

Enhanced penalties for contravention of the Environmental Quality Act 1974

08 OCTOBER 2022

The Environmental Quality (Amendment) Bill 2022 (**'the Bill'**) was passed by the Dewan Rakyat (House of Representatives) of the Malaysian Parliament on 5 October 2022. The Bill will continue its legislative journey for approval of the Dewan Negara (Senate) of the Malaysian Parliament and assent of the Yang di-Pertuan Agong and to be gazetted before becoming law.

The Bill amends 28 sections of the Environmental Quality Act 1974 (**'the Act'**) mainly to enhance the penalties for offences under the Act.

A summary of the key amendments introduced under the Bill are set out below:

1. Breach of terms and conditions of licence

Section 10 of the Act provides that the Director General of Environmental Quality (**'Director General'**) shall be the licensing authority for all matters requiring a licence under the Act. The penalties under section 16(2) of the Act for non-compliance with the terms and conditions of any licence issued under section 11 will be amended to replace the existing maximum fine of RM25,000 with a fine of not less than RM25,000 and not more than RM250,000, and the maximum term of imprisonment will be increased from two years to five years.

2. Licensing of prescribed premises and prescribed conveyance

Section 18(1) and 18(1A) of the Act provide for the licensing requirements for prescribed premises and prescribed conveyances respectively. The penalties that may be imposed under section 18(3) for non-compliance with these provisions will be amended such that the existing maximum fine of RM50,000 will be replaced by a fine of not less than RM25,000 and not more than RM250,000, and the maximum term of imprisonment will be increased from two years to five years.

3. Causing vehicle, ship or premises to become a prescribed conveyance or prescribed premises

Section 19 (to be renumbered as section 19(1)) of the Act, *inter alia*, prohibits a person from: (a) carrying work on any vehicle, ship or premise that will cause such vehicle, ship or premise to be a prescribed conveyance or a prescribed premises, as the case may be; and (b) constructing any building designed for or used for a purpose that will cause the land or building to become a prescribed premises, without the prior written approval of the Director General.

The Bill introduces a new section 19(2) to provide that any person who contravenes section 19(1) shall be liable to a fine of not less than RM25,000 and not more than RM250,000 or to imprisonment for a term not exceeding five years or to both. In addition, a continuing offence will attract a further fine of RM1,000 for every day that the offence continues after a notice by the Director General requiring the act specified in the notice to be ceased has been served.

4. Pollution of the atmosphere

Section 22(1) of the Act prohibits a person from emitting or discharging any environmentally hazardous substances, pollutants or wastes into the atmosphere in contravention of acceptable

conditions specified under section 21 unless he is licensed to do so.

The penalties set out in section 22(3) for a contravention of the above requirement will be amended such that the maximum fine of RM100,000 will be replaced by a fine of not less than RM10,000 and not more than RM1.0 million. The maximum term of imprisonment of five years remains unchanged.

5. Noise pollution

Section 23(1) of the Act prohibits a person from emitting or causing or permitting the emission of noise greater in volume, intensity or quality in contravention of acceptable conditions specified under section 21 unless he is licensed to do so.

The penalties set out in section 23(2) of the Act for contravention of the above requirement will be amended such that the maximum fine of RM100,000 will be replaced by a fine of not less than RM10,000 and not more than RM250,000. The daily default penalty of RM500 under this provision will be increased to RM1,000. The maximum term of imprisonment remains unchanged at five years.

6. Soil pollution

Section 24(1) of the Act prohibits a person, unless licensed, from polluting or causing or permitting to be polluted, any soil or surface of any land in contravention of acceptable conditions specified under section 21.

The Bill amends the penalties set out in section 24(3) for contravention of the above requirement such that the maximum fine of RM100,000 will be replaced by a fine of not less than RM50,000 and not more than RM500,000. The maximum term of imprisonment remains unchanged at five years.

7. Pollution of inland waters

Section 25(1) of the Act prohibits a person from emitting, discharging or depositing any environmentally hazardous substances, pollutants or wastes into any inland waters in contravention of acceptable conditions specified under section 21 unless he is licensed to do so.

The penalties set out in section 25(3) for contravention of the above requirement will be amended under the Bill such that the maximum fine of RM100,000 and the maximum term of imprisonment of five years will be replaced by a mandatory term of imprisonment not exceeding five years **and** a fine of not less than RM50,000 and not more than RM10.0 million, a significantly higher maximum fine than the present RM100,000.

8. Discharge of oil into Malaysian waters

Section 27(1) of the Act renders it an offence for a person, unless licensed, to discharge or spill any oil or mixture containing oil into Malaysian waters in contravention of acceptable conditions specified under section 21.

The penalties set out in section 27(3) for contravention of the above requirement will be amended under the Bill such that the maximum fine of RM500,000 will be replaced by a fine of not less than RM100,000 and not more than RM10.0 million, a significantly higher maximum fine than the present

RM500,000. The maximum term of imprisonment remains unchanged at five years.

9. Discharge of wastes into Malaysian waters

Section 29(1) of the Act renders it an offence for a person, unless licensed, to discharge environmentally hazardous substances, pollutants or wastes into Malaysian waters in contravention of acceptable conditions specified under section 21.

The penalties set out in section 29(2) for contravention of the above requirement will be amended under the Bill such that the maximum fine of RM500,000 will be replaced by a fine of not less than RM50,000 and not more than RM10.0 million, a significantly higher maximum fine than the present RM500,000. The maximum term of imprisonment remains unchanged at five years.

10. Open burning

The Bill will consolidate sections 29A and 29AA of the Act on open burning into a new section 29A.

The new section 29A(1) provides that, subject to any order issued by the Minister of Environment and Water ('**Minister**') under section 29A(2), no person shall commit, allow, instruct or cause open burning on any premises. The expression '**open burning**' which is defined as '*any fire, combustion or smouldering that occurs in the open air and which is not directed there through a chimney or stack*' has been relocated from the existing section 29A(3) to section 2 of the Act.

A person who contravenes the new section 29A shall be liable to a fine of not less than RM25,0000 and not more than RM1.0 million or to a term of imprisonment not exceeding five years, or to both, and will also be liable to a further fine not exceeding RM5,000 for every day that the offence continues after a notice by the Director General requiring the act specified in the notice has been served.

11. Use of substance and product and environmental labelling

Section 30A(1) of the Act, *inter alia*, permits the Minister to, after consultation with the Environmental Quality Council ('**Council**'), prescribe by order published in the Gazette:

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

The penalty for non-compliance with an order under section 30A(1) will be amended to replace the maximum fine of RM50,000 with a fine of not less than RM25,000 and not more than RM250,000. The maximum term of imprisonment remains unchanged at five years.

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

Where any environmentally hazardous substances, pollutants or wastes are being or are likely to be emitted, discharged, or deposited from any vehicle, ship, aircraft or premises, the Director General is empowered under section 31(1) of the Act to require the owner or occupier of such vehicle, ship, aircraft or premises to carry out any of the actions prescribed in paragraphs (a) to (g) of that section, such as remedial and monitoring measures.

Further, section 31(2) permits the Director General to: (a) direct the owner or occupier of any vehicle, ship, aircraft or premises to emit, discharge, or deposit the environmentally hazardous substance, pollutant or waste from the vehicle, ship, aircraft or premises during such periods of a day as the Director General may specify; and (b) generally direct the manner in which the owner or occupier is to carry out his trade, industry or process or operate any equipment, industrial plant or control equipment therein.

The penalties under section 31(3) for contravention of a notice issued under section 31(1) or section 31(2) will be amended such that the existing maximum fine of RM25,000 will be replaced by a fine of not less than RM50,000 and not more than RM1.0 million, and the maximum term of imprisonment of two years will be increased to five years.

13. Prohibition order

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

Where the Minister considers the environment, public health or safety is under or likely to be under serious threat, he may direct the Director General:

- to issue an order under section 31A(2) of the Act requiring a person to cease all acts that have resulted in the release of the environmentally hazardous substances, pollutants or wastes; and
- to effect and render any machinery, equipment, plant or process to of the person inoperable.

The penalties that may be imposed on a person who contravenes a prohibition order issued under section 31A(1) or section 31A(2) will be amended such that the maximum fine of RM50,000 and the maximum term of imprisonment of two years will be replaced by a mandatory term of imprisonment not exceeding five years **and** a fine of not less than RM50,000 and not more than RM1.0 million.

14. Maintenance and operation of equipment

Section 32 (to be renumbered as section 32(1)) of the Act requires the owner or occupier of any vehicle, ship, aircraft or premises to maintain any equipment or control equipment installed on the vehicle, ship, aircraft or premises in good condition and to operate the equipment or control equipment in a proper and efficient manner.

The Bill introduces a new section 32(2) to provide that any person who contravenes section 32(1) shall be liable to a fine of not less than RM5,000 and not more than RM100,000 or to imprisonment for a term not exceeding five years or to both. In addition, the new provision provides that the person shall also be liable to a fine of RM1,000 for every day that the offence continues after a notice by the Director General requiring him to take action specified in the notice has been served.

15. Prohibition or control of discharging by several licensed persons

Where several persons are licensed under the Act to emit, discharge or deposit environmentally hazardous substances, pollutants or wastes into the same segment or element of the environment and it appears to the Director General that each of these persons is complying with the conditions of his licence, but nevertheless the collective effect of the aggregate of such wastes is likely to cause a worsening of the of the condition in that segment or element of the environment such as to affect the health, welfare or safety of human beings, or threaten the existence of any animals, birds, wildlife, fish or other aquatic life, the Director General may serve a notice on each of these licensees under section 33(1) of the Act, requiring each of them to abate such emission, discharge or deposit in the manner and within the period specified in the notice.

The penalties set out in section 33(2) for contravention of the notice issued under section 33(1) will be amended such that the maximum fine of RM50,000 will be replaced by a fine of not less than RM50,000 and not more than RM1.0 million. The maximum term of imprisonment remains unchanged at five years.

16. Environmental impact assessment report

Section 34A of the Act sets out various requirements relating to an environmental impact assessment report to be prepared in respect of any activity that is prescribed by the Minister, after consultation with the Council, as a prescribed activity.

Presently, section 34A(8) provides that a person who contravenes section 34A shall, amongst others, be liable to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both. The Bill replaces the penalties provided in this subsection with mandatory imprisonment for a term not exceeding five years **and** a fine that is not less than RM100,000 and not more than RM1.0 million.

17. Prohibition order for prescribed activities

Where the Director General is satisfied that a person is carrying out a prescribed activity: (a) without the approval under section 34A(3) of the Act; (b) in violation of any of the conditions in the report; or (c) in a manner which, in the opinion of the Director General, is likely to cause environmental

damage, the Director General may issue a prohibition order or stop work order under section 34AA of the Act to prevent the prescribed activity from continuing: (a) absolutely or conditionally; (b) for such period as the Director General may determine; or (c) until the remedial measures directed by the Director General are complied with.

Presently, section 34AA(3) provides that a person who contravenes a prohibition order or stop work order under section 34AA shall, amongst others, be liable to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both. The Bill replaces the penalties provided in this subsection with mandatory imprisonment for a term not exceeding five years and a fine of not less than RM100,000 and not more than RM1.0 million.

18. Dealings with scheduled wastes

Section 34B prohibits a person from dealing with scheduled wastes¹ in the manner set out in paragraphs (a) to (c) of section 34B(1) unless the person has the prior written approval of the Director General.

Presently section 34B(4) provides that the penalties for a contravention of section 34B is mandatory imprisonment for a term not exceeding five years and a fine not exceeding RM500,000. The amendments under the Bill will maintain the mandatory term of imprisonment of up to five years and the fine. However the amount of the fine will be amended to be not less than RM100,000 and not more than RM10.0 million, a significantly higher maximum fine than the present RM500,000.

19. Obligation to furnish information

The owner or occupier of any vehicle, ship, aircraft or premises may be required by the Director General to provide information prescribed in paragraphs (a) to (d) of section 37(1) of the Act.

A person who refuses to answer any question or furnish information required by the Director General or gives any answer or information that is false or misleading in any material respect will be liable under section 34(2) to a fine not exceeding RM2,000 or to imprisonment for a term not exceeding six months or to both. The Bill will amend the fine to an amount that is not less than RM5,000 and not more than RM50,000 and increase the maximum term of imprisonment to two years.

20. General penalty

A person who commits any offence or contravenes any provision in the Act, any regulations made thereunder or breaches any condition or restriction in any licence issued under the Act and for which no penalty is specifically provided, shall be liable to a fine not exceeding RM10,000 or to a term of imprisonment not exceeding two years or to both under section 41. The Bill will amend the fine that can be imposed to an amount that is not less than RM5,000 and not more than RM250,000. The other penalties remain the same.

21. Compounding of offences

The Director General and other officers and bodies specified in section 45(1) of the Act are permitted to compound any offence that is a compoundable offence under regulations made under

the Act by accepting from the person reasonably suspected of committing the offence, a sum of money not exceeding RM2,000. This provision will be amended by the Bill to stipulate that the amount of the compound shall not exceed 50% of the maximum fine for which that person would be liable for in respect of the offence. It is suggested that this provision should also stipulate a minimum amount of the compound in line with the amendments of the other sanctions stipulated in the Act.

22. Moving a detained vehicle or ship before release

The owner or master or any person who causes to be moved, any vehicle or ship that has been detained under section 48(1) of the Act on grounds that it has discharged or spilled oil or a mixture containing oil or scheduled waste before such vehicle or ship is released is presently liable under section 48(2) to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding five years or to both. The Bill will amend the fine to an amount of not less than RM50,000 and not more than RM250,000, with the other penalties remaining the same.

23. Prohibition of use and testing of vehicle

Section 48A of the Act, *inter alia*, confers power on the Director General to require a vehicle to be detained, examined, tested and if required, remedied.

A person who fails to comply with section 48A in relation to the vehicle concerned is liable a fine not exceeding RM5,000 or to imprisonment for a term not exceeding one year or to both under section 48A(8). The Bill will amend the fine to an amount of not less than RM5,000 and not more than RM50,000, with the other penalties remaining the same.

24. Obstruction to search

Section 48AD, *inter alia*, provides that a person commits an offence if he obstructs the Director General or any authorised officer from having access to any vehicle, ship, aircraft or premises, or assaults, obstructs or otherwise impedes the Director General or any authorised officer in the performance of his powers, or refuses to provide to the Director General or any authorised officer any information reasonably required of him and which he has in his knowledge or power to give.

A person who contravenes section 48AD is liable to a fine not exceeding RM10,000, or to imprisonment for a term not exceeding two years or to both. The Bill will amend the fine to an amount which is not less than RM5,000 and not more than RM100,000 and increase the maximum term of imprisonment to five years.

25. Contravention of regulations

Section 51(3) of the Act permits regulations made under the Act to stipulate any act in contravention of the regulations to be an offence and to prescribe penalties of a fine not exceeding RM100,000 or imprisonment for a term not exceeding two years or to both. The Bill will introduce two amendments; first, that the maximum term of imprisonment will be increased to five years, and second, a daily default penalty not exceeding RM1,000 for each day that the offence continues.

Comments

The following trends can be discerned from the proposed amendments under the Bill. First, the maximum fine that may be imposed has been significantly increased in many instances, with the maximum in four instances being increased to RM10.0 million, namely for pollution of inland waters, discharge of oil or environmentally hazardous substances, pollutants or wastes into Malaysian waters, and dealing with scheduled wastes without approval.

Second, the amendments will introduce a minimum fine that is to be imposed for each offence (except in relation to the compounding of offences). This will set a baseline for fines imposed during sentencing.

Last and most significantly, mandatory imprisonment and fine will be introduced for four offences, namely pollution of inland waters, non-compliance with environmental assessment reports, breach of prohibition order relating to industrial plant or process and breach of prohibition order or stop work order relating to prescribed activities.

The proposed amendments are welcomed as the enhanced penalties will hopefully have the desired effect of becoming a stronger deterrence against flouting of environmental laws and compel businesses to raise their level of compliance.