

NATURAL RESOURCES AND ENVIRONMENT ORDINANCE

Chapter 84

Laws of Sarawak (1958 Edition)

(Incorporating all amendments up to 30th June 2005)



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**THE NATURAL RESOURCES AND ENVIRONMENT
(AMENDMENT) ORDINANCE, 2001**

DATE OF COMMENCEMENT

This Ordinance may be cited as the Natural Resources and Environment (Amendment) Ordinance, 2005, and shall come into force on 30th day of June, 2005

NOTE

The former Ordinance and Board, being known respectively as “the Natural Resources Ordinance” and “the Natural Resources Board” have with effect from 1st February, 1994 (*Swk. L.N. 4/94*) been cited and reconstituted as “the Natural Resources and Environment Ordinance” and “the Natural Resources and Environment Board” respectively under sections 2(2) and 4(2) of the Natural Resources (Amendment) Ordinance 1993 (Cap. A12).

The change of name of the Board shall not affect any rights, privileges, liabilities, duties or obligations of the Board subsisting immediately before 1st February, 1994, or render defecting any legal proceedings by or against it and any legal proceedings that could have been continued or commenced under its new name. The transitional provisions as set out in section 4(3) and (4) of the Natural Resources (Amendment) Ordinance, 1993, are reproduced for reference purposes—

(3) All existing liabilities incurred by or on behalf of for the purposes of the Natural Resources Board may be enforced against the Natural Resources and Environment Board.

(4) (a) All lands, property and assets that immediately before the coming into force of this Ordinance re vested in or reserved for the Natural Resources Board or any person acting on its behalf shall, upon the coming into force of this Ordinance, vest in or be reserved for the Natural Resources and Environment Board or any person acting on its behalf without any conveyance, assignment or transfer whatsoever.

(b) All references to the Natural Resources Board or any person acting on its behalf, in relation to or affecting any such land, property and asset in any instrument, deed, title, document, bond, agreement and working arrangement subsisting immediately before the coming into force of this Ordinance, shall be constructed as if all such references to the Natural Resources and Environment Board or any person acting on its behalf.

CHAPTER 84
LAWS OF SARAWAK
(1958 Edition)

**NATURAL RESOURCES AND
ENVIRONMENT ORDINANCE**

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CHAPTER 84
LAWS OF SARAWAK
(1958 Edition)

***NATURAL RESOURCES AND THE MANAGEMENT
OF THE ENVIRONMENT**

*An Ordinance to consolidate and amend
the law relating to conservation of natural resources.*

[12th December, 1949]

PART I

PRELIMINARY

1. This Ordinance may be cited as the Natural Resources and Environment (Amendment) Ordinance, 2001, and shall come into force on 1st day of June, 2001. Short title and commencement.

2.—(1) In this Ordinance — Interpretation.

“Board” means the Natural Resources and Environment Board constituted under section 3; [Am.
Cap. A12.]

† “conservation area” means any area of land designated as such under section 10(6) to enable the Board to take such measures as it deems fit and necessary for the protection and conservation of natural resources to provide for the safeguard and enhancement of the environment, and includes any area of land declared to be a special area under section 3 of the Public Parks and Greens Ordinance, 1993; Cap 3.

“ “Controller” means the person appointed pursuant to section 3(9) to the office of Controller of Environmental Quality, and includes a Deputy Controller;”

Council established under section 4 of the Environmental Quality Act 1974; Act 127

* Formerly known as the Natural Resources Ordinance, this Ordinance has now been cited as the Natural Resources and Environment Ordinance w.e.f. 1.2.94 (Swk. LN. 4/94)—see section 2 of the Natural Resources (Amendment) Ordinance, 1993 (Cap. A12).

† Cap. A12 w.e.f. 1.2.94 (see Swk. LN. 4/94)

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“environmental audit” means a periodic, systematic, documented and objective evaluation to determine—

- (a) the compliance status of any order, directive, approval or requirement issued or made by the Board;
- (b) the environmental management system and its performance; and
- (c) any risk, that may be caused to the environment in regard to the use, exploitation or development of any of the natural resources of the State;

“environmental elements” means the constituent parts of the environment including the atmosphere, vegetation, land, soils, water (both inland and subterranean), wild life and animals;

“environmental management system” means a system or process comprising of an organizational structure with its responsibilities, procedures, practices and control for the overall management and protection of the environment;

“municipal wastes” means any refuse or waste materials, whether solid, semi-solid or liquid in form, generated by or emanating from domestic, commercial, industrial or public premises or places including waste materials from any garden, farm, plantation or forest but excluding scheduled wastes;

“open burning” means any fire which is ignited or lighted in the open air onto any refuse, wastes, vegetation or other combustible materials whatsoever, but does not include—

- (a) any burning of materials in any incinerator; or
- (b) any burning of materials in connection with the performance of religious rites or ceremonies, and funerals; or

(c) any fire used in connection with preparation or cooking of food;

“scheduled wastes” means any waste prescribed as such pursuant to regulations made under the Environmental Quality Act 1974 [*Act 127*];

“soil” includes earth, sand, rock, shales and mineral deposits;

†“environment” means the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics;

*“Environmental Authority” means any local authority, statutory body or department of the State or Federal Government or such other authority, officer or person duly directed by the Board under this Ordinance to exercise the powers conferred or perform the duties imposed upon the Environmental Authority by this Ordinance or to perform such duties or functions as may be directed by the Board for the implementation, execution or enforcement of any Order, direction, ruling or decision of the Board;

*Cap. 126.
(1958 Ed.).*

*“forest produce” shall have the same meaning assigned to that expression by the Forests Ordinance;

*“inland waters” means the waters of any rivers, waterways, lakes, reservoirs, watercourses, water catchment areas within the State and in the foreshores and includes subterranean water;

*“local authority” shall have the same meaning assigned to it in the Local Authorities Ordinance, 1996 [*Cap. 20*];

*Cap. 117.
(1958 Ed.).*

(a) any local authority constituted under the Local Authority Ordinance;

* Formerly known as the Natural Resources Ordinance, this Ordinance has now been cited as the Natural Resources and Environment Ordinance w.e.f. 1.2.94 (Swk. LN. 4/94)--see section 2 of the Natural Resources (Amendment) Ordinance, 1993 (Cap. A12).

† Cap. A12 w.e.f. 1.2.94 (see Swk. L.N. 4/94)

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Ord.
No. 1/78. (b) the Bintulu Development Authority established under the Bintulu Development Authority Ordinance, 1978;

Cap. 116.
(1958 Ed.).
Ord.
No. 2/88. (c) the Council of the City of Kuching South established under the Kuching Municipal Ordinance as modified by the City of Kuching Ordinance, 1988; or

Ord.
No. 3/88. (d) the Commissioner of the City of Kuching North established under the City of Kuching North Ordinance, 1988;

[Added Ord.
No. 11/63.] “Minister” means the Minister responsible for natural resources;

*“natural resources” means air, biological diversity of resource, minerals, oil, gas, forest produce, land, rocks, soils, sub-soils, animals, birds, plants, marine or aquatic life and waters of Sarawak;

“occupier” means any person in actual occupation of land and, in the case of land reserved or allocated for the use of a native community, includes the head of the community;

“owner” means the person in whose name the title to any land is registered and includes any person, other than the Government, who receives or is entitled to receive the rent or profits of any land whether on his own account or on behalf of himself and others or as agent;

“Permanent Secretary”

[Deleted
Cap. A12.]

*“plant” means any species of plant or any part thereof, including all tree and crops species and vegetation;

*“pollution” means any direct or indirect alteration of the physical, thermal, chemical, or biological properties of any part of the environment by discharging, emitting, or depositing wastes in such amount or concentration or by the emission of noise or vibration to any land, drain, stream or river not specifically designated by any Environmental Authority for the purpose or not designated for the type, amount or concentration of wastes discharged, emitted or deposited or by emitting noise or vibration, which is hazardous or a potentially risk to public health, safety or welfare, or to animals, birds, fish or other aquatic life, or to plants;

•Ins. Cap. A12 w.e.f. 1.2.94---seeSwk. L.N. 4/94

“storm water” means all flow of water directly due to rainfall, before such water joins a stream;

“stream” means a watercourse of natural origin wherein water flows either continuously or intermittently, whether or not its conformation has been changed by artificial means, and includes swamps or marshes, whether forming the source or found upon the course of or feeding such watercourse;

*“vegetation” means all species of plants and trees, moss, algae and fungi, and any other vegetable products of the soil or water.

*(2) In this Ordinance a reference to the Yang di-Pertua Negeri shall be construed as a reference to the Yang di-Pertua Negeri acting in accordance with the advice of the Majlis Mesyuarat Kerajaan Negeri or of a member thereof acting under the general authority of the Majlis.

*(3) It shall be the duty of an Environmental Authority to carry out such duties and functions as may be directed by the Board and to implement, carry out, comply and rulings of the Board made pursuant to the provisions of this Ordinance.

PART II

NATURAL RESOURCES AND ENVIRONMENT BOARD

Establishment
and
composition
of Natural
Resource and
Environment
Board.
[Sub. Cap.
A12.]

3.—(1) There shall be established a Natural Resources and Environment Board which shall consist of—

- (a) the Minister as Chairman;
- (b) a Deputy Chairman;
- (c) the State Attorney-General or his nominee;
- (d) the Director-General of Environmental Quality or his nominee;
- (e) the Permanent Secretary to the Ministry of Resource Planning or his nominee;
- (f) the Permanent Secretary to the Minister of Environment or his nominee;

* Ins. Cap. A12 w.e.f. 1.2.94---see Swk. L.N. 4/94.

(g) the Permanent Secretary to the Ministry of Land Development or his nominee;

(h) the Director of Agriculture or his nominee;

(i) the Director of Forests or his nominee;

(j) the Director of Lands and Surveys or his nominee;

(k) the Director of Irrigation and Drainage or his nominee; and

(l) not more than five other members with appropriate experience, knowledge or expertise.

“(1A) The Deputy Chairman and the members referred to in paragraph (l) of subsection (1) shall be appointed by the Majlis Mesyuarat Kerajaan Negeri.

(2) (a) The Controller shall be the Secretary of the Board.

(b) He shall be responsible for—

(i) the general administration of the affairs of the Board, the management, control and supervision of its officers and employees and for executing and implementing all decisions of the Board;

(ii) preparing annual budgets and estimates of expenditure of the Board for approval by the Board; and

(iii) performing such other duties as the Board may from time to time determine or as the Chairman may from time to time direct.

(3) The appointment of the Deputy Chairman and any member made under paragraph (j) of subsection (1) shall—

(a) be for such term not exceeding three years as the Majlis Mesyuarat Kerajaan Negeri may deem fit; and

(b) be determined—

(i) upon his death;

(ii) if he shall by writing addressed to the Minister resign such appointment;

(iii) if he is a bankrupt;

(iv) if he is declared to be unsound mind; or

(v) if he is sentenced to a term of imprisonment without the option of a fine.

(4) Any member of the Board or the Committee established under paragraph (b) of subsection (9) and any person invited under subsection (7) of section 4 may be paid by the Board such remuneration and allowances as may be determined by the Minister.

(5) The Board for the purposes of this Ordinance may sue and be sued by its name and to be described by that name for all purposes.

(6) (a) The Board shall have a Corporate seal which shall be in the custody of the Secretary of the Board.

(b) All orders or directions of the Board issued pursuant to the provisions of this Ordinance and any contract or deed entered into or executed by the Board shall bear the Seal of the Board, which shall be affixed in the presence of any member of the Board and the Secretary.

(7) The Board may own, hold or have possession of any movable or immovable properties and may enter into any contract, arrangement, instrument or deed to acquire any interest in, deal with, transact upon or dispose off any such properties in the discharge of any of the functions prescribed by this Ordinance or under any other written laws.

*Cap. 81.
(1958 Ed.)*

(8) The Board shall for the purposes of the Land Code be deemed to be a native.

(9) For the discharge of its functions under this Ordinance, the board may, subject to the approval of the Minister—

(a) appoint a Controller of Environment Quality who shall be the Principal Administrative Officer of the Board;

(b) appoint or employ, on such terms and conditions as to salaries, allowance and benefits as it thinks fit and proper, any officer, employee and such persons with the expertise, knowledge and professional experience as may be required by the Board in the performance of its functions or the exercise of its powers under this Ordinance; and

(c) establish Committees comprising of at least one member of the Board who shall be the Chairman and such other persons as members as the Board deems fit. The Secretary of the Board shall be the secretary of such Committees and he shall report to the Board all decisions and recommendations of such Committees.

*Quorum and
proceedings
of the Board
(Am. Cap.
A12.)*

4.—(1) The Chairman or Deputy Chairman and any four other members of the Board shall form a quorum at any meeting of the Board.

(2) All acts, matters and things authorized and required to be done by the Board shall be decided by resolution.

(3) The Chairman shall, in addition to this deliberative vote as a member of the Board, have a casting vote.

(4) The procedure of the Board and any Committee established under subsection (9) (b) of section 3 shall be as determined by the Board.

(5) The Board Shall meet as and when required or wherever a meeting of the Board is requisitioned by the Chairman or Deputy Chairman.

(6) The Chairman shall preside at all meetings of the Board and in his absence the Deputy Chairman shall preside and perform the duties exercise the powers of the Chairman.

(7) The Chairman may invite to any of its meetings any person who can in his opinion contribute to its deliberation but such person shall have no right to vote at the meeting.

5. The functions and powers of the Board shall be—

Functions and powers of the Board.
(Sub. Cap. A12.)

(a) to determine the mode and manner whereby natural resources can be exploited or used without damaging, polluting or causing adverse impact on the environment;

(b) to determine and take such measures as may be considered necessary, including the issue of such direction or directive or order to any Environmental Authority or to any other person or body, to prevent, abate or stop the pollution of waters in the rivers or those in catchment areas within the jurisdiction of any water authority established under the Water Ordinance, 1994 [**Cap. 13**];

Cap. 141.
(1958 Ed.)

(c) to control, stop or prohibit the destruction of vegetation for the prevention of erosion, damage or injury to the natural resources, rivers and landscapes or the protection of the environmental elements of the State;

(d) to liaise and co-ordinate with and make representation to the Council or the Ministry charged with the responsibility for environment in the Federal Government relating to the determination of the standards for control of environment, the enforcement of any rules made pursuant to this Ordinance or under any written law relating to the environment;

(e) to provide rules, guidelines and directions for the protection and enhancement of the environment in matters relating to—

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(i) land use (including the siting of housing, industrial and commercial estates or the creation of conservation areas);

(ii) development and protection of sources of water supply and inland waters;

(iii) extraction and removal of forest produce and rock materials;

(iv) mining;

(v) planning and development of agricultural estates;

(vi) clearance and burning of vegetation;

(vii) fishing and exploitation of marine or aquatic life and plants within the rivers of Sarawak and in the foreshores; and

(viii) any matters over which the State exercises legislative authority by virtue of the provisions of the Federal Constitution or powers delegated to the State;

(g) to recommend to the Government rules and regulations to be prescribed for the protection and enhancement of the environment;

(h) to provide information and education to the public regarding the protection and enhancement of the environment;

(i) to direct any Environmental Authority and any other person or body involved in or undertaking the development, exploitation, utilization or management of natural resources, on the steps or measures to be undertaken by them to maintain environmental quality control;

(j) to consider, analyze and, if deem fit, approve plans, projects or specific recommendations or technical representations or advice of the Council or any experts or consultants or institutions or from any other sources concerning the measures for environmental quality control in any natural resources based development;

(k) to make orders for the protection and enhancement of the environment and any other matters as the Board is entitled to make under Section 10;

(l) to draw up, or to direct the preparation of, develop and implement environmental management system for any conservation area or any region or specific area of the State or in relation to any prescribed activity;

(m) to set environmental quality goals for the protection of flora, fauna and human health and to determine and take such measures as may be considered necessary for achieving such goals;

(n) to direct any Environmental Authority to undertake environmental monitoring and to make periodic report to the Board on the implementation thereof;

(o) to direct any body or person to carry out environmental audit of any prescribed activity undertaken by him and provide a report to the Board;

(p) to carry out such duties or exercise such powers as the Yang di-Pertua Negeri may require or direct or as may be conferred by any other written law; and

(q) generally to take or undertake such measures or steps as may be necessary to safeguard the quality of the environment.

6. When any matter arises for the determination of the Board, all persons having an interest in such matter shall, where reasonable, be notified in writing or in such other manner as the Board may direct of the questions at issue and given facilities for making thereon such representations, in person or by writing, as they may see fit. Representations may be made either to the Board or to such officer of the Government as the Board may appoint to receive representations on its behalf.

Board to give notice to interested parties.

7.—(1) For the determination of any subject under consideration, the Board shall have the powers which a Session Court has to summon witnesses, to cause oaths and affirmations to be administered to them, to examine them and to call for the production of documents.

Board may summon witnesses. [Am. Act 92, s. 111.]

(2) A summons for the attendance of a witness or for the production of any book, documents or record before the Board shall be signed and issued by the Chairman of the Board, and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial.

(3) Any person summoned to give evidence or to procure any book, documents or record or giving evidence before the Board shall be entitled to the same privileges and immunities as if he were summoned to attend or were giving evidence at a trial in a Sessions Court and may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.

[Am. Act. 92, s. 111.]

(4) Any person who fails without reasonable excuse to attend in obedience to such summons, or, subject to the provisions of subsection (3), fails to answer fully to the best of his knowledge any question relevant to the matter under investigation, or when required fails to produce any book, document or record as aforesaid, shall be guilty of an offence: Penalty, imprisonment for three months and a fine of five hundred ringgit.

[Am. Commissioner of Law Revision.]

Appeal from determination of Board.

8.—(1) The Board shall communicate in writing the terms of any approval, decision or order made by it or the Controller in terms of section 10, 11 or 12 (hereinafter referred to as a determination) to any person who is or may be directly affected by such determination.

(2) Any person who considers such determination is inequitable, unreasonable or unduly harsh may, within such times as may be prescribed, appeal to the *Yang di-Pertua Negeri in Council who may rescind or vary the determination of the Board or the Controller.

Functions of Government departments, statutory bodies and local authorities. (Am. Cap. A12.)

9. Every Government department, statutory body and local authority shall—

(a) generally co-operate with and assist the Board in carrying out the provisions of this Ordinance; and

(b) formulate for submission to the Board conservation schemes and environmental management system in and for the area in which it has jurisdiction and may, on the recommendation of the Board and with the approval of the *Majlis Mesyuarat Kerajaan Negeri, undertake the construction of works and other measures for the conservation of natural resources or the protection and enhancement of the environment in and for the area in which it has jurisdiction.

PART III

CONSERVATION AND IMPROVEMENT OF
NATURAL RESOURCES AND PROTECTION OF THE ENVIRONMENT

Board may make orders for conservation of natural resources. (Sub. Cap. A12.)

10.—(1) The Controller if he considers—

(a) that measures are necessary for—

(i) the conservation of, or the prevention of injury to, natural resources; or

(ii) the protection and enhancement of the environment or the prevention and control of such activities which may cause pollution,

either within a conservation area or in any other area or on any land; and

(b) that having regard to all the circumstances it is just and equitable that such measures should be undertaken by the owner or occupier of such conservation area, other area or land,

may order in writing the owner or occupier, as the Controller may decide, to undertake or adopt such measures as he may deem necessary for the conservation of natural resources or the protection and enhancement of the environment in such conservation area, other area or land,

(2) Such order may relate to—

Am. Cap. A12.)

(a) the use to which the conservation area or land may be put and the manner thereof;

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(b) the prohibition, restriction or control of the burning, clearing or destruction of vegetation, or the breaking up or clearing of conservation area or land for any purpose;

(c) the prohibition, restriction or control of cultivation of any part of the conservation area of land;

(d) the method of the cultivation, clearing and disposal of vegetation either within any conservation area or any other area or on any land;"

(e) the manner of watering, depasturing and moving stock;

(f) the preservation and protection of the source course and banks of streams;

(g) the protection and control of water, the sources of supply of water required for human consumption, including inland waters; (Sub. Cap. A12).

(h) the construction and maintenance of works for, or the doing or abstaining from doing any act which in the opinion of the Board is necessary for, the conservation of natural resources or the protection and enhancement of the environment;

(i) the location or relocation of any agricultural, housing or industrial estates, farms, water catchment areas, places for fish or aqua culture in inland waters;

(j) the mode, manner and places for discharge of water, sewage and other effluent into any inland waters and the emission of smoke into the atmosphere; or

(k) the preparation, development and implementation of an environmental management system, to be approved by the Board, for any area or land described in the order and within such time as may be stipulated therein.

(Am. Commissioners of Law Revision.)

(3) Any person who, without reasonable cause, fails, neglects or refuses to comply with or carry out any order made by the Controller under subsection (1) shall be guilty of an offence: Penalty, in the case of a first offence, imprisonment for one year and a fine of ten thousand ringgit and, in the case of a second or subsequent offence, imprisonment for two years and a fine of twenty thousand ringgit. A court in addition to any penalty imposed shall also make an order requiring the person guilty of the offence, to comply with the order of the Controller within such times as the court may specify; and

[Am. Cap.
A12.]

(4) Without prejudice to subsection (3), where an order made under subsection (1) is not complied with by any person subject thereto, the Board may direct in writing, an Environmental Authority, to execute, implement or carry out the requirements of such order or complete all works or acts stipulated therein, and to recover the costs thereby incurred from the person who fails, neglects or refuses to comply with the order.

(5) Where an advance or incentive is given to an owner or occupier of any land to enable him to carry out an order made under subsection (1), and he fails, neglects or refuses to comply with the order, or where an Environmental Authority is directed to execute the works under subsection (4), such advance, incentive or the amount of costs and expenses incurred in carrying out and complete the requisite works, shall be a debt due by the owner or occupier of the land to the Government and until the costs and expenses thereof are fully discharged, interest shall be charged or levied thereon at the rate of ten per centum per annum.

[Ins. Cap.
A12.]

(6) The Yang di-Pertua Negeri may, on the advice of the Board, by notification in the Gazette designate any area of land (whether alienated or unalienated) as a conservation area to be managed by the Board for the protection and conservation of natural resources to provide for the safeguard and enhancement of the environment on such land or to be subject to any order made by the Board under subsection (1).

(7) For the purpose of this section, "Land" shall include river, stream, lake, watercourse or foreshore.

Board may
construct
works. [Sub.
Cap. A12.]

11. If the Board—

- (a) decides that the proposed works should not be the subject of an order under Section 10; and
- (b) approves such works as being in the public interest; or
- (c) approves works for the protection of inland waters or the foreshores and banks of any river against erosion and encroachment of the sea; or
- (d) approves any measures for preventing or controlling pollution and protecting and enhancing the quality of the environment,

the Board may undertake, construct and maintain upon any land such works or activity as the Board may deem necessary for the protection, conservation and improvement of natural resources and for the protection and enhancement of the environment.

*11A.—(1) The Board may, subject to such rules as may be made under section 18, by Order published in the *Gazette*, require any person undertaking the following activities---

Reports on activities having impact on environment and natural resources.

(a) development of agricultural estates or plantation of an area exceeding the dimension specified in the said Order;

[*Ins. Cap. A12.*]

(b) clearing of forest areas for the establishment of agricultural estates or plantation;

(c) carrying out of logging operations in forest areas which have previously been logged or in respect whereof coupes have previously been declared to have been closed by the Director of Forests under the provisions of the Forests Ordinance;

Cap. 126.
(1958 Ed.).

(d) carrying out of any activity, including exploration for minerals, mining, farming, clearance of vegetation and setting up of agricultural estates in any area which in the opinion of the Board may pollute or in any way affect the sources of supply of water for human consumption;

(e) development of commercial, industrial and housing estates of an area exceeding the dimension specified in the said Order;

(f) extraction and removal of rock materials;

(g) activities which may cause pollution of inland waters of the State or endanger marine or aquatic life, organism or plants in inland waters, or pollution of the air, or erosion of the bank of any rivers, watercourses or the foreshores and fisheries;

(h) establishment of, or the use of any land for, landfill or for the storage, disposal or treatment of municipal wastes;

* See the Natural Resources and Environment (Prescribed Activities) Order, 1994 (Swk. L.N. 45/94).

(i) establishment or construction of any plant or facility for the treatment of sewage and waste water; or

(j) any other activities which may injure, damage or have any adverse impact on the quality of the environment or the natural resources of the State,

to submit to the Board a report from such expert or authority and in such form as may be approved by the Board, on the impact of such activities on the natural resources and environment and any other particulars or information as may be required by the Board.

(2) Upon consideration of such report, and having regard to the standards and recommendations of the Council, and after making all necessary enquiries and seeking any further opinion as the Board may deem desirable or necessary, the Board may make such Order or direction as the Board may approved the report with or without condition and is empowered to do under section 10 or any other provisions of this Ordinance or to undertake such works as may be deemed necessary under section 11.

(3) No person shall carry out or commence any preparatory work relating to any activity or part thereof specified in subsection (1) or any order made under it unless the Board has approved the report required to be submitted to it pursuant to this section.

(4) Where the Board, after examining the contents of the report, considers it reasonable and where the decision is not expected to have any significant adverse effect on the environment, the Board may decide that specified preparatory work relating to the activity or specified part of the activity may be carried out or commenced before the approval of the report.

(5) Any condition imposed by the Board when approving any report submitted pursuant to this section or any order made under it shall be deemed to have the legal effect of an order made under section 10 and may be enforced accordingly.

(6) Any person who contravenes this section shall be guilty of an offence: Penalty, a fine not exceeding ten thousand ringgit or an imprisonment not exceeding five years or both.

(7) Nothing in this section shall authorise or deem to have authorised the Board or the Yang di-Pertua Negeri, in the exercise of the powers conferred under section 18 to make any Order, direction, guidelines, rules or regulations in regard to the environment affecting matters over which the State, by virtue of the provisions of the Federal Constitution, has no legislative authority.

Apportionm
ents of
costs.
[Am. Cap.
A12.]

12.---(1) The Environmental Authority shall notify the Board of the cost of any works constructed under the powers conferred by section 11. **(Deleted)**

[Am. Cap. A12.]

(2) If the Board is of opinion that, having regard to all the circumstances, it is just and equitable that the owner of any land upon which any such works have been executed, or such owner and the owners of any other land which, in its opinion, has benefited from such works, should pay or contribute towards the cost thereof, it shall notify the owner or each of the owners accordingly, and shall in such notification specify the amount of such costs, if any, to be borne by the Government and the amount of payment or contribution to be made by such owner or by each of such owners.

(3) The amount of payment or contribution fixed by the Board in terms of subsection (2) shall be a debt due by the owner to the Government and, until discharged, interest shall be paid thereon at the rate of three per cent per year, with effect from the date of notification.

PART IV

GENERAL

13.—(1) Subject to and in accordance with any rules made under this Ordinance, advances may be made from the Consolidated Fund of Sarawak to owners or occupiers to enable them to carry out orders made under section 10, and loans or grants in aid may be made from the Consolidated Fund of Sarawak to Government departments, statutory bodies or local authorities in respect of conservation schemes undertaken by them.

Advances, loans, grants in aid and incentives.

[Am. Reprint Commission er: Am. Cap. A12.]

(2) The Board may, subject to such rules as may be made under section 18, provide incentives, by way of awards, grants or other forms of monetary awards, works, which are the subject of an order made under section 10, if it appears to the Board that they merit such incentives.

14.—(1) Subject to the restrictions imposed by subsection (2), and to the extent necessary for exercising the powers conferred or performing the duties imposed by this Ordinance, the Environmental Authority or any officer or person authorized in writing in that behalf by the Environmental Authority or the Controller shall have the right to enter upon any land or premises at all reasonable times with such men, animals, vehicles, appliances and instruments and to do all such acts thereon as are necessary for or incidental to the exercise of the aforesaid powers or the performance of the aforesaid duties.

Rights of entry.

[Am. Cap. A12.]

(2) The exercise of the rights conferred by sub-section (1) shall be subject to the following restrictions---

(a) no person shall enter any dwelling house except with the consent of the occupant; and

[Am. Cap. A12.]

(b) as little damage as possible shall be caused to any land or premises by the exercise of such rights, and compensation shall be paid by the Government or the Environmental Authority, as the case may be, for all damage so caused other than damage incidental to or consequent on work done to carry out an order made under section 10. The compensation may, in default of agreement, be claimed and determined on the appropriate court.

[Am. Commissioners of Law Revision.]

(3) If any person prevents such entry on any area as is authorized by this section, or willfully obstructs or hinders any person so authorised in lawfully carrying out his powers or duties under this Ordinance he shall be guilty of an offence: Penalty, in the case of a first offence, imprisonment for six months and a fine of one thousand ringgit and, in the case of a second or subsequent offence, imprisonment for one year and a fine of two thousand ringgit.

Penalty for discharge of storm water.
[Am. Commissioners of Law Revision.]

15. Any person who by any act or by neglect, causes damage to another by diverting storm water from its natural course, or who injures any soil or water conservation work, shall be guilty of an offence: Penalty, in the case of a first offence, imprisonment for six months and a fine of one thousand ringgit and, in the case of a second or subsequent offence, imprisonment for one year and a fine of two thousand ringgit. A court in addition to any penalty it may impose may order the payment of compensation.

Destocking and limitation of stock.
[Am. Ord. No. 9/76.]

16.—(1) Where the Yang di-Pertua Negeri is satisfied that the natural resources of any area are being injured or are deteriorating through overstocking of domestic animals, he may authorize the reduction of the number of such animals and prescribe the maximum number and the class of such animals as may be depastured in any area.

(2) Destocking and limitation of stock in terms of this section shall be carried out in accordance with rules made under section 18.

*[Sections 17 and 18 omitted by Commissioners
of Law Revision]*

17.—(1) A certificate purporting to be under the hand of the Environmental Authority certifying the amount of the cost of work done to give effect to an order made under section 10, or a copy of a determination made by the Board in the terms of section 12 purporting to be certified by the Environmental Authority as a true copy, shall until the contrary is proved, be evidence in any court of the amount due as a debt to the Government. *Evidence. [Am. Cap. A12.]*

(2) A copy of a determination made by the Board in the terms of section 10 or 11 purporting to be certified by the Environmental Authority as a true copy shall be conclusive evidence in any court that a determination was made by the Board in the terms of the certified copy. *[Am. Cap. A12.]*

***18.** The Yang di-Pertua Negeri in Council may make rules generally for the purpose of carrying out the provisions of this Ordinance and, in particular, such rules may provide for--- *Rules. [Am. Ord. No. 9/96.]*

(a) prescribing the manner in which destocking and limitation of stock shall be carried out;

(b) prescribing the time within which appeals may be lodged under section 8;

(c) prescribing the conditions on which loans or grants in aid may be made to the Environmental Authority in respect of conservation schemes undertaken by the Authority; *[Am. Cap. A12.]*

(d) prescribing the conditions on which an advance may be made to an owner or occupier to enable him to carry out an order made under section 10;

(e) prescribing the apportionment of costs between owners;

(f) prescribing fees for the submission and approval of any reports submitted pursuant to an order or direction issued by the Board under this Ordinance, and for the issue of permits;

* See Appeals Rules (Vol. VIII, 1958 Edition, p. 192).

Conservation of Wet Padi Land Rules (Vol. III, 1958 Edition, p. 187).

[aM. cAP. a12.]
[pARAS. (g) to (n):
Ins. Ord. No.
18/52.]

- (g) regulating and controlling the use of land or water;
- (h) regulating or controlling the clearing, burning, removal, disposal or destruction of vegetation and the procedure for applying for permits for the clearance, burning and disposal of vegetation;”;
- (i) prohibiting, restricting or controlling the cultivation of land;
- (j) regulating the method of cultivation of land;
- (k) prescribing the manner of watering, depasturing and moving stock;
- (l) the preservation and protection of the source, course and banks of streams;
- (m) controlling water, including storm water;
- (n) the construction and maintenance of works for, or the doing or abstaining from doing of any acts necessary for, the conservation of natural resources;
- (o) prohibiting or restricting the entry into, or movement within, a conservation area of persons, vehicles, boats or animals;
- (p) the development, implementation and regulation of any environmental management system;
- (q) the manner and procedure for undertaking any environmental audit and the preparation and submission of report arising therefrom to the Board and the action and activities to be undertaken resulting from such report;
- (r) the protection and preservation of plants or geological or physiographical features of special interest in a conservation area;
- (s) regulating and controlling the construction, management and operation of—

24 NATURAL RESOURCES AND ENVIRONMENT

- (i) landfill for municipal wastes or any site or area used or to be used for the storage, disposal, treatment, recycling or decomposition of municipal wastes;
- (ii) any plant or facility used or intended to be used for the storage and treatment of sewage and waste water;
- (t) prohibiting or regulating the open burning of refuse, municipal waste or other combustible matter;
- (u) prohibiting the discharge, emission or deposit into the environment of any matter, whether liquid, solid, or gaseous, or of radioactivity in any prescribed area as appears to the Board requisite for the protection and enhancement of the environment;
- (v) prohibiting or regulating the pollution of inland waters or of the atmosphere or solid as appears to the Board requisite for the protection and enhancement of the environment;
- (w) prohibiting or regulating any activity which may have significant environmental impact in the atmosphere or on the soils or in the inland waters of the State;
- (x) prohibiting the occupier of any premises from emitting, discharging or depositing pollutants into the atmosphere which by virtue of their nature are obnoxious or offensive;
- (y) rehabilitating any land, soil or premises or other environmental element which has been damaged as a result of pollution or activity which adversely affects the environment;
- (z) prescribing incentives to persons or body of persons for carrying out measures which are necessary to protect and conserve natural resources for the protection and enhancement of the environment;
- (A) prescribing penalties (not exceeding a fine of fifty thousand ringgit or imprisonment for ten years) for any breach or failure to comply with such rules;
- (B) prescribing the offences which may be compounded, the persons who may compound, the limit of the sum of money to be collected for compounding such offences and the procedure and forms to be complied with in compounding;

(C) prescribing rate of compensation that the Board may require any person to pay for damage caused to the environment by the acts, omission, neglect or default of that person; and

(D) all matters or things which are necessary or expedient to be prescribed for giving effect to this Ordinance.

PART V

[Part V.
Ins.
Cap. A12.]

FUND AND FINANCIAL PROVISIONS

Fund of the
Board.

19.—(1) For the purpose of enabling the Board to carry out its obligations and functions, there shall be established a Fund to be known as the Natural Resources and Environmental Quality Control Fund (hereinafter referred to as “the Fund”).

(2) The Fund shall consist of---

(a) such sums as may be appropriated from time to time by Dewan Undangan Negeri;

(b) all monies received from time to time by way of grants from the Federal or State Government;

(c) monies earned by the operation of any project, scheme or enterprise financed from the Fund;

(d) such sums as may be paid from time to time to the Board from advances or loans made by the Board;

(e) monies received by way of interests or dividends earned from investments in respect of monies held in the Fund;

(f) compound fees and compensation received by the Board pursuant to the provisions of this Ordinance or any rules made hereunder; and

(g) all other sums or property which may in any manner become payable to or vested in the Board in respect of any matter incidental to its functions, powers and duties.

20. It shall be the duty of the Board to conserve the Fund by so performing, exercising and discharging its functions, powers and duties under this Ordinance as to secure that the total revenues of the Board are, subject to any directions given by the Minister, sufficient to meet to any directions given by the Minister, sufficient to meet all sums properly chargeable to its revenue account, including depreciation and interest on capital, taking one year with another.

Conservation of Fund

21. The Fund shall be expended for the purposes of---

Expenditure to be charged on Fund.

(a) paying any expenditure lawfully incurred by the Board, including legal fees and other fees and costs, and the salaries, remuneration and allowances of members, Committees, officers and servants appointed and employed by the Board, including superannuation allowances, provident fund, pensions and gratuities;

(b) paying any other expenses, costs or expenditure properly incurred or accepted by the Board in the performance of its functions or the exercise of its functions and powers under section 5;

(c) granting loans, advances, incentives or other financial assistance approved by the Board;

(d) purchasing or hiring equipment, vehicles, machinery, stores and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under section 5;

(e) repaying any monies borrowed under this Ordinance and the interest due thereon; and

(f) generally, paying any expenses for carrying into effect the provisions of this Ordinance and any rules made hereunder.

22.—(1) The expenditure of the Board up to such amount as may be authorised by the Minister for any one year shall be defrayed out of the Fund.

Expenditure and preparation of estimates.

(2) Before the beginning of September of each year, the Board shall submit to the Minister an estimate of the expenditure for the following year in such form and containing such particulars as the State Financial Secretary may direct and the Minister shall, before the beginning of the following year, notify the Board of the amount authorised for expenditure generally or the amounts authorised for each description of expenditure.

(3) The Board may at any time submit to the Minister a supplementary estimate for any one year and the Minister may allow the whole or any part of the additional expenditure included therein.

Accounts and
audit.

23.—(1) The Board shall keep proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year, and shall submit the same to the Auditor-General or other auditor appointed by the Board for audit.

(2) After the end of each financial year, as soon as the accounts of the Board have been audited, the Board shall cause a copy of the statement of accounts to be transmitted to the Minister, together with a copy of any report or observations made by the auditor on that statement or on the accounts of the Board.

(3) The Minister shall cause a copy of every such statement and report or observations to be laid on the table of the Dewan Undangan Negeri.

Borrowing
powers.

24. The Board may, from time to time, with the approval of the Minister, borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Board for meeting any of its obligations or discharging any of its duties.

Government
loans or
grants.

25. The Government may, upon the recommendations of the Minister, make advances to the Board, either by way of grant or by way of loan, or partly by grant or partly by loan, and upon such terms and subject to such conditions as the Government may think fit for the purpose of assisting the Board to perform any function which it is empowered to perform by virtue of this Ordinance.

26. The assets of the Board shall, in so far as they are not required to be expended by the Board under this Ordinance, be invested in such manner as the Minister may approve.

Investment.

PART VI

[part VI Ins.
Cap. A12.]

MISCELLANEOUS PROVISIONS

27.—(1) The Board shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Board during the preceding financial year and containing such information relating to the proceedings and policy of the Board as the Minister may from time to time direct.

Annual report.

(2) The Minister shall cause a copy of every such report to be laid on the table of the Dewan Undangan Negeri.

28. In the exercise of its functions under this Ordinance, it shall be the duty of the Board and the Environmental Authority to have due regard to the needs of agriculture and forestry.

Duty of
authorities as
respects
agriculture and
forestry.

29. Where it is represented to the Minister that it is expedient in any particular case that any of the powers of the Board or the Controller under the provisions of this Ordinance should be exercised by a local authority, statutory body or such other authority or officer or person, the Board or the Controller may, with the approval of the Minister, delegate the exercise of that power or the discharge of that duty to that power of the discharge of that duty to that local authority, statutory body, authority, officer or person:

Provided that nothing in this section shall authorise delegation of any power to make subsidiary legislation.

*“Specific
offences.*

30.---(1) Any person who---

(a) carries out or causes or permits to be carried out open burning of refuse or other combustible materials on any land; or

(b) uses or causes or permits to be used, any land for the deposit of refuse,

without written permission of the Controller shall be guilty of an offence: Penalty, a fine of twenty thousand ringgit and imprisonment for three years.

(2) Any person who, without the written permission of the Controller, cuts, destroys or burns vegetation in any area which is not Native Customary Land or Native Area Land, shall be guilty of an offence: Penalty, a fine of thirty thousand ringgit and imprisonment for three years.

Cap. 81. (1958 Ed.).

(3) For the purpose of subsection (2), "Native Customary Land" shall have the same meaning as assigned to this expression in the Land Code.

Miscellaneous offences.

30A. Any person who—

(a) knowingly does any act or conducts any activity which pollutes or contaminates any inland waters; or

(b) submits a report pursuant to an order made under section 11A, containing facts, data or information which he knows or has reason to believe is false or calculated to deceive the Board,

shall be guilty of an offence: Penalty, a fine of fifty thousand ringgit and imprisonment for five years.”.

Pollution of land, etc.

30B.—(1) No person shall, unless he is carrying out any activity or function permitted by the Board, pollute or cause or permit to be polluted any soil or surface of any land.

(2) Notwithstanding the generality of subsection (1), a person shall be deemed to pollute any soil or surface of any land if—

(a) he places in, or drops or spills on any soil or in any place where it permeates any soil, any matter whether liquid, solid or gaseous; or

(b) he establishes on any land a refuse dump, garbage tip, soil and rock disposal site, sludge deposit site, waste injection well or otherwise uses land for the disposal of or a storage for solid or liquid wastes which are obnoxious or offensive to human beings or which interfere with subterranean water or are detrimental to any beneficial use of the soil or the surface of the land.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term of not exceeding five years or to both, and to a further fine not exceeding one thousand ringgit a day for every day during which the offence is continued after a notice by the Controller requiring him to cease the act specified therein has been served upon him.

Presumption

30C. In any prosecution of an offence under section 30 or 30B, where it is proved that refuse has been deposited or open burning or pollution of the soil has occurred, on any land; the owner or occupier thereof shall, until and unless the contrary is proved, be deemed to have carried out, caused or permitted the deposit of such refuse or open burning or pollution of the soil, as the case may be.

Defence.

30D In any prosecution under section 30 or 30B, it shall be a defence if the person, owner or occupier of the premises proves—

(a) that the deposit of refuse or open burning or pollution of the soil occurred outside his control or without his knowledge or connivance or consent; or

(b) that he—

- (i) took all reasonable precautions; or
- (ii) exercised all due diligence,

to prevent the commission of the offence as he ought to have taken and exercised having regard to the nature of his responsibility in that capacity and to all the circumstances.

Default in compliance with notice or order.

31. Where any direction or notice or order requires any act to be done or work to be executed under this Ordinance or to refrain from the doing of any act or activity within the period specified therein by the Board or the Controller or the Environmental Authority and default shall be guilty of an offence and shall, where no penalty is specially provided in this Ordinance for such default, on conviction be liable to a fine of twenty thousand ringgit or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

“Power of entry and investigation

32.---(1) The Controller or any officer duly authorized by him or any police officer not below the rank of Inspector may without warrant enter upon any land, premises, vessel or any other property for the purpose of ascertaining whether the provisions of this Ordinance or its rules or Orders are being complied with, and may conduct such investigation and inspection as he may deem fit, and may call upon any person to produce such documents, books, accounts, articles or other things and to furnish such information as may be considered necessary for the purpose:

Provided that any person not in uniform purporting to exercise any powers under this section shall on demand produce his written authority to exercise these powers to any person lawfully demanding the same.

(2) The Controller or any officer duly authorized by him or any police officer not below the rank of Inspector in carrying out an investigation under this Ordinance or rules or orders may examine orally any person who is acquainted or supposed to be acquainted with the facts and circumstances of the case shall reduce into writing any statement made by the person so examined.

F.M.S.
Cap. 6.

(3) The person who is being examined or investigated under subsection (2) shall be bound to answer all questions relating to the case put to him by the Controller, authorized officer or police officer not below the rank of Inspector, as the case may be:

Provided that the person may refuse to answer any question the answer to which would have the tendency to expose him to a criminal charge, penalty or forfeiture.

(4) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer and questions.

(5) The Controller or any authorised officer or the police officer not below the rank of Inspector, as the case may be, in examining a person under this section shall first inform the person of the provisions of subsections (3) and (4).

(6) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb-print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make corrections he may wish, and the Controller, authorised officer or police not below the rank of Inspector shall endorse thereon under his hand the fact of the refusal and the reasons for it, if any, as stated by the person examined.

(7)(a) In carrying out any investigation under this Ordinance, the Controller or any officer authorized by him or any police officer not below the rank of Inspector may arrest without warrant—

(i) any person reasonably believed to have committed an offence against this Ordinance or its rules or orders; or

(ii) any person who refuses to give his name and address when it is requested for or if there is reason to doubt the accuracy of the name and the address given.

(b) A person arrested under this section shall be taken to a police station and shall be dealt with in accordance with the provisions of the Criminal Procedure Code [*Act 593*].

Power of
Seizure

32A.—(1) Where there is any reason to believe that an offence under this Ordinance has been committed, any tool, equipment, machinery, vehicle or property used in the commission of the offence may be seized by the Controller or any officer authorized by the Controller or any police officer, investigating the offence:

Provided that the Controller or a police officer not below the rank of Superintendent may release anything so seized under this section upon the furnishing of a bond or other security that is adequate to cover the value of the things seized.

Power of
seizure

32A.—(2) Where it is proven to the satisfaction of the court that any things seized pursuant to subsection (1) is used in the commission of the offence, the court shall order the same to be forfeited and disposed of in such manner as the court may direct.

(3) Where any things is seized under this section and there is no prosecution within sixty days from date of such seizure thereof, the thing seized shall be deemed to be forfeited at the end of that period unless before the end of that period a written claim on it is made, by the lawful owner thereof or his duly authorized agent, to the Controller or a Superintendent of Police, as the case may be, for the return of the things seized.

Offence by
bodies of
persons.

32B. Where an offence under this Ordinance or any rules made thereunder is committed by a company, a firm or society or any other body of persons, any person who, was a director, manager or other similar officer of the company, or a partner or manager of the firm, or an office-bearer of the society or other body of persons or was purporting to act in such capacity, shall be deemed to be guilty of the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or congerence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions or office and to all the circumstance of the case.”

33.—(1) The prosecution of any offence against the Ordinance or any rules made thereafter shall be conducted by the Public Prosecutor or any person duly authorized by him under section 377 of the Criminal Procedure Code [*Act 593*].

Power to
prosecute and
legal
representation.

(2) In regard to any suit or proceeding of a civil nature by or against the Board, the State Attorney-General or any person duly appointed or authorised by him shall represent, appear and plead on behalf of the Board in any court having jurisdiction over such suit or proceedings.

(3) For the purposes of subsection (2), the word “Board” shall include any member of the Board or the Controller or any person appointed or employed under section 3(9)(b) or any Committee established under section 3(9)(c).

34. All members of the Board or any Committees, the Controller and other officers and any person appointed or employed by the Board shall be deemed to be public servants within the meaning of the Penal Code, and public officers within the meaning of the Anti-Corruption Act 1997 [*Act 575*].

Public servants.

Act. 57.

35. No member of the Board or any Committees, officers or employees of the Board or any other person whomsoever acting under the direction of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith and without negligence in the course of the operations of the Board.

Personal immunity of members, officers and employees.

36. The Public Authorities Protection Act 1948, shall apply to any action, suit, prosecution or proceedings against the Board or Committees or against any member, officer, employee or agent of the Board in respect of any act, neglect or default if done or committed by any of them in such capacity.

Public Authorities Protection Act 1948, Act 198.

37. Nothing in this Ordinance shall prevent any person from being prosecuted under any other written law for any act or omission which constitutes an offence under this Ordinance or any rules or regulations made hereunder or being liable under that written law to any other higher punishment or penalty that prescribed by this Ordinance or the rules and regulations made hereunder:

Security for protection under other laws.

Provided that no person may be punished twice for the same or similar offence.

