

**THE ENVIRONMENTAL QUALITY ACT 1974:
A SIGNIFICANT LEGAL INSTRUMENT FOR
IMPLEMENTING ENVIRONMENTAL POLICY
DIRECTIVES OF MALAYSIA***

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ABSTRACT

In Malaysia, the Environmental Quality Act 1974 is considered to be the most comprehensive piece of legislation promulgated to deal with environmental protection and pollution control. The Act also forms the basic instrument for achieving environmental policy objectives. As a developing country that strives for economic growth, Malaysia's rapid development activities especially since the early 1980s have unveiled new dimensions to environmental concerns. Since its introduction more than 30 years ago, the scope and strategies of this Act have been constantly amended, altered or improved in the pursuit of environmental policy objectives. Thus, in the context of environmental protection, the Environmental

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Quality Act 1974 needs to be pro-active and flexible enough to accommodate new measures for facing challenging environmental problems. These changes provide an indication of the increasing complexities of environmental issues facing Malaysia. This paper examines the development of environmental strategies that has taken place within the framework of the Act, based on Malaysia's environmental policy directives particularly on sustainable development.

Keywords: environmental law, environmental policy, Environmental Quality Act 1974.

ABSTRAK

Di Malaysia, Akta Kualiti Alam Sekeliling 1974 dianggap undang-undang yang paling menyeluruh yang diisytiharkan untuk menguruskan perlindungan alam sekeliling dan kawalan pencemaran. Akta tersebut membentuk instrumen asas bagi mencapai matlamat-matlamat dasar alam sekeliling. Sebagai sebuah negara membangun yang berusaha ke arah pertumbuhan ekonomi, aktiviti perkembangan pesat Malaysia terutama sejak awal 1980an telah mendedahkan dimensi baru urusan alam sekeliling. Sejak penguatkuasaannya lebih 30 tahun yang lalu, skop dan strategi Akta ini telah sentiasa dipinda, ditukar atau diperbaiki dalam usaha mencapai matlamat dasar alam sekeliling. Dengan demikian, dalam konteks perlindungan alam sekeliling, Akta Kualiti Alam Sekeliling 1974 perlu menjadi pro-aktif dan anjal secukupnya untuk memberikan langkah-langkah baru bagi menghadapi masalah alam sekeliling yang mencabar. Perubahan-perubahan ini menunjukkan bahawa isu alam sekeliling yang dihadapi Malaysia semakin rumit. Makalah ini meneliti perkembangan strategi alam sekeliling yang telah berlaku dalam rangka

Akta tersebut, berdasarkan direktif dasar alam sekeliling Malaysia, terutamanya pembangunan mapan.

Kata kunci: undang-undang alam sekeliling, dasar alam sekeliling, Akta Kualiti Alam Sekeliling 1974.

INTRODUCTION

Malaysia is a developing country which has been experiencing massive economic growth for over three decades. However, this growth has caused a significant impact on the natural environment. During the 1970s, environmental problems arose in the wake of the development of Malaysia's land and natural resources, and through issues such as the discharge of undesirable waste products or effluents into the environment.¹ As regards land and natural resource development, major activities that affected the environment during that time were mining, new agricultural settlement, replanting of existing agricultural lands, logging, urban and general infrastructure development.² Over the years, the country continued to face various issues relating to environmental pollution and natural resources degradation. At present, Malaysia's main environmental pollution problems include:³

- inland water and marine pollution from various sources;
- air pollution from traffic, industry and agricultural activities;
- air pollution due to the occurrence of haze; and
- dangerous discharge of hazardous and toxic wastes.

As the continuous deterioration of environmental quality due to rigorous development activities showed no abatement, Malaysia realized that it has to take a serious look at how it manages the environment.

¹ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 219.

² *Ibid.*, 219-220.

³ Jabatan Alam Sekitar Malaysia, *Environmental Quality Report 2006* (Kuala Lumpur: Jabatan Alam Sekitar, 2007), 5.

Considering the quest of becoming a developed nation by the year 2020,⁴ it is important for Malaysia to formulate appropriate policies and legal strategies to ensure that development proceeds hand in hand with sound environmental management.

Over the years, attempts were made to reconcile the needs of development and environmental protection. However, it was not until the Third Malaysia Plan (1976-1980) did Malaysia's environmental commitment materialize through the inclusion of a chapter on 'environment' under the Plan.⁵ Subsequent Malaysia Plans and the 'National Policy on the Environment of Malaysia' have been built-up on these environmental commitments applying sustainable development as their guiding principle.

ENVIRONMENTAL POLICY AND SUSTAINABLE DEVELOPMENT IN MALAYSIA

Generally, sustainable development provides a new perspective of the economic compatibility between the environment and development, and identifies how and why future development patterns must be sustainable. Over the recent years, especially after the famous 1987 Brundtland Commission's Report,⁶ this concept has become more widely accepted by the policy-makers all over the world, including Malaysia.

The Brundtland Commission's Report defined sustainable development as one 'which meets the needs of the present without compromising the ability of the future generations to meet their own needs.' The Report's overall recommendation was that human activities could and should be redirected towards a pathway of sustainable

⁴ This idea was introduced in 1991 by the former prime minister, Mahathir Mohammad in a working paper entitled 'Malaysia: The Way Forward' in Ahmad Sarji Abdul Hamid (ed.), *Malaysia's Vision 2020* (Petaling Jaya: Pelanduk, 1993).

⁵ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976).

⁶ Report of the World Commission on Environment and Development: Our Common Future. General Assembly Resolution 42/187, 11 December 1987.

development, with environment seen not as an obstacle to growth but rather as an aspect which needed to be reflected in the policies if growth were to be sustained.

Indeed, the concept of sustainable development becomes very attractive to many nations which have embraced it as their main thrust in environmental management. Malaysia, for example, due to its developing status, has strongly associated itself with short or medium term objectives of rapid industrialisation, high economic growth and increased material well-being in its development.⁷ These development strategies, which allow Malaysia to sustain a new growth experienced over the last few years, must continue if this country wants to achieve the Vision 2020 goal of becoming a developed nation. Thus, for Malaysia, her national policy on sustainable development should be based on this balanced approach whereby development and environment complement each other.

The importance of balancing the needs of economic development and environmental protection has been highlighted by the Sixth Malaysia Plan⁸ as a part of environmental policy directives for Malaysia. Similarly, the Department of Environment in its annual report has specifically emphasised the need for 'responsible and well-balanced exploitation of natural resources to safeguard the requirement of future generations.'⁹ According to the Report, this directive is parallel to the concept of 'environmentally sound and sustainable development' which stresses strategies for environmental protection in all development plans.¹⁰

As stated earlier, in 1976, the environmental policy directive of Malaysia was first introduced within the Third Malaysia Plan through the inclusion of a chapter on 'Development and the Environment' within this Plan.¹¹ Thus, for the first time, Malaysia provided a documented recognition of the multi-dimensional nature of environmental problems such as the increasing amount of environmental pollution, rapid

⁷ See the Ministry of Finance, *Economic Report 1996/1997* (Kuala Lumpur: Ministry of Finance, Malaysia, 1996).

⁸ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 369, 402.

⁹ Jabatan Alam Sekitar Malaysia, *Environmental Quality Report 1991* (Kuala Lumpur: Jabatan Alam Sekitar, 1991), 3.

¹⁰ *Ibid.*, 3.

¹¹ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), Chapter xi.

environmental exploitation, and problems relating to urbanization.¹² As a result, the Third Malaysia Plan highlighted important factors that needed to be considered within the overall environmental policy, namely:¹³

- (i) The impact of population growth and man's activities in resources development, industrialization and urbanization on the environment;
- (ii) The critical importance of maintaining the quality of the environment relative to the needs of the population, particularly in regard to the productive capacity of the country's land resources in agriculture, forestry, fisheries and water;
- (iii) The need to maintain a healthy environment for human inhabitation;
- (iv) The need to preserve the country's unique and diverse natural heritage, all of which contribute to the quality of life; and
- (v) The interdependence of social, cultural, economic, biological and physical factors in determining the ecology of man.

The task of environmental policy directive within the Third Malaysia Plan was to ensure that in the process of development, the capability of the environment to support man's needs was preserved, and that undesirable changes were contained at reasonable costs relative to the benefits.¹⁴

Subsequently, the next Malaysia Plan that incorporated environment within its policy directive was the Fifth Malaysia Plan (1986-1990). Within this Plan, more commitments were given for the preservation and protection of the environment against overexploitation of natural resources and pollution of the environment.¹⁵ Under this Plan, efforts to

¹² Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 219.

¹³ *Ibid.*

¹⁴ *Ibid.*, 219-220.

¹⁵ Jabatan Perdana Menteri, *Fifth Malaysia Plan 1986-1990* (Kuala Lumpur: Jabatan Percetakan Negara, 1986), 279.

deal with environmental problems were done through curative measures to ensure a more balanced exploitation of natural resources. However, it was also highlighted that it was during the period of the Fifth Malaysia Plan that overall improvements in the environment were constrained.¹⁶ For this reason, the Fifth Malaysia Plan stressed the need for environmental strategy to focus more on prevention rather than protection to ensure a proper balance between development and environment with a view to achieve the target goals.¹⁷ Similar commitment was upheld by the Sixth Malaysia Plan (1991-1995).¹⁸ Until the period of the Sixth Malaysia Plan, objectives of environmental management in Malaysia continued to be based on fundamental environmental policy directives elucidated in the Third and Fifth Malaysia Plans, reinforced by the Sixth Malaysia Plan which were as follows:¹⁹

- to maintain a clean and healthy environment;
- to maintain the quality of the environment relative to the needs of the growing population;
- to minimise the impact of the growing population and human activities relating to mineral exploitation, deforestation, agriculture, urbanization, tourism, and the development of other resources on the environment;
- to balance the goal for socio-economic development and the need to bring the benefits of the development to a wide spectrum of the population against the maintenance of sound environmental conditions;
- to place more emphasis on prevention through conservation rather than on curative measure, inter alia by preserving the country's unique and diverse cultural and natural heritage;

¹⁶ *Ibid.*, 290.

¹⁷ *Ibid.*, 291.

¹⁸ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995*, (Kuala Lumpur: Jabatan Percetakan Negara, 1991).

¹⁹ Jabatan Alam Sekitar Malaysia, *Environmental Quality Report 1991* (Kuala Lumpur: Jabatan Alam Sekitar, 1992), 4, 5.

- to incorporate an environmental dimension in project planning and implementation, inter alia by determining the implication of the proposed projects and the costs of required environmental mitigation measures through the conduct of environmental impact assessment studies; and
- to promote greater cooperation and increase coordination among relevant federal and state authorities as well as among the ASEAN governments.

Indeed, the Sixth Malaysia Plan was the first ever Malaysia Plan that provided for a specific discussion concerning the issue of economic development and the environment. It was also the first Malaysia Plan that specifically applied the term ‘sustainable development’ in the context of balancing the needs of environmental protection and economic development.²⁰

Subsequently, the Seventh Malaysia Plan which covered the period between 1996 to 2000 continued with the thrust on sustained and balanced development²¹ and promulgated the policy objective of integrating environmental considerations within the economic and development planning process. Significantly, the Plan linked these considerations with the continued sustainability of the economic growth of the country.²² Economic growth remained paramount as a development objective, but it was also recognised as an important means towards sustainable development. The key environmental thrust of ‘balanced development’ was interpreted by the Plan as ‘the improvement of the environment and efficient utilization of resources to ensure that the improvement of living standards through the progress of development was made without compromising the needs, interest and welfare of future generations.’²³ The Plan also recognised the role of markets in achieving

²⁰ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 402.

²¹ Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 1996), 589.

²² *Ibid.*, 605.

²³ *Ibid.*, 615.

sustainable development and proposed the incorporation of economic measures in the legal provisions.²⁴

The Eighth Malaysia Plan (2001-2005)²⁵ retained the importance of balanced development and stressed the need to address environmental and resource management issues in an integrated and holistic manner.²⁶ During this period, early preventive measures and precautionary principles were adopted by the Government to address environment and natural resource management issues.²⁷ For this purpose, the thrust for the Eighth Malaysia Plan was to achieve the nation's environmental and natural resource goals efficiently and to reduce the negative environmental impact of development activities.²⁸

Meanwhile, the Ninth Malaysia Plan (2006-2010)²⁹ put emphasis on preventive measures to mitigate and minimise pollution, and to address other adverse environmental impacts arising from development activities.³⁰ In addition, the Plan suggests steps to be taken to identify and adopt action to promote sustainable natural resource management practices in relation to land, water, forest, energy and marine resources.³¹ The strategic thrusts for the Plan in addressing environmental and natural resources issues are as follows:³²

- promoting a healthy living environment;
- utilising resources sustainably and conserving critical habitats;
- strengthening the institutional and regulatory framework as well as intensifying enforcement;
- expanding the use of market-based instruments;
- developing suitable and sustainable development indicators; and

²⁴ See the Rio Declaration on Environment and Development, United Nations Environmental Programme, at <<http://www.unep.org>>.

²⁵ Jabatan Perdana Menteri, *Eight Malaysia Plan 2001-2005* (Kuala Lumpur: Jabatan Percetakan Negara, 2001).

²⁶ *Ibid.*, 539.

²⁷ *Ibid.*, 548.

²⁸ *Ibid.*, 548.

²⁹ Jabatan Perdana Menteri, *Ninth Malaysia Plan 2006-2010* (Kuala Lumpur: Jabatan Percetakan Negara, 2006).

³⁰ *Ibid.*, 453.

³¹ *Ibid.*, 463.

³² *Ibid.*, 465.

- inculcating an environment-friendly culture and practice at all levels of the society.

While the Malaysia Plans continue to provide directions for Malaysia's environmental protection and management, in the year 2002, Malaysia finally adopted its own environmental policy known as the 'National Policy on the Environment'.³³ This National Policy, introduced during the era of the Seventh Malaysia Plan, provides guidance to subsequent Malaysia Plans particularly in ensuring long-term sustainability and improvement in the quality of life.³⁴ The Policy aims at promoting economic, social and cultural progress through environmentally sound and sustainable development, and contains strategies to propel the country's growth trend towards sustainability. The seven key areas of Malaysia's environmental strategies as formulated by the Policy are as follows:³⁵

- (i) stewardship of the environment;
- (ii) conservation of nature's vitality and diversity;
- (iii) continuous improvement in health, safety and the quality of the environment for sustained human development;
- (iv) integration of sustainability in all development decisions;
- (v) commitment and accountability;
- (vi) rational and efficient use of natural resources; and
- (vii) active participation in the community of nations.

In essence, this Policy, together with the Malaysia Plans, provides guidance to the government agencies, industrial sector, local community and other stakeholders in ensuring that the environment is clean, safe, healthy and productive. It also sets out the principles and strategies necessary to ensure that sustainable development is an achievable target.

³³ Kementerian Sains, Teknologi dan Alam Sekitar Malaysia, *National Policy on the Environment* (Kuala Lumpur: Kementerian Sains, Teknologi dan Alam Sekitar Malaysia, 2002).

³⁴ Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 1996), 605.

³⁵ *Ibid.*, 605.

THE LINK BETWEEN ENVIRONMENTAL POLICY AND ENVIRONMENTAL LAW

The environmental policy, a manifestation of how Malaysia's environment, particularly its natural resources are to be managed, guides the manner in which environmental law is to be formulated and enforced. Thus, one of the steps taken to ensure the policy is carried out according to the set objectives is by formulating appropriate laws. For Malaysia, the most important legislation enacted as a mechanism to implement the directives of environmental policy is the Environmental Quality Act 1974.³⁶

For Malaysia, until early 1970s, environmental protection and management were never a planned agenda although issues pertaining to environmental degradation had already emerged. Among these issues were soil erosion and siltation in rivers as a result of the opening up of land for tin mining and shifting agricultural activities.³⁷ Subsequently, further development in the economy had resulted in the setting up of more factories causing further degradation of the environment especially in the form of marine pollution, air pollution, solid waste, and toxic and hazardous wastes pollution.³⁸

While environmental pollution and natural resources degradation continued to happen, until then, not much thought was given to having a singular environmental law. Prior to the enactment of the Environmental Quality Act 1974, environmental issues had been handled as and when they arose, and formed a part of the administrative responsibility of government agencies at the federal and state levels. Existing environmental related laws were not formulated to deal with environmental management and its protection specifically, but mainly sought to regulate human activities that might affect the quality of the environment. These laws were also developed mainly to promote sound housekeeping practices in specific sectors, in line with the government policies at the

³⁶ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 225.

³⁷ Robert Aiken, *et.al.*, *Development and Environment in Peninsular Malaysia* (Singapore: McGraw Hill, 1982), 159-197.

³⁸ Jamaluddin Jahi, *Striking a Balance Between Environment and Development* (Bangi: UKM, 1999), 13.

time.³⁹ Among the early forms of environment related laws were the Water Enactments 1920;⁴⁰ the F.M.S. Forest Enactment in 1934;⁴¹ the Merchant Shipping Ordinance 1952;⁴² the Land Conservation Act 1960;⁴³ the Fisheries Act 1963;⁴⁴ and the Factories and Machinery Act 1967.⁴⁵

Generally, while these and other related legislations contain provisions that are directly or indirectly relevant to certain environmental issues, they are however not uniform and do not seek to achieve comprehensive environmental protection objectives. With rapid economic development coupled with increasingly more complicated environmental problems, most of these legislations were rendered ineffective. When the Environmental Quality Act 1974 was passed, it was meant to be a legislation designed to deal with emerging and future environmental issues while aiming at achieving the objectives of national environmental policy. As a federal law, the Act applies to the whole of Malaysia.⁴⁶ It also establishes powers to be exercised exclusively by the federal government, and it does not depend on parallel state enactments for its effectiveness within state boundaries. An examination of the Act's structure, administration and strategies in relation to the environmental policy directives discussed below sheds more light on the issues at stake.

STRUCTURE, ADMINISTRATION AND STRATEGIES OF THE ENVIRONMENTAL QUALITY ACT 1974

The Environmental Quality Act 1974 is arranged in eight parts, the first being the Preliminary Part that deals with interpretations; Part II covers

³⁹ Nik Abdul Rashid, 'The Environmental Law in Malaysia: A Survey,' in Kato, Ichiro et.al. (eds.), *Environmental Law and Policy in the Pacific Basin Area* (Japan: University of Tokyo Press, 1981), 11-22; and Shaik Mohd Noor Alam Hussain, 'The Law and Environmental Quality,' [1984] 1 *CLJ* 211-214.

⁴⁰ Cap 148.

⁴¹ Cap 153.

⁴² No.70 of 1952.

⁴³ Act 385.

⁴⁴ Act 210.

⁴⁵ Act 139.

⁴⁶ Section 1 (1) of the Act.

administrative provisions of the Act; Part III includes provisions relating to licences; and Part IV concerns the prohibition and control of pollution, and contains sections relating to various aspects of environmental pollution. Part IVA deals with the control of scheduled wastes. Provisions on licensing appeals are set out in Part V, while Part VA includes provisions relating to the payment of cess and environmental fund. The final part is Part VI which deals with miscellaneous matters.

Administratively, the agency responsible for the enforcement of the Act is the Department of Environment which is under the Ministry of Natural Resources and Environment Malaysia. For this reason, the Act provides for the office of Director General of Environmental Quality (hereinafter Director General), whose duties as contained in section 3(1) include:

- administering the Act and its Orders and Regulations;
- coordinating all activities relating to the discharge of wastes into the environment; and
- controlling such activities through the issue of licences of wastes or substances which are of danger to the quality of the environment.

The Director General is also empowered to give recommendations to the Minister with regard to the environmental policy as well as standards and criteria of the quality of the environment. He must report to the Minister on matters concerning the environmental protection or any amendment to the law. Other duties required of the Director General are:⁴⁷ the propagation of environmental research, education, reporting and fact finding; the coordination of efforts domestically and internationally with regard to environmental protection measures; conducting investigations and inspections to ensure compliance with the Act; and the investigation of complaints from the public with regard to any breach of the Act.

The ultimate legislative authority over the Act lies with both the Parliament and the Minister of Natural Resources and Environment.⁴⁸

⁴⁷ Section 3 of the Environmental Quality Act 1974.

⁴⁸ In this regard, duties of the Director General, among other things, are to give recommendations to the Minister on the said matters. See subsection (1) of section 3 of the Environmental Quality Act 1974.

Being a federal legislation, the Parliament has the jurisdiction to amend any part of the Act, including introduction of any new section, or revocation of any part of it. It should be noted that the Act is a framework legislation which means that for its provisions to take effect it is in need of formulating the necessary rules and regulations. Under section 51 of the Act, the Minister⁴⁹ is allowed to make regulations aimed at environmental protection and pollution control. Such regulations can prescribe standards or criteria, prohibit discharge, emissions or use of any equipment which is likely to endanger the environment, and determine the quantum of fines to be imposed.

As regard the Minister, he has the power to pass, amend or revoke any regulations, rules or orders by virtue of the legislative powers conferred on him.⁵⁰ Apart from that, matters such as environmental policy, standards and criteria for the quality of the environment are also within the jurisdiction of the Minister. Considering that the Act is a framework legislation, it is therefore important that these subsidiary legislations are introduced to ensure that the main provisions of the Act can take effect. At the same time, it is also important for new rules, regulations and orders to be introduced as a platform for the implementation of environmental policy directives of the country.

At the policy level, the Act establishes a council for the purpose of advising the Minister on matters relating to the Act as provided for in section 4. The council which is known as the 'Environmental Quality Council' comprises 14 members who are representatives of relevant bodies concerned with the environment and pollution. They include:⁵¹ a Chairman, the Secretary-General of six ministries, namely the Ministry of Science, Technology and the Environment,⁵² the Ministry of International Trade and Industry, the Ministry of Domestic Trade and Consumer Affairs, the Ministry of Agriculture, the Ministry of Human Resources, the Ministry of Transport, and the Director General of Health. Besides these, six of the following persons are also appointed as members of the Council, namely: one representative each from Sabah and Sarawak, one representative each from the petroleum industry, the oil palm industry,

⁴⁹ Section 51 of the Environmental Quality Act 1974.

⁵⁰ *Ibid.*

⁵¹ Section 4 of the Environmental Quality Act 1974.

⁵² Presently the Ministry of Natural Resources and Environment Malaysia.

the Federation of Malaysian Manufacturers, the rubber industry; one representative from the academic staff of the universities or colleges in Malaysia and two from among the registered societies knowledgeable and having interest in matters pertaining to the environment.

For the Act, any strategy formulated therein must take into account not only the extent of environmental issues facing the country at any given time, such strategies must also be in tandem with the objectives of the national environmental policy. Ever since its enactment over 30 years ago until now, there have been continuous changes within the Act in terms of its scope and strategies. Considering the Act was passed to implement the directives of the environmental policy, its strategies were therefore reflections of these directives targeting sustainable development. Below is an examination of some of the strategies that have been introduced within the Act, and their link with the environmental policy directives of the Malaysia Plans.

STRATEGY TO CONTROL AGRO-BASED POLLUTION

Various environmental strategies have been enforced within the Environmental Quality Act 1974 pursuant to the directives of the environmental policy. One of the earliest and most important strategies introduced was the application of the concept of 'acceptable conditions.' This concept, based on the pollution control principles laid down by the Third Malaysia Plan,⁵³ is a combination of administrative schemes of command and control, as well as the economic instrument of polluter pays principle.

Through this concept, a person is prohibited from discharging wastes, pollutants or environmentally hazardous substances into the environment in contravention of the acceptable conditions or allowable standards, unless he is licensed to do so. The term 'acceptable condition' presupposes an environmental standard, which will be used as a baseline criterion of the acceptability or restriction stipulated in the Act, and is central to the management of pollution control in the Act.

The importance of the acceptable conditions strategy in the context of pollution control and the attainment of environmental policy

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Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 225-226.

targets lies within its overall objective of ensuring the balance between economic development and environmental protection. The main provision on acceptable conditions is Section 21. This section permits the Minister, after consultation with the Environmental Quality Council, to specify the acceptable conditions for the discharge of pollutants into the environment within which the discharge is prohibited or restricted. Through this strategy, the Director General is authorised to set a particular effluent standard within a licence. Such licence prescribes the allowable limit or acceptable conditions of effluent to be discharged into the environment.⁵⁴ The application of this licence is done in accordance with the procedures specified under the Environmental Quality (Licensing) Regulations 1977.⁵⁵

For Malaysia, this acceptable conditions strategy is very important particularly in dealing with the discharge from palm-oil and rubber processing factories. Specifically, during the early 1970s, Malaysia's economic development was based on the agricultural sector. Large areas of forest were converted into palm estates. In 1989, the oil palm estates together covered 1.95 million hectares i.e. one third of the country's cultivated area. Simultaneously, the industrial expansion pursued then was focused on the utilisation of palm oil products. As a result, oil palm based industries mushroomed. Production of palm oil increased from 0.4 million tonnes in 1970 to 1.8 million tonnes in 1978;⁵⁶ whereas, rubber production in Malaysia in 1978 was 1.6 million tonnes.⁵⁷ Thus, during that period, the palm oil and rubber processing industries were considered to be industries of economic importance.⁵⁸ However, during that time also, these two processing industries were considered to be major contributors to the pollution load in the Malaysian rivers. Hence, great care had to be taken when formulating its effluent standards for they have to be not only effective but also sensible within the framework of the economy and technology of that period.⁵⁹

⁵⁴ Section 10 of the Environmental Quality Act 1974.

⁵⁵ P.U. (A) 198/1977.

⁵⁶ Robert Aiken, *et.al.*, *Development and Environment in Peninsular Malaysia* (Singapore: McGraw Hill, 1982), 82-85.

⁵⁷ *Ibid.*, 81.

⁵⁸ *Ibid.*, 120-125.

⁵⁹ See the Department of Environment Malaysia, *Environmental Quality Report 1981-1984* (Kuala Lumpur: Department of Environment Malaysia, 1985), 22-4.

This concern over the need to regulate pollution from these two agro-based industries had been highlighted by the Third Malaysia Plan.⁶⁰ As a result, the Environmental Quality Act 1974 formulated a specific strategy that could control pollutant loads of these two industries while taking into consideration their importance economically. This strategy, applying the requirement of acceptable conditions, is incorporated within two Regulations gazetted within the Act. They are the Environmental Quality (Prescribed Premises) (Crude Palm Oil) Regulations 1977;⁶¹ and the Environmental Quality (Prescribed Premises)(Raw Natural Rubber) Regulations 1978.⁶²

Under these two Regulations, acceptable conditions are applied through the issuance of a licence known as 'prescribed premises' licence and applicable to all premises carrying out palm-oil and rubber activities as provided in section 18 of the Act. Under clause (1) of section 18, once the premises have been ordered to be 'prescribed premises,' the occupation or use thereof is an offence unless the occupier or user is the holder of a licence issued in respect of those premises. In order to give time to the industry to use technology to dispose their effluents, a mechanism based on the progressive phasing out of standards was adopted. The phasing of standards for Biochemical Oxygen Demand (BOD) over four years gave the industry time to construct treatment facilities and to gain experience operating them in order to conform to the increasingly stringent standards set by the Government.

Over the years, the acceptable conditions strategy has managed to reduce the amount of pollutant loads from these two industries. According to the report of the Fifth Malaysia Plan,⁶³ the rate of compliance for the discharge of effluents from these two processing industries has been improving. The improvement is attributed to the stringent but gradual standards stipulated under the two Regulations over the period of five years. Generally the rate of compliance of the acceptable conditions was more rapid in the rubber processing industry than in the palm oil

⁶⁰ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 221-226.

⁶¹ *P.U. (A) 342/77.*

⁶² *P.U. (A) 338/78.*

⁶³ Jabatan Perdana Menteri, *Fifth Malaysia Plan 1986-1990* (Kuala Lumpur: Jabatan Percetakan Negara, 1986), 281.

processing industry. By 1985, the palm oil processing industries managed to reduce their pollution load of BOD from 1893 tonnes to 4 tonnes per day.⁶⁴ By the year 1994, the palm oil and rubber industries' contribution to organic pollution load into the rivers was reduced significantly by about 91 per cent.⁶⁵ At present, the Environmental Quality Act's management of wastes from these two agro-based industries has been a success. As of now, pollution loads from palm oil industry and rubber industries are greatly reduced, making these industries insignificant contributors towards inland water pollution in the country.⁶⁶

STRATEGY TO CONTROL OPEN BURNING ACTIVITIES

During the 1970s, while environmental pollution had started to become an important issue for the country, the pollution of the atmosphere was not yet significant as pointed out by the Third Malaysia Plan.⁶⁷ However, by the time of the Sixth Malaysia Plan, air pollution, including that caused by open burning activities, had become a major problem.⁶⁸ For Malaysia, open burning activities, including the burning of agricultural wastes, have been and still are a part of the farming activities. For example, in the case of paddy farming, it has become almost a standard practice with the Malaysian farmers to burn the stubble left behind after harvesting the paddy.⁶⁹ For these farmers, burning is considered the cheapest way to clear huge heaps of paddy stalk quickly and the easiest way to prepare the land for the next planting.⁷⁰ However, uncontrolled open burning for

⁶⁴ Jabatan Perdana Menteri, *Fifth Malaysia Plan 1986-1990* (Kuala Lumpur: Jabatan Percetakan Negara, 1986), 281.

⁶⁵ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 392.

⁶⁶ *Ibid.*, 62, 64.

⁶⁷ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1976), 220.

⁶⁸ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1990-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 2001), 394.

⁶⁹ This activity started in the 1970s when paddy farming moved from single to double cropping in order to raise production.

⁷⁰ See 'Schedule for Padi Burning,' in *The Star*, 8 February 2006 (North Edition), as an example one of the many open burning incidents being reported in the newspaper.

this and other activities can have adverse effects on the environment, and has been identified to be a major contributor to the haze and global warming.

Generally, haze is a form of poor air pollution due to increase of suspended particulates matters in the air and it can exacerbate at certain times of the year under specific weather conditions. This phenomenon has been gaining prominence in Malaysia since the 1990s as highlighted by the Eighth Malaysia Plan.⁷¹ However, until the period of the Seventh Malaysia Plan, there had been no law in Malaysia that can sufficiently deal with haze and the problem of open burning.⁷² At that time, while there already existed a provision on air pollution within the Environmental Quality Act 1974, it was nevertheless insufficient to tackle the problem of open burning and its related issues. As a result, during the Eighth Malaysia Plan, the Act was amended in order to introduce new and more comprehensive measures to deal with the matter.⁷³ Beginning from 1998, the Act has incorporated a new section 29A⁷⁴ which provided for a complete ban on 'open burning.' This section strictly prohibits any person from causing open burning on any premises, and land. The penalty imposed by this section is a fine of up to RM500 000, or a jail term of five years, or both. In 2003, one more provision was gazetted namely the Environmental Quality (Declared Activities) (Open Burning) Order 2003.⁷⁵ This Order specifically provides for a list of activities which are prescribed as 'declared activities' for the purpose of controlling air pollution.

In addition, the Act was also amended in order to strengthen the enforcement powers of the Department of Environment in regulating open burning activities. Under the new section 29AA,⁷⁶ the Department

⁷¹ Jabatan Perdana Menteri, *Eighth Malaysia Plan 2001-2005* (Kuala Lumpur: Jabatan Percetakan Negara, 2001), 540.

⁷² Jabatan Perdana Menteri, *Eighth Malaysia Plan 2001-2005* (Kuala Lumpur: Jabatan Percetakan Negara, 2001), 540, 541; and Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 1996), 591.

⁷³ Jabatan Perdana Menteri, *Ninth Malaysia Plan 2006-2010* (Kuala Lumpur: Jabatan Percetakan Negara, 2006), 454.

⁷⁴ The Environmental Quality Act (Amendment) 1998, Act 1030, section 3.

⁷⁵ P.U. (A) 406/2003.

⁷⁶ The Environmental Quality Act (Amendment) 1998, Act 1030, section 3.

of Environment, which has a duty of monitoring the quality of air throughout Malaysia, has the power to notify the Director General of the status of air pollution in the country. In situations where the air quality in an area has reached an unhealthy level, or where such activity would be hazardous to the environment, the Director General has the right to withdraw this exemption.⁷⁷ This is stated in clause (2) of section 29AA which provides that no person shall allow or cause such fire, combustion or smouldering to occur in any area if the Director General notifies by such means and in such manner as he thinks expedient.

ENVIRONMENTAL IMPACT ASSESSMENT STRATEGY

Initially, the Environmental Quality Act 1974 relied mainly on curative and remedial strategies for the purpose of environmental protection. Subsequently, it was realised that these strategies alone were not sufficient to deal with environmental issues faced by Malaysia. Different strategies needed to be introduced especially those that could cater for both economic and environmental needs without jeopardizing any of them.

As early as the 1970s, the Third Malaysia Plan had already proposed the adoption of environmental protection measures that were at par with the development costs through the assessment of the overall impact of relevant projects on the environment.⁷⁸ Subsequently, during the Fifth Malaysia Plan, a process known as the 'environmental impact assessment' was identified as a measure to provide the basis for evaluating the overall impact of projects on the environment.⁷⁹ Initially, a number of projects were identified to be subjected to an informal procedure administered by the Department of Environment. By these arrangements, the environmental dimension was incorporated into the planning of the said projects.⁸⁰

⁷⁷ The Air Pollution Index (API) status for the whole of Malaysia, which is updated daily by the Department of Environment, can be found at its website at <<http://www.doe.gov.my>>.

⁷⁸ Jabatan Perdana Menteri, *Third Malaysia Plan 1976-1980* (Kuala Lumpur: Jabatan Percetakan Negara, 1986), 226.

⁷⁹ Jabatan Perdana Menteri, *Fifth Malaysia Plan 1986-1990* (Kuala Lumpur: Jabatan Percetakan Negara, 1986), 280, 289.

⁸⁰ *Ibid.*, 280-281.

Finally, in 1985, during the tenure of the Sixth Malaysia Plan, the environmental impact assessment requirement was given legal recognition through its incorporation within section 34A of the Environmental Quality Act 1974.⁸¹ Thus, for the first time, an integrated project planning approach was introduced within the Act as a new environmental measure to support the existing one. What is equally significant is that the implementation of Environment Impact Assessment (EIA) is meant to promote Malaysia's policy objective of sustainable development which is the core thrust of Malaysia's environmental policy.⁸²

In the context of the Act, EIA is defined as 'a study to identify, predict, evaluate and communicate information about the impacts on the environment of a proposed project and to detail out the mitigating measures prior to project approval and implementation.'⁸³ Section 34A requires the EIA to be a mandatory requirement for large-scale development projects as means of preventing environmental destruction. In 1987, in order to supplement the provision of section 34A, the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987⁸⁴ was gazetted. This Order contains a list of 'prescribed activities,' namely activities considered by the Minister as having a possibility of causing significant environmental impacts and whereupon EIA requirement is made mandatory upon them. Administratively, the authority in charge of overseeing the EIA process is the Director General. Section 34A requires that, before a person can carry out any of the prescribed activities, and before any approval for the carrying out of such activity is granted by the relevant approving authority, the person must submit to the Director General a report for assessment.⁸⁵

Until now, EIA requirements are continuously being applied throughout Malaysia as a tool to incorporate environmental considerations into project planning. According to the Ninth Malaysia Plan, EIA and

⁸¹ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 406.

⁸² *Ibid.*, 389.

⁸³ See Jabatan Alam Sekitar Malaysia, *Environmental Impact Assessment (EIA) Procedure and Requirement in Malaysia* (Kuala Lumpur: Jabatan Alam Sekitar Malaysia, 1993), 1.

⁸⁴ P.U. (A) 362/87.

⁸⁵ Section 34A (2) of the Environmental Quality Act 1974.

other environmental planning tools will be increasingly applied in evaluating and mitigating environmental impacts of development activities.⁸⁶ It was reported in the Department of Environment's annual report 2006 that in the year 2005, a total of 204 EIA reports were received. In addition, a total of 1,345 enforcement visits were conducted during the same year to check on the progress of projects and compliance of EIA approval conditions.⁸⁷ Penalty for non-compliance with the EIA requirements is provided in section 34A. Under this section, a guilty person shall be liable to a fine of up to RM 100 000 or imprisonment up to five years or to both and to a further fine of RM 1000 for every day that the offence is continued after a notice by the Director General requiring him to comply with the Act has been served on him.⁸⁸

MARKET-BASED STRATEGY

Over the years, new strategies continued to be implemented within the Environmental Quality Act 1974 in line with environmental policy directives endorsed by the Malaysia Plans. One of these was the incorporation of evaluation tools and economic incentives to control pollution as additions to existing traditional command and control measures. These new measures were introduced in an effort to reconcile economic and environmental objectives which are central to the achievement of sustainable development while ensuring that the industrialization process does not result in worsening the environment.

The earliest policy on the application of market mechanism within the environmental law can be found within the Sixth Malaysia Plan.⁸⁹ The measure to integrate environmental considerations within development planning was further intensified during the Seventh Malaysia Plan. The Plan specifically provided that, in order to promote sustainable

⁸⁶ Jabatan Perdana Menteri, *Ninth Malaysia Plan 2006-2010* (Kuala Lumpur: Jabatan Percetakan Negara, 2006), 453.

⁸⁷ See Jabatan Alam Sekitar Malaysia, *Annual Report 2005* (Kuala Lumpur: Department of Environment Malaysia, 2005), 14.

⁸⁸ Section 43A (8) of the Environmental Quality Act 1974.

⁸⁹ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 402.

development, innovative economic mechanisms needed to be instituted to supplement legislative means such as the application of the management system, labelling and recycling.⁹⁰

Initiatives to incorporate economic instruments within the legal framework as proposed by the Malaysia Plans materialised in 1996 when the Environmental Quality Act 1974 was amended to include several economic-related strategies within its provisions. One of these is section 30A⁹¹ on recycling and environmental labelling. Specifically, this section requires that any substance may be prescribed as an 'environmentally hazardous substance' requiring it to be reduced, recycled, recovered or regulated in the manners specified in the order.⁹² The section further provides that the Minister may prescribe any product as a 'prescribed product' for sale and that the product shall contain a minimum percentage of recycled substances and to carry an appropriate declaration on its recycled constituents, method of manufacture and disposal.⁹³ Generally, the objectives of section 30A is to encourage industries to conserve the resources by prescribing certain products produced by the industries as 'prescribed product' which should contain a minimum percentage of recycled substances.⁹⁴ Besides that, these products must also carry appropriate constituents, method of manufacture and disposal. Failure or refusal of such order is punishable by a fine not exceeding RM50000 or imprisonment of up to five years.⁹⁵

A related provision introduced to encourage further self-regulation on the part of the industries and facilities is the requirement of deposit and rebate scheme under section 30B.⁹⁶ This section empowers the Minister to specify the guidelines and procedures on deposit and rebate schemes in connection with the disposal of products that are considered environmentally unfriendly or causing adverse constraints on the environment. The purpose of these schemes, according to the section, is

⁹⁰ Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 2000), 589, 616.

⁹¹ Act A953 section 16.

⁹² Section 30A (1) (a) of the Environmental Quality Act 1974.

⁹³ Section 30A (1) (b) of the Environmental Quality Act 1974.

⁹⁴ Section 30A (1)(b) of the Environmental Quality Act 1974.

⁹⁵ Section 30A (3) of the Environmental Quality Act 1974.

⁹⁶ The Environmental Quality (Amendment) Act 1996, Act A953, section 16.

to provide an incentive for the industry to practise recycling. It is also to ensure that the products are collected efficiently so that their recycling or disposal is done in an environmentally sound manner.

Another economic strategy introduced under the Act is section 33A⁹⁷ on 'environmental auditing' which is considered as a part of the environmental management system within a body or corporation.⁹⁸ Generally, environmental auditing is a tool used to identify areas of environmental concern in any organisation, company or industry and this tool is being applied basically to determine how well the organization manages the effects of its activities on the environment. This system enables industries and facilities to establish and assess the effectiveness of procedures. It also allows them to set an environmental policy and objectives, and achieve conformance.

Under section 33A, the Director General may require the owner or occupier of any vehicle, ship or premises to carry out an environmental audit and to submit an audit report.⁹⁹ The section further provides that, for the purpose of carrying out an environmental audit and to submit a report thereof, the owner or occupier so directed shall appoint qualified personnel who are registered under the Act.¹⁰⁰ The section further requires the Director General to maintain a list of qualified personnel who may carry out any environmental audit and submit a report thereof.¹⁰¹

The directives of the Malaysia Plans to secure environmental participation from the industrial sector through their funding for environmental purposes are further incorporated within the Act through section 36B.¹⁰² This section provides for the concept of 'Environmental

⁹⁷ The Environmental Quality (Amendment) Act 1996, Act A953, section.21.

⁹⁸ Section 2 of the Environmental Quality Act 1974 defines 'environmental management system' as a system comprising of an organizational structure with its responsibilities, practices, procedures, processes and resources for implementing and maintaining the system relating to the management of the environment.

⁹⁹ Section 33A (1) of the Environmental Quality Act 1974.

¹⁰⁰ Section 33A (2) of the Environmental Quality Act 1974.

¹⁰¹ Section 33A (3) of the Environmental Quality Act 1974.

¹⁰² The Environmental Quality (Amendment) Act 1996, Act A953, section.25.

Fund' and is to be operated as a 'trust account' within the Federal Consolidated Fund.¹⁰³ The purposes of the Fund, as specified by section 36E,¹⁰⁴ are as follows:

- to conduct, promote and coordinate research in relation to any aspect of pollution or the prevention thereof;
- to recover waste, or remove, disperse, destroy, clean, dispose of or mitigate pollution;
- to prevent or combat the spillage, discharge or dumping of oil, environmentally hazardous substances, or waste; and
- to encourage conservation measures against any damage that may be caused by any occurrence mentioned above.

The Fund shall consist of the sums of money as may be provided for by the government from time to time; all donations and contributions received from within or outside Malaysia; and all moneys paid to or received by the DG from the cess imposed or collected as authorised by section 36A;¹⁰⁵ and all moneys paid or received in accordance with section 36D.¹⁰⁶ Section 36A provides that for the purpose of conducting, promoting or coordinating research in relation to any aspect of pollution or the prevention thereof, the Minister, after consultation with the Minister of Finance and the Environmental Quality Council, may make an order for the imposition and collection, or variation or cancellation of an imposition, of a cess on the waste generated. Such order may provide for different rates of cess to be imposed in respect of the different types of waste generated; the manner of collection of the cess by the DG; and the exemption of any person or in respect of any waste generated from payment of the cess.¹⁰⁷

¹⁰³ Section 36B (1) of the Environmental Quality Act 1974.

¹⁰⁴ The Environmental Quality (Amendment) Act 1996, Act A953, section.25.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Section 36A(2) of the Environmental Quality Act 1974.

CRIMINAL STRATEGY

Within the environmental policy directives of Malaysia, curative measures, in the form of criminal sanction, have been considered to be one of the most important strategies for environmental protection.¹⁰⁸ Thus, from the introduction of the Environmental Quality Act 1974, up to date, criminal sanction has been relied upon as an effective strategy to control pollution.

However, over the years, it has been realized that the amount of penalty imposed need to be revised in response to an upsurge in environmental offences in Malaysia, and to ensure compliance. Arguably, effective enforcement of the Act does not depend on the enforcement capacity alone, but also on the severity of punishment. During the period of the Sixth Malaysia Plan, consideration was given to the efficacy of instituting penalties such as fines and surcharges on industries for non-compliance and contravention of laws.¹⁰⁹ By the time of the Seventh Malaysia Plan, more effort was taken towards revising the amount of penalty imposed under the existing law. Specifically, the Plan proposes the amendment of provisions under the Environmental Quality Act 1974 to provide stricter and stiffer penalties including increasing the amount of maximum fines.¹¹⁰

¹⁰⁸ Jabatan Perdana Menteri, *Fifth Malaysia Plan 1985-1990*. (Kuala Lumpur: Jabatan Percetakan Negara, 1985), 279.

¹⁰⁹ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 403.

¹¹⁰ Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 2000), 606.

¹¹¹ See the Sixth and Seventh Malaysia Plans respectively at, Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 402; and Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur, Jabatan Percetakan Negara, 1996), 605.

¹¹² The Seventh Malaysia Plan specifically highlights the need for the amendment of the Environmental Quality Act 1974 to provide, among other things, stricter regulations and stiffer penalties within its provisions. See Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 2000), 590, 606, 605.

Finally, upon such proposal,¹¹¹ the Act was amended in 1996 to increase the amount of penalty to reflect the current monetary value.¹¹² The amendment has raised significantly the amount of fines and penalties imposed for non-compliance of environmental regulations. Prior to the amendment, the amount of penalties was small and insufficient to deter the commission of an offence or to ensure compliance. The amendment was meant to truly reflect the severity of offences committed. The stiffer penalties prescribed include increasing the term of imprisonment for offences from two years to five years, and the maximum fine from RM10,000 to RM500,000. For example, previously, for the purpose of the control of air, soil and inland water pollution, the respective sections 22, 24 and 25 provided for fines not exceeding RM10000 and jail not exceeding 2 years. However, the amendment has raised the amount of penalty to RM100000 and jail of up to 5 years for the said offences. As regard the control of noise pollution under section 23, the penalty has been increased from RM5000 of fine and 1 year of jail to RM100000 of fine and jail of maximum 5 years. Similar changes can be seen on sanctions involving marine pollution. For example, under section 27 on the prohibition of discharge of oil into Malaysian waters, the penalty imposed before the amendment was a fine not exceeding RM25000 and jail not exceeding 2 years. The present penalty is a fine not exceeding RM500000 and jail not exceeding 5 years. Whereas for the prohibition of discharge of wastes into Malaysian waters under section 29, the previous penalty was a fine not exceeding RM10000 and jail of up to 2 years. Now, the penalty has been increased to a fine not exceeding RM500000 and jail not exceeding 5 years. Arguably, the increased fines and penalties are clear indications that environmental violations are considered serious matters under the Environmental Quality Act 1974 which can result in heavier penalties against polluters. It has been reported that in the year 2005, a total of 290 environmental offences were prosecuted under the Act with the total amount of fines imposed being over three million ringgit.¹¹³

STRATEGY TO CONTROL SCHEDULED WASTES

¹¹³

See Jabatan Alam Sekitar Malaysia, *Annual Report 2005* (Kuala Lumpur: Department of Environment Malaysia, 2005), 86.

Issues pertaining to toxic and hazardous waste management in Malaysia were first raised in the Fifth Malaysia Plan. Among issues raised were matters pertaining to the safe handling, transportation, and disposal of such wastes generated by the manufacturing and engineering industries.¹¹⁴ During the late 1980s, the same issues continued to be highlighted by the Sixth Malaysia Plan which pointed out that no less than 380000 m³ of toxic and hazardous wastes were generated annually from some 1000 sources.¹¹⁵ Thus, at the time of the Seventh and Eighth Malaysia Plans, more efforts were made towards management of hazardous substances and waste. These include the intensification of enforcement and development of comprehensive legislation to control the use, storage, handling, transport, labelling, and disposal of toxic chemicals.¹¹⁶

In order to ensure that policy directives on toxic and hazardous wastes are implemented, provisions within the Environmental Quality Act 1974 were yet again amended. Specifically, changes were made in its scope and jurisdiction to accommodate the inclusion of 'toxic and hazardous waste' within its ambit. Thus, in 1996, the definition of the word 'pollution' under section 2 of the Act was amended to include that of 'toxic and hazardous wastes.' The word 'pollution' under the Act now means the following:¹¹⁷

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

¹¹⁴ Jabatan Perdana Menteri, *Fifth Malaysia Plan 1990-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1990), 284.

¹¹⁵ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 391.

¹¹⁶ See Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 1996) 595, 609; and Jabatan Perdana Menteri, *Eighth Malaysia Plan 2001-2005* (Kuala Lumpur: Jabatan Percetakan Negara, 2001), 542.

¹¹⁷ The Environmental Quality (Amendment) Act 1996, Act A953.

It was also in 1996 that the words ‘environmentally hazardous substances’ were included within the scope of the Act. These words are defined by the Act as:¹¹⁸

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

Changes were also made to definitions of other relevant words namely ‘pollutant’ and ‘waste.’ Under the original principle Act, the word ‘pollutant’ was defined as:¹¹⁹

‘any substance whether liquid, solid or gaseous which directly or indirectly -

- (a) alters the quality of any segment or element of the receiving environment so as to affect any beneficial use adversely; or
- (b) is hazardous or potentially hazardous to health, and includes objectionable odours, radioactivity, noise, temperature change or physical, thermal, chemical or biological change to any segment or element of the environment.’

The word ‘pollutant’ is now defined as:¹²⁰

‘any natural or artificial substances, whether in a solid, semisolid or liquid form, or in the form of gas or vapour, or in a mixture of at least two of these substances, or any objectionable odour or noise or heat emitted, discharged or deposited or is likely to be emitted,

¹¹⁸ Section 2 of the Environmental Quality Act 1974.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

discharged or deposited from any source which can directly or indirectly cause pollution and includes any environmentally hazardous substances.'

Under the Environmental Quality Act 1974, the term 'pollutant' is made distinct from the term 'waste' to indicate their different features, composition and adverse environmental impact. Specifically, the Act defines 'waste' as:¹²¹

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

As highlighted by the Sixth Malaysia Plan, among the earliest regulations¹²² gazetted under the Environmental Quality Act 1974 on toxic and hazardous wastes are the following:

- the Environmental Quality (scheduled Wastes) Regulations 1989;¹²³ and
- the Environmental Quality (prescribed Premises) (Scheduled Wastes Treatment and disposal facilities) Order 1989.¹²⁴

The management of toxic and hazardous wastes under these provisions are comprehensive, through the prescription of waste substances as 'scheduled wastes' and regulating all stages of waste handling.¹²⁵ During the Eighth Malaysia Plan, more new measures were introduced within the Environmental Quality Act 1974 to improve the

¹²¹ *Ibid.*

¹²² Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 391.

¹²³ P.U. (A) 241/87.

¹²⁴ P.U. (A) 140/89.

¹²⁵ Jabatan Perdana Menteri, *Sixth Malaysia Plan 1991-1995* (Kuala Lumpur: Jabatan Percetakan Negara, 1991), 391.

¹²⁶ Jabatan Perdana Menteri, *Eight Malaysia Plan 2001-2005* (Kuala Lumpur: Jabatan Percetakan Negara, 2005), 550.

regulation of toxic and hazardous wastes.¹²⁶ For this reason, the Environmental Quality (scheduled Wastes) Regulations 1989¹²⁷ were repealed by the Environmental Quality (scheduled Wastes) Regulations 2005.¹²⁸ The new Regulations provide for requirements on procedures¹²⁹ and monitoring of scheduled wastes by waste generator which include their handling,¹³⁰ storing,¹³¹ labelling,¹³² transporting,¹³³ handling¹³⁴ and disposal.¹³⁵ Additionally, general prohibition on scheduled wastes is provided in section 34B which was introduced in 1996.¹³⁶ Under this section, no person is allowed to do the following without prior written approval from the Director General:

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

¹²⁷ P.U. (A) 139/1989.

¹²⁸ P.U. (A) 294/2005.

¹²⁹ The Regulations were introduced to repeal the Environmental Quality (Scheduled Wastes) Regulations 1989, P.U. (A) 139/1989.

¹³⁰ Reg. 3 of the Environmental Quality (Scheduled Wastes) Regulations 2005.

¹³¹ Reg. 9 of the Environmental Quality (Scheduled Wastes) Regulations 2005.

¹³² Reg. 10 of the Environmental Quality (Scheduled Wastes) Regulations 2005.

¹³³ Reg. 13 of the Environmental Quality (Scheduled Wastes) Regulations 2005.

¹³⁴ The requirements in the Seventh Schedule include information pertaining to its properties, handling manners, precautions in case of spills or accidents, and steps to be taken in case of spill or accident discharge causing material damage.

¹³⁵ Reg. 4 of the Environmental Quality (Scheduled Wastes) Regulations 2005.

¹³⁶ The Environmental Quality (Amendment) Act 1996, Act A953 section 23.

Under a similar section, it is also an offence to receive or send, or transit any scheduled wastes with an approval obtained through falsification, misrepresentation or fraud or which does not conform in a material way with the relevant documents in such form as may be prescribed.¹³⁷ The penalty imposed upon conviction under section 34B is a fine not exceeding RM500 000 or imprisonment for a period not exceeding five years or both.

CONCLUSION

This article examines the development of environmental strategies under the Environmental Quality Act 1974 and their relation to environmental policy directives as embodied in the various Malaysia Plans. This discussion provides a perspective on the nature of the environmental policy in Malaysia, coupled with a particular factor affecting its development, composition and objectives, namely the economy. In general, it has been shown that economic development is an important factor to be considered by the Malaysia Plan in formulating its environmental policy directives. However, such an outlook is anticipated. Being a developing country, Malaysia indeed places great emphasis on her economic development, particularly in her determination to uplift her status to become a developed nation by the year 2020. For this, the Malaysia Plans adopt a parallel and consistent stand towards environmental protection within its overall economic development objectives. Their aims are to ensure that the maintenance of sound environmental conditions is balanced against the goals for economic development, and that any environmental standards adopted should take into account the country's level of development which provides support for its development strategies. This principle, based on sustainable development, is the principle that environmental law in Malaysia, specifically the Environmental Quality Act 1974, is based on.

This discussion on the development of environmental strategies within the Environmental Quality Act 1974 has highlighted the importance of this legislation in providing effective and uniformed protection for the environment. From the perspective of environmental protection through

¹³⁷

Section 34B (3) of the Environmental Quality Act 1974.

legal means, it has been shown that Malaysia has developed tremendously since the times of the colonial administration until now particularly through the introduction of the Act. The Act which is the fundamental environmental legislation in Malaysia is considered strategic for the implementation of the country's environmental sustainability policies. In many ways, continuous amendments of the Act are reflections of the continuous development of environmental policies in Malaysia. Its amendments are also reflections of the growing concern and magnitude of pollution problems and environmental degradation of the country.

From this examination on the development of environmental strategies within the Act, it can clearly be seen that environmental protection in Malaysia has evolved. Initially, the focus was curative in nature whereby criminal sanction was mostly relied upon through the imposition of fine and imprisonment on those who violated the law. In the mid 1980s, the focus was shifted to pollution prevention. It was during this time that the concept of sustainable development was incorporated within the law through various strategies, such as the environmental impact assessment.

In relation to environmental protection, latter Malaysia Plans started to focus on new and more advanced strategies based on sustainable development so as to secure long-term maintenance of environmental quality. As already discussed, through their inclusion in the Environmental Quality Act 1974, more economic measures have been adopted within its environmental strategies. Arguably, the application of this tool, which targets sectors known to be major environmental polluters, can help ensure more effective and long-term environmental protection, greater environmental responsibility and direct environmental participation amongst the economic sectors. For Malaysia, economic instruments will have a bigger role in the near future as a tool towards promoting sustainable development as pointed out in the Seventh Malaysia Plan.¹³⁸ Similarly, the Ninth Malaysia Plan seeks to expand the use of economic instruments and market-based measures including the incorporation of the polluter pays principle, user fees and economic evaluation techniques.¹³⁹

¹³⁸ Jabatan Perdana Menteri, *Seventh Malaysia Plan 1996-2000* (Kuala Lumpur: Jabatan Percetakan Negara, 2000), 589.

¹³⁹ Jabatan Perdana Menteri, *Ninth Malaysia Plan 2006-2010* (Kuala Lumpur: Jabatan Percetakan Negara, 2006), 462.

In the context of sustainable development, Malaysia's commitment in pursuing this sustainability target is commendable. According to the Ninth Malaysia Plan, Malaysia's efforts to promote sustainable development resulted in the country being ranked 38 among 146 countries worldwide and second in Asia with regard to environmental sustainability.¹⁴⁰ However, for Malaysia, more efforts are needed to ensure that its sustainability targets are met. From the perspective of environmental law particularly the Environmental Quality Act 1974, it must continuously be ready to accommodate new and more advanced strategies pertaining to the environment. Apart from focusing on environmental issues at the local level, the Act must also be sensitive to pressing and current global issues such as climate change so that such problems can also be tackled at the national level. At the same time, it is also important to ensure that strategies within the Act are enforced effectively and comprehensively. With effective enforcement and compliance, the application of strategies within the Environmental Quality Act 1974 can help Malaysia attain its sustainability goal of striking a balance between environmental protection and economic development.

¹⁴⁰*Ibid.*, 453.