the increasing complexities of environmental issues facing Malaysia.

The Environmental Quality (Amendment) Act 2012 or Act 1441 was gazetted on 16 August 2012 came into force on 2 January 2013. Among others, the main purpose of the Amendment is to strengthen the enforcement mechanism and the implementation of the EIA procedures. Announcement of the amendment made by the Honorable Minister of Natural Resources and Environment last year was welcomed with optimism and sanguinity.

I am certain many, if not all of you are fairly well versed, however, please allow me to highlight the amendments to existing provisions as well as insertion of new provisions made under this Environmental Quality (Amendment) Act 2012, for the benefit of all participants.

Section 2 of the principal Act is amended—

by inserting the following definition:

- (a). “competent person” means a person who is competent to conduct the activities as specified in section 49a;
- (b). “qualified person” means a person who fulfills the requirement as the Director General may determine to conduct an environmental audit and environmental impact assessment, and to submit a report thereon;
- (c). “physical plan” means—
 - (i) the national physical plan under the Town and Country Planning Act 1976 [*Act 172*];
 - (ii) the physical plan covering Sabah under the Town and Country Planning Ordinance [*Sabah Cap. 141*];
 - (iii) the physical plan covering Sarawak under the Sarawak Land Code [*Cap. 81*]; and
- (d). “development plan” has the same meaning assigned to it under the Town and Country Planning Act 1976;’.

By **substituting** for the definition of “**pollution**” the following definition:

- (e). “pollution” means an act or process, whether natural or artificial, resulting in the introduction of any pollutant into the environment in contravention of the acceptable conditions as specified in the regulations made under section 21;’;

Section 4 on Environmental Quality Council is amended:-

- correct names of the Ministries e.g. NRE, MOSTI etc.; and
 - one additional representation, each from :-
 - Ministry of Housing & Local Government ; and
 - Ministry of Energy, Green Technology & Water.
- ... making the membership 20 from previously 17.

Amendment of section 33A – Environmental Audit

Section 33a of the principal Act is amended by substituting for subsection (2) the following subsection:

For the purpose of carrying out an environmental audit and to submit a report thereof—

(a) the Director General may appoint a **qualified person**; or

(b) the Director General may request the owner or occupier to appoint a **qualified person** from amongst the qualified persons listed under subsection (3).” referring to the list of registered environmental auditors. Valuable to note that the words “qualified personnel” wherever they appear is substituted with the words “**qualified person**”in this amendment to maintain uniformity.

In view of improving the implementation and enforcement of EIA projects the following amendments were made:

Section 34A of the principal Act is amended to state that —

“(2) Any person intending to carry out any prescribed activity shall **appoint a qualified person** to conduct an environmental impact

assessment and to submit a report thereof to the Director General in the manner as the Director General may prescribe.”;

(2a) The Director General shall maintain a **list of qualified persons** who may carry out an environmental impact assessment and submit a report thereof.

(2b) The qualified person who submits the report shall—

(a) **be responsible** for the environmental impact assessment and the recommendations of the environmental impact assessment;

(b) ensure that the report and the recommendation **do not contain any false or misleading information**;

(c) take a **professional indemnity insurance** for any liability arising from the environmental impact assessment and the recommendations of the environmental impact assessment.

(2c) The report shall be in accordance with the **guidelines** as the Director General may prescribe and shall contain—

(a) an assessment of the impact such activity will have or is likely to have on the environment; and

(b) the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.”;

(d) by substituting for subsections (4) and (5) the following subsections:

“(4) If the Director General, on examining the report and after making such inquiries as he considers necessary, is of the opinion that—

- (a) the report is not in accordance with the development plan or physical plan approved by the relevant approving authority; or
- (b) the report does not satisfy the requirements under subsection (2c), he shall not approve the report, giving reasons for not approving, and shall inform the person and the relevant approving authority accordingly.

“(5) The Director General may require the person to submit any other report to him, in addition to the report required to be submitted under subsection 34a(2), relating to the environmental impact for his approval.”; and

Subsection (8) – any person who contravenes this section shall be guilty of an offence and shall be liable to a fine not exceeding **RM500, 000.00** or to imprisonment for a period not exceeding 5 years or to both.

New section 34AA - Prohibition order for prescribed activities

(1) The Director General may issue a **prohibition order or stop work order** to the person carrying out the prescribed activities—

- (a) without the approval under subsection 34A(3);

- (b) who violates any conditions attached to the approval of the report; or

- (c) which in the opinion of the Director General are being carried out in a manner that is likely to cause environmental damage.

(2) The prohibition order or stop work order may be issued for the purpose of preventing the prescribed activities from continuing—

(a) either absolutely or conditionally;

(b) for such period as the Director General may determine; or

(c) until requirements to remedy as the Director General may direct have been complied with.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable—

(a) to a fine not exceeding **RM500,000.00** or to imprisonment for a period not exceeding five years or to both; and

(b) for a continuous offence, to a fine not exceeding one thousand ringgit for everyday during which the offence continues after a notice has been served by the Director General upon the person requiring the person to comply with the act specified in it.”.

Amendment to Section 36C, 36D & 36E - pertaining to Payment of Cess and Environmental Fund

New Sections 37A, 37B & 37C relates powers of The Director General or any officer duly authorized, conferred to conduct investigation under this Act. This includes the power to arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Act.

Subsequently, the following New Sections / substitutions are made,

Section 38AA- Admissibility of statements in evidence; and

Section 38AB - Power to require attendance of persons acquainted with case.

Section 46B - Forfeiture of seized vehicle, ship, book, *etc.*

Section 46BA - List of vehicle, ship, book, *etc.*, seized

Section 46BB - Release of seized book, record, computer, *etc.*

Section 46BC - Cost of holding seized vehicle, ship, book, *etc.*

Section 46D - No costs or damages arising from seizure to be recoverable

Section 48AA – Access to computerized data

Section 48AB - Presumption

Section 48AC - Additional powers

Section 48AD - Obstruction to search

Section 48 AE - Joinder of offences; &

Section 49 – Delegation

Section 49A – Competent person

(1) An owner or occupier of a premise shall employ a person who has been **certified by the Director General** as a **competent person** to conduct all or any of the following activities:

(a) the operation of a control equipment;

(b) the management of scheduled wastes;

(c) the conduct of studies;

(d) the preparation and submission of reports, plans, proposals, engineering drawings or other documents relating to environmental matters.

(2) The reports, plans, proposals, engineering drawings or other documents relating to environmental matters referred to in paragraph (1)(d) shall be prepared and submitted by the competent person to the Director General.

Section 49B - Reward to informers

The Director General may order a reward as he thinks fit to be paid to an informer for services, information, statement or assistance in connection with the detection of any offence under this Act.

Section 50A - Protection of informers

Ladies and gentlemen,

Let me just give you some highlights of the new provisions.

Strengthening Enforcement Mechanism

- i) Power of arrest without warrant of any suspected person committing an offence under the Act;
- ii) Seizure and forfeiture of vehicles, vessels, goods or documents involved in contravention to the provisions of the Act;

- iii) Recovery of costs of goods confiscated in the custody pending court proceedings,
- iv) Requiring the attendance of person acquainted with case to provide information and can be referred to the court for further orders.
- v). Presumption; when substance is suspected of being schedule waste, shall be sufficient of analyse samples of the substances and shall presumed that the contents of all receptacles will be the same
- iv) Reward to informers and the Protection of Informers

In the context of improving the implementation and enforcement of the projects subject to EIA requirements, the new provisions amongst others include:

- i) Prohibition Order or Stop Work Order for development of project without EIA approval or violating the condition(s) of EIA approval or has caused pollution during the course of project implementation;
- ii) The maximum penalty on offences related to EIA has increased from RM 100,000 to RM 500,000
- iii) Proposed development projects will have to be consistent with the development plan or physical plan approved by the relevant authorities

Another amendments to the EQA is the requirement of a competent person:

- i. to operate a control equipment
- ii. manage schedule waste
- iii. conduct studies;
- iv. preparing and submitting reports, plans, proposal, engineering drawings or other documents

DOE has also taken steps to ensure the smooth implementation of the new provisions provided for under the 2012 amendments. A series of workshops and road shows have been conducted for State DOE officers. Standard Operating Procedures and guidance documents have also been developed for DOE officers to ensure consistency and transparency in its implementation. It is also important that there will be no abuse of power amongst DOE officers.

Ladies and Gentlemen,

The department in executing its responsibilities seek continual cooperation and support of all stakeholders to further improve the effectiveness of enforcement on environmental offences that is becoming increasingly challenging to deal with. The Department is also hopeful of reducing the level of environmental pollution in the effort to ensure a clean, healthy and safe environment for the people. The responsibility to ensure a clean, safe and productive environment does not fall on the government, in particular MNRE alone. It is important that we all work together, making use of opportunities provided for public participation in the process. We need the

involvement of all, in particular the NGOs and the public to be our eyes and ears so that we are informed of what is happening on the ground. I must underline the fact that the Department would like to view the NGOs, Industries, GLCs and the general public as partners in managing our environment.

Certainly there are always shortcomings in any system. But we should not let it remain so. I therefore call on each and every one of us to take home this message - that **Environmental Protection & Conservation Is Indeed Our Shared Social Responsibility.** Pointing fingers will not solve problems. It is necessary to work together with each one doing our bit. In this regard, the government welcomes positive and constructive criticism so that we can continuously improve our programme and activities in enhancing the quality of the environment.

Ladies and gentlemen,

The papers being presented and the ensuing discussions will, I trust, lead to better understanding of the different and important roles of each stakeholder in joint environmental management, hence resulting in better cooperation among the different sectors present today.

In conclusion, I hope you will all have a healthy and very participative Seminar. I wish you every success in your deliberations.

Thank you.