

ENVIRONMENT PROTECTION (PRESCRIBED ACTIVITIES) (ENVIRONMENTAL IMPACT ASSESSMENT) ORDER 2005

In exercise of the powers conferred by subsection 12(2) of the Environment Protection Enactment 2002 [*Enactment No. 12 of 2002*], the Director makes the following order.

Citation and commencement.

1. This order may be cited as the Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005 and shall come into force on such date as the Director may, by notification in the *Gazette*, appoint.

Interpretation.

2. (1) In this Order -

"Department" means the Environment Protection Department;

"Director" means the Director of the Environment Protection Department;

"Enactment" means the Environment Protection Enactment 2002;

"environmental impact assessment report" means a report or series of reports which provides a detailed assessment in quantitative terms wherever possible, and in qualitative terms of –

(a) the likely environmental impacts of a development activity;

(b) the measures required to prevent, mitigate or abate any adverse environmental impacts, or to protect the environment; and

- (c) the monitoring programme required to ensure compliance with mitigation measures and/or to monitor residual impacts;

"person" shall have the same meaning assigned to it under the Interpretation and General Clauses Enactment 1963;

"proposal for mitigation measures" means a proposal or series of proposals which provides a description of –

- (a) the known environmental impacts of a development activity;
- (b) the measures required to prevent, mitigate or abate any adverse environmental impacts, or to protect the environment; and
- (c) the monitoring programme required to ensure compliance with mitigation measures and/or to monitor residual impacts;

"relevant authority" means any government authorities or agencies responsible for approving development activities; and

"wetland forests" means forests where land is either subject to inundation with saltwater and/or freshwater, or has a high water table and such forests include mangrove forests, brackish water forests, transitional forests, freshwater swamp forests and peat swamp forests.

(2) Any reference in the First and Second Schedules to units of measurement of area shall be construed to mean the minimum area prescribed therein for any person to undertake any of the prescribed activities, regardless of whether such activities are carried out in phases or simultaneously within a prescribed period.

Categories of prescribed activities.

3. The prescribed activities under the Environment Protection (Prescribed Activities) Order 2005 are categorised into the First and Second Schedules.

Submission to the Director.

4. Any person who intends to undertake any prescribed activities shall prepare and submit to the Director –

- (a) a proposal for mitigation measures for any of the prescribed activities specified in the First Schedule; or
- (b) an environmental impact assessment report for any of the prescribed activities specified in the Second Schedule,

in accordance with the guidelines prescribed thereto.

Approval and non-approval.

5. (1) If the Director, upon examining the proposal for mitigation measures or the environmental impact assessment report submitted under paragraph 4 and after making such inquiries as he may deem necessary, is of the opinion that –

- (a) the proposal or the report has complied with the guidelines prescribed by the Director; and
- (b) the measures required to prevent, mitigate or abate the adverse environmental impacts or to protect the environment are adequate; and
- (c) the impacts are not detrimental to the welfare of the environment,

he shall approve the proposal or the report.

(2) If the Director, upon examining the proposal for mitigation measures or the environmental impact assessment report submitted under paragraph 4, is of the opinion that –

- (a) the proposal or the report does not comply with the guidelines prescribed by the Director; or
- (b) the measures required to prevent, mitigate or abate the adverse environmental impacts or to protect the environment are inadequate; or

- (c) the impacts are detrimental to the welfare of the environment,

he shall not approve the proposal or the report, and shall inform the person intending to carry out the prescribed activity and the relevant authority of the non-approval.

Director to prescribe guidelines.

6. The Director may from time to time-

- (a) prescribe such guidelines as he may deem necessary concerning the preparation of the proposal for mitigation measures or environmental impact assessment report required to be submitted under paragraph 4; or
- (b) amend, vary, alter, delete or impose any additional requirements to the guidelines, as may be necessary.

No prescribed activities to be undertaken without approval.

7. (1) No prescribed activities shall be carried out or commenced until-

- (a) a proposal for mitigation measures or an environmental impact assessment report required to be submitted under paragraph 4 has been approved by the Director, subject to such conditions, orders or directions as the Director is empowered to make under the Enactment; and
- (b) the person carrying out the prescribed activity has undertaken in writing to comply with such conditions, orders or directions as may be specified by the Director, by signing –
 - (i) a mitigation declaration for any of the prescribed activities specified in the First Schedule; or
 - (ii) an agreement of environmental conditions for any of the prescribed activities specified in the Second Schedule.

(2) Notwithstanding subparagraph (1)(b), the Director may amend, vary, alter, delete or impose any additional conditions, orders or directions.

Notice to cease activities.

8. In the event of any breach of undertakings under paragraph 7(b), the Director may by a notice in writing direct that the prescribed activity be ceased.

FIRST SCHEDULE
[Paragraphs 3, 4 and 7]

List of Prescribed Activities Requiring Proposal for Mitigation Measures

1. AGRICULTURE –

- (i) Development of agricultural estates or plantations covering an area of 100 hectares or more but less than 500 hectares;
- (ii) Development of agricultural estates or plantations involving change in type of crops covering an area of 100 hectares or more but less than 500 hectares; or
- (iii) Conversion of wetland forests into agricultural estates or plantations covering an area of 20 hectares or more but less than 50 hectares.

2. FORESTRY –

- (i) Felling or extraction of timber covering an area of 100 hectares or more but less than 500 hectares; or
- (ii) Development of forest plantation or reforestation covering an area of 100 hectares or more but less than 500 hectares.

3. HOUSING, COMMERCIAL AND INDUSTRIAL ESTATES -

- (i) Development of housing, commercial or industrial estates covering an area of 10 hectares or more but less than 50 hectares;
- (ii) Conversion of wetland forests into housing, commercial or industrial estates covering an area of 2 hectares or more but less than 30 hectares;
or
- (iii) Development of housing, commercial or industrial estates within 200 metres from the high-water mark of the coastal area.

4. FISHERIES AND AQUACULTURE –

- (i) Conversion of wetland forests into fisheries or aquaculture development covering an area of 10 hectares or more but less than 50 hectares, or
- (ii) Creation of lakes or ponds for fisheries or aquaculture development covering an area of 10 hectares or more but less than 50 hectares.

5. QUARRIES -

Quarrying of aggregates, limestone, silica, quartzite, sandstone, sand, marble or stones within 200 metres from any streams or rivers.

6. RESORTS AND RECREATIONAL DEVELOPMENT -

- (i) Development of resorts, recreational or tourism facilities covering an area of 10 hectares or more but less than 30 hectares; or

- (ii) Development of resorts, recreational or tourism facilities within 200 metres from the high-water mark of the coastal area.
7. ANY OTHER ACTIVITIES WHICH MAY DAMAGE OR HAVE AN ADVERSE IMPACT ON QUALITY OF ENVIRONMENT -
- (i) Construction of buildings for public purposes within 200 metres from the high-water mark of the coastal area; or
 - (ii) Construction of open jetties with a length of 100 metres or more for commercial or public use along rivers or sea front.

SECOND SCHEDULE
[Paragraphs 3, 4 and 7]

List of Prescribed Activities Requiring Environmental Impact Assessment Report

1. AGRICULTURE -
- (i) Development of agricultural estates or plantations covering an area of 500 hectares or more;
 - (ii) Development of agricultural estates or plantations involving change in type of crops covering an area of 500 hectares or more;
 - (iii) Conversion of wetland forests into agricultural estates or plantations covering an area of 50 hectares or more; or
 - (iv) Agricultural programmes involving the settlement of 100 families or more.

2. FORESTRY –

- (i) Felling or extraction of timber covering an area of 500 hectares or more;
or
- (ii) Development of forest plantation or reforestation covering an area of 500 hectares or more.

3. HOUSING, COMMERCIAL AND INDUSTRIAL ESTATES -

- (i) Development of housing, commercial or industrial estates covering an area of 50 hectares or more;
- (ii) Conversion of wetland forests into housing, commercial or industrial estates covering an area of 30 hectares or more; or
- (iii) Development of housing, commercial or industrial estates on hills with slopes having gradient of 20 degrees or more.

4. DRAINAGE AND IRRIGATION -

- (i) Irrigation schemes covering an area of 500 hectares or more; or
- (ii) Drainage of wetland forests covering an area of 50 hectares or more.

5. LAND RECLAMATION –

Reclamation of land by the sea or along river banks for development of housing, commercial or industrial estates, construction of major roads, or other public purposes.

6. FISHERIES AND AQUACULTURE -

- (i) Conversion of wetland forests into fisheries or aquaculture development covering an area of 50 hectares or more; or
- (ii) Creation of lakes or ponds for fisheries or aquaculture development covering an area of 50 hectares or more.

7. MINING –

Mining including open cast mining for minerals pursuant to any mining lease -

- (a) covering an area of 20 hectares or more; or
- (b) any form of mining which is likely to affect the landscape of the mining area so as to require rehabilitation thereof upon the cessation of the mining activities, or which involves the use of chemicals or explosives.

8. POWER GENERATION –

Construction of dams and hydro-electric power schemes involving the following

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- (a) dams over 15 metres high and ancillary structures covering an area of 40 hectares or more;
- (b) artificial lakes or reservoirs with a surface area covering 50 hectares or more; or
- (c) diversion of streams, rivers or watercourses.

9. QUARRIES –

- (i) Quarrying of aggregates, limestone, silica, quartzite, sandstone, sand, marble or stones for commercial or construction purposes within 3 kilometres of –
 - (a) any existing settlement, residential, commercial or industrial area, major roads, or any buildings for public purposes, or
 - (b) any area for which a licence, permit or approval has been granted for development of settlement, residential, commercial or industries area, major roads, or any buildings for public purposes;
- (ii) Earth work involving extraction, removal, filling or dumping of earth with a volume of 40,000 cubic metres or more; or
- (iii) Excavation or dredging of sand or rock materials from watercourses, streams, rivers, coastal area or sea for commercial or construction purposes.

10. RESORTS AND RECREATIONAL DEVELOPMENT -

- (i) Development of resorts, recreational or tourism facilities covering an area of 30 hectares or more;
- (ii) Development of resorts, recreational or tourism facilities on hills with slopes having gradient of 20 degrees or more; or
- (iii) Development of golf courses.

11. WATER SUPPLY -

- (i) Construction of dams, artificial lakes or reservoirs with a surface area of 50 hectares or more for impounding water; or
- (ii) Development of groundwater supply with a capacity of 4,500 cubic metres or more per day.

12. ANY OTHER ACTIVITIES WHICH MAY DAMAGE OR HAVE AN ADVERSE IMPACT ON QUALITY OF ENVIRONMENT -

- (i) Construction of buildings for public purposes on hills with slope having gradient of 20 degrees or more;
- (ii) Construction of major roads or upgrading of major roads involving realignment and widening through settlement, coastal areas or wetland forests, or on hills with slopes having gradient of 20 degrees or more;
- (iii) Construction of port facilities (including warehouses, container yards and cargo storage facilities) for commercial use along rivers or sea front; or
- (iv) Construction of closed landing jetties for commercial or public use along rivers or sea front.

Made this 23rd day of August 2005.

DATUK ERIC USIP BIN JUIN,
*Director of State Environment Protection
Department.*