

# DRAFT FOR DISCUSSION

## POLLUTION CONTROL LAW

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# DEMOCRATIC REPUBLIC OF TIMOR-LESTE

## NATIONAL PARLIAMENT

### POLLUTION CONTROL LAW

The Constitution creates rights and obligations for the State and for the people of the Timor - Leste in relation to the environment and in particular the Constitution recognises and provides for:

- a) rights to a humane, healthy and ecologically balanced environment;
- b) the need to preserve and rationalise natural resources; and
- c) the State to promote actions protecting the environment and safeguarding sustainable development.

Taking into account that the development of law for the protection of the environment and sustainable development is a basic issue for the Timor-Leste's domestic policy.

There is established a need for laws that further those principles which:

- a) begin to fulfil the provisions of section 61 of the Constitution in relation to the protection of the environment of Timor-Leste;
- b) implement the universal principle that the 'polluter pays' for the costs associated with damage to the environment;
- c) implement a licensing system that will manage and control the level of pollution that may be emitted from scheduled premises;
- d) implement a registration system that will control the storage of dangerous or hazardous chemicals;
- e) implement a Pollution Clean-up Fund contributed to by persons who operate a scheduled premises or storage premises.

Accordingly pursuant to Section 95 and in particular section 61, paragraph (f) of section 6 and item 3 of section 139 of the Constitution, the National Parliament enacts the following that shall have the force of law.

## Part 1 - Introduction

### Section 1. Definitions

**Authorised Person** means a person authorised in writing by the Director and includes the Director.

**Dangerous or hazardous chemicals** in the context of Part 5 are:

- a) Petroleum, oil, oil by-products and lubricants;
- b) Industrial or laboratory standard chemicals that are mainly comprised of acids or alkalis;
- c) Heavy metals; and
- d) Any chemical specified in Ministerial Rules issued under this Law.

**Director** means the Director, Division of Environment.

**Division of Environment** means the Division established as an organisational unit of the public administration of Timor-Leste that has responsibility for the Environment.

**Clean-up** means:

- a) to remove, destroy, dispose of, abate, neutralize or treat any pollutant, waste, substance, environmental hazard or noise; and
- b) to restore the environment to a state as close as practicable to the state it was in immediately before:
  - i). the discharge of any pollutant, waste or substance; or
  - ii). the creation of an environmental hazard.

**Environmental Audit** is an evaluation process performed by the Division of Environment or those responsible for a scheduled premises or a storage premises to assess the level of compliance with relevant guidelines and standards established under this Law or the Environmental Impact Assessment Law.

**Environmental hazard** means a state of danger to humans or the environment resulting from the location, storage, processing or production or handling of any substance having toxic, corrosive, flammable, explosive or infectious characteristics.

**Environmental Management Plan** has the same meaning as in the Environmental Impact Assessment Law.

**Environmentally Sensitive Area** has the same meaning as in the Environmental Impacts Assessment Law.

**Industrial Waste** means:

- a) any waste arising from commercial, industrial or trade activities or from laboratories; or
- b) any waste containing substances or materials which are potentially harmful to humans; or
- c) any waste from government facilities such as hospitals, power stations, motor vehicle workshops, storage facilities or from motor vehicles, water craft and air craft.

**Licence** means a licence issued under Part 3 of this Law.

**Licensee** means a person licensed under **section 7** or **section 8**.

**Minister** means the Minister assigned responsibility for the Environment.

**Notifiable chemical** means a chemical for which there is not available and accessible in Timor-Leste a satisfactory facility for the destruction or disposal of the chemical and is declared by the Minister to be a notifiable chemical.

**Regulation** is a reference to a Regulation promulgated under the United Nations Transitional Administration in East Timor.

**Scheduled Premises** are premises from which industrial waste or pollution emanates and may be further defined by Ministerial Rules issued under this Law.

**Storage premises** are premises where dangerous or hazardous chemicals are stored in quantities that are at or above amounts specified in Ministerial Rules issued under this Law. In setting amounts for the purposes of this definition, the Minister must have regard to the likelihood of the quantity of dangerous or hazardous chemicals causing an environmental hazard.

**Timor-Leste** means the Democratic Republic of Timor-Leste.

**Waste** means any solid, liquid, gaseous or radio-active matter which is discharged into the environment in a manner that causes an alteration in the environment.

## **Section 2. Application of the Law**

- 1) This Law also binds the organs of the Government of Timor-Leste.
- 2) The scope of this Law extends and applies to the territorial seas and the exclusive economic zone of Timor-Leste.

## **Section 3. Repeal of Indonesian Law**

When this Law comes into effect the laws of Indonesia relating to pollution control as Regulation 1999/1 applied them are repealed.

## **Section 4. Administration of the Law**

The Minister and the Division of Environment are empowered to administer and exercise the powers provided to them respectively by this Law.

# **Part 2 – General Duty Not to Pollute**

## **Section 5. General Duty not to Pollute**

- 1) Protection of the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Timor-Leste.
- 2) A person commits an offence and is liable for the penalty in this **section** if he or she pollutes the atmosphere, land or waters that make the atmosphere, land or the produce of the land or the waters:
  - a) noxious or poisonous;
  - b) harmful or potentially harmful to the health or welfare of humans, animals, birds or wildlife, plants or vegetation; or
  - c) obnoxious or unduly offensive to the senses of humans.
- 3) Without limiting the scope of **sub-section** (2), pollution has occurred if:
  - a) standards or guidelines established under this Law have not been complied with;
  - b) any conditions of a licence issued under this Law have not been complied with; or

- c) an Environmental Management Plan related to a scheduled premises or a storage premises has not been followed and pollution has resulted.

Penalty: not less than \$200 and not more than \$50,000

## **Part 3 – Licences**

### **Section 6. Licence Register**

- 1) The Division of Environment will establish and maintain a register of all licences issued under this Law that contains the following information:
  - a) the name of the business for which the licence is issued;
  - b) the owner or operator of the premises;
  - c) the type of business;
  - d) the type of chemicals stored and used on the premises; and
  - e) the licence details, including the nature and quantity of industrial waste discharged from the premises.
- 2) The register will be available for inspection at no fee by the public during normal working hours.

### **Section 7. Transitional Licences**

- 1) During the first six months of the operation of this Law a transitional licence issued by the Division of Environment is required for an existing business that discharges industrial waste into the atmosphere, land, water or a drain.
- 2) A transitional licence is valid for not more than six months and may not be extended.
- 3) Every person who operates premises that discharge industrial waste into the atmosphere, land, water or a drain must within 45 days of the commencement of this Law notify the Division of Environment of their business details including:
  - a) the name of the business;
  - b) the type of business;
  - c) the nature of the industrial waste discharged from the premises; and
  - d) the quantity of industrial waste discharged from the premises.
- 4) The Division of Environment must not issue a transitional licence if the premises present a significant environmental hazard.
- 5) The fee for a transitional licence will be established by Ministerial Rules.

### **Section 8. Licensing Provisions**

- 1) A person must not operate a scheduled premises which discharges industrial waste into the atmosphere, land, water or any drain without a licence issued under this **section**.

- 2) The Division of Environment is responsible for the issue of licences under this **section**.
- 3) An application for a licence must be:
  - a) accompanied by the licence application fee;
  - b) in the form approved by the Division of Environment; and
  - c) accompanied by plans and specifications of the premises and the proposed industrial waste discharge arrangements and levels.
- 4) The Division of Environment is required to consider and make a decision about the issue of a licence within 60 days of receiving an application. If a decision is not made within that time the Division of Environment must issue a licence (except in the circumstances set out in **section 9**) within the next succeeding five days in accordance with the licence application and the standards and guidelines issued under this Law.
- 5) A licence issued under this **section** is valid for up to 3 years as determined by the Division of Environment.
- 6) In issuing a licence under this **section**, the Division of Environment has the following powers:
  - a) it may require specified works for the proper environmental operation of the scheduled premises to be carried out before a licence is issued;
  - b) it may apply conditions, including restricting times when and places where industrial waste may be discharged from the scheduled premises; and
  - c) it may require an environmental management plan as part of the licence.
- 7) From the enactment of this Law it is prohibited to conduct a business or activity which uses imported hazardous or toxic waste or to issue a license for a business or activity of that nature.
- 8) A licence may not be issued by the Division of Environment if the applicant is undertaking an Environmental Impact Assessment for the scheduled premises, until the Minister has made a determination under the Environmental Impact Assessment Law.

## **Section 9. Environmentally Sensitive Areas**

- 1) In relation to an application for a scheduled premises that are situated in close proximity to an environmentally sensitive area, the Division of Environment may:
  - a) reject the application because of the potential to create an environmental hazard; or
  - b) issue a licence and impose higher standards of industrial waste management than those specified in standards and guidelines issued under this Law in order to reduce the potential to create an environmental hazard.
- 2) The Division of Environment may require any premises that discharge industrial waste into the atmosphere, land, water or drains to be licensed under this **section** because of its close proximity to an environmentally sensitive area and the provisions of this **section** will apply accordingly.
- 3) The onus is on the applicant to prove that pollution from the premises will not create an environmental hazard.

## **Section 10. Alteration and Modification of Licence Conditions**

- 1) A Licensee is required to advise the Division of Environment of alterations to scheduled premises that will affect the discharge of industrial waste, including details of the alterations and an assessment of the potential to create an environmental hazard resulting from the alterations.
- 2) The Division of Environment may review the licence conditions and restrictions for any scheduled premises and require the licensee to comply with any modified conditions or restrictions:
  - a) immediately upon receiving notification from the Division of Environment of the modified conditions or restrictions; or
  - b) from a date specified in a notification received from the Division of Environment.

## **Section 11. Transfer of Licences**

The Division of Environment must approve the transfer of a licence prior to the occurrence of any transfer and may amend any licence conditions and restrictions at the time of transfer.

## **Section 12. Referral Processes**

- 1) The Division of Environment must refer a licence application (within 10 days of receiving it) to the following Agencies:
  - a) the Ministry of Health;
  - b) the relevant District Administration office;
  - c) the Division of Commerce and Industry;
  - d) the Ministry of Agriculture, Fisheries and Forestry;
  - e) the Water Supply and Sanitation Service;
  - f) the Division of Public Works; and
  - g) the Directorate of Mineral and Natural Resources.

for any conditions, limitations and restrictions to be incorporated in a licence.

- 2) The Agencies must respond within 30 days of the date of receiving a referral under **subsection (1)**.
- 3) In the event that an Agency does not respond within 30 days that Agency is deemed to have consented to the licence issue.
- 4) The Division of Environment must:
  - a) impose the conditions, limitations and restrictions advised by an Agency; and
  - b) take into account any representations or comments from the public in relation to the issue of a licence.
- 5) The Division of Environment is prevented from issuing a licence if the Ministry of Health objects to the issue of a licence on the ground that there are significant risks to public health.

- 6) An applicant for a licence must comply with the guidelines issued under this Law for:
  - a) notification of a licence application to the public; and
  - b) consultation with the public about a licence application.

### **Section 13. Appeals**

- 1) Every person has the right to appeal on a matter of law to a Court or tribunal of competent jurisdiction against the issue of a licence under this Law.
- 2) An appeal must be lodged with the Court within 90 days of the licence being issued.

## **Part 4 – Pollution Clean-up**

### **Section 14. Pollution Clean-up**

- 1) The cost of a clean-up must be paid for by the polluter.
- 2) The Division of Environment may conduct or require a clean-up to be conducted in the following circumstances:
  - a) where pollutants have been or are being discharged;
  - b) if a condition of pollution is likely to arise;
  - c) if any industrial waste or potentially hazardous substance appears to have been abandoned or dumped; or
  - d) if any industrial waste or potentially hazardous substance is being handled in a manner which is likely to cause an environmental hazard.
- 3) The Division of Environment is empowered to require a person who pollutes to pay the costs of a clean-up under **sub-section (2)**. If the Division of Environment incurs any costs in undertaking a clean-up the person who caused the pollution is required to reimburse those costs.
- 4) In this **section** “costs” are the costs incurred by the Division of Environment in undertaking the clean-up.
- 5) If the person who caused the pollution cannot be identified the costs of the clean-up are to be paid from the Pollution Clean-up Fund established under **section 15**.

### **Section 15. Pollution Clean-up Fund**

- 1) A Pollution Clean-up Fund (the Fund) is established.
- 2) The purpose of the Fund is to:
  - a) First, provide for the costs of a Clean-up under **section 14**;
  - b) Secondly, provide for environment education programs approved by the Minister.
- 3) The Fund shall comprise all levies paid into it by Licensees under this Law.



- 4) A licensee under this Law is obliged to pay into the Fund each year on a date specified by the Division of Environment an amount equal to 10 % of the licence fee payable under this Law.
- 5) The occupier of storage premises under this Law is obliged to pay into the fund each year at the time of registration the amount specified in Ministerial Rules under this Law.
- 6) Payments from the Fund may only be made with the approval of the Minister and only for the purposes of sub-**section** (2).

## **Part 5 – Registration of Storage Premises**

### **Section 16. Registration Requirements**

- 1) The occupier of storage premises is required to register the premises with the Division of Environment.
- 2) The fee (not exceeding \$150) for a registration under sub-section (1) will be established by Ministerial Rules.
- 3) Registration of storage premises must be renewed annually at the anniversary of the first registration.
- 4) The registration must be in the form approved by the Division of Environment and contain:
  - a) The location of the storage premises to be registered;
  - b) Information about the type and nature of dangerous or hazardous chemicals to be stored at the storage premises;
  - c) Information about the average quantities of dangerous or hazardous chemicals to be stored at the storage premises; and
  - d) Other information requested by the Division of Environment that relates to the construction of buildings and pollution control measures at the storage premises.
- 5) The occupier of storage premises is required:
  - a) to prepare an Environmental Management Plan which must be approved by the Division of Environment;
  - b) to construct and manage the storage premises in accordance with the Environmental Management Plan.
- 6) The Division of Environment is required to maintain a register of the registrations made under this Part and the register is to be available to the public at no fee during normal working hours.

## **Part 6 – Enforcement and Legal Provisions**

### **Section 17. Enforcement Mechanisms**

- 1) The Division of Environment is empowered to enforce this Law through the following mechanisms:
  - a) an On-the-Spot Fine Notice;
  - b) a Pollution Hazard Correction Notice;
  - c) an Environmental Hazard Prevention Notice.
  
- 2) An On-the-Spot Fine Notice is for the purpose of imposing fines for minor breaches of this Law or a licence or a registration under Part 5 and:
  - a) is issued only by an authorised person;
  - b) imposes a fine not exceeding USD\$200;
  - c) must be in a form approved by the Division of Environment;
  - d) is issued only for an offence that is specified in the form of Notice approved by the Division of Environment; and
  - e) must be paid within 30 days by the person to whom it is issued to the Division of Environment.
  
- 3) A Pollution Hazard Correction Notice may be issued in respect of storage premises or to a licensee if pollution has occurred or there is a likelihood of pollution occurring but which does not present an immediate Environmental Hazard and:
  - a) is issued only by an authorised person;
  - b) must specify the pollution hazard and the corrective action to be taken by the person to whom it is issued and the time by which the corrective action must be taken; and
  - c) must be acted on and completed by the person to whom it is issued within the time specified in the notice.
  
- 4) An Environmental Hazard Prevention Notice may be issued in respect of storage premises or to a licensee in respect of premises where there has been continual and serial breaches of an environmental management plan, licence conditions, standards or guidelines under this Law or for the purpose of taking immediate action to prevent the occurrence of an environmental hazard and:
  - a) is issued by an authorised person;
  - b) must specify the action to be taken to prevent pollution from occurring or to prevent further pollution occurring from those premises; and
  - c) may order those premises to be closed and prevent the premises from operating as a business for a period of up to 180 days.

### **Section 18. Powers of Entry to Land**

- 1) An authorised person may enter 1) scheduled premises or storage premises during normal working hours for the following purposes:
  - a) to carry out inspections of scheduled premises and storage premises;

- b) to ensure that a licensee or the occupier of storage premises is complying with this Law, and any Rules, guidelines and technical standards required by the Division of Environment;
  - c) to remove any substance or material that in the authorised person's reasonable belief may cause pollution; and
  - d) to carry out duties that are connected with the administration of this Law.
- 2) In exercising the powers under this **section** an authorised person must:
- a) cause as little harm and inconvenience as possible;
  - b) not stay on the land for longer than is reasonably necessary; and
  - c) cooperate as much as possible with the owner or occupier.
- 3) An authorised person must produce his or her identity tag at the request of a licensee or occupier of storage premises and may not remain on those premises without the permission of that person if the identity tag is not produced.
- 4) A licensee or occupier of storage premises is obliged to provide reasonable access to an authorised person to carry out his or her duties under **sub-section** (1) and must not obstruct an authorised person in carrying out those duties.
- 5) A licensee or occupier of storage premises who does not comply with **sub-section** (4) is guilty of an offence and liable to a maximum penalty of USD\$200

## **Section 19. Offences and Penalties**

- 1) The following are offences under this Law:
- a) Operate a scheduled premises without a licence;
  - b) Operate a scheduled premises while the licence is suspended;
  - c) Failure to comply with standards or guidelines issued under this Law or any licence conditions including any works required by the Division of Environment for obtaining a licence;
  - d) Failure to comply with an Environmental Management Plan in relation to the discharge of industrial waste;
  - e) Failure to comply with a Notice issued under **section** 17;
  - f) Failure to pay the Clean-up Fund levy under **section** 15;
  - g) Operating a scheduled premises if the licence has been revoked or suspended under this **section**;
  - h) Failure to register a storage premises under section 16;
  - i) Failure to comply with an Environmental Management Plan in relation to storage premises.
- 2) Notifiable chemicals may not be used in any form or stored in any place in Timor-Leste.
- 3) The penalty for any offence under subsections (1) and (2) is a maximum of USD\$500 for every day the offence occurs.
- 4) A Court may revoke or suspend (for not more than 12 months) a licence in serious or serial cases of pollution.

## **Section 20. Appeals**

Every person has the right to appeal to a Court or tribunal of competent jurisdiction against the use of a power or the issue of a notice under this Part by the Division of Environment or an authorised person.

## **Section 21. Powers of Authorised Persons**

- 1) Proceedings for an offence against this Law may only be brought by an authorised person.
- 2) Authorised persons are empowered take control in emergency situations and take actions to prevent pollution from occurring, to control a hazardous or dangerous situation or to prevent an environmental hazard.
- 3) An authorised person only may issue notices under **section 17**.

## **Section 22. Court Jurisdiction**

A Court of Competent Jurisdiction established under **section 123** of the Constitution is empowered to hear and determine prosecutions and impose penalties under this Law (except a penalty under section 23) or until such a Court is established, the Dili District Court.

## **Section 23. Administrative Penalty**

The Division of Environment is empowered to issue administrative penalties under this Law as follows:

- a) Where this Law provides for a daily penalty, the issue of a daily penalty of not more than USD\$200 per day;
- b) In relation to any other penalty not more than USD\$200.

## **Section 24. Delegated Legislation**

- 1) The Minister on the recommendation of the Division of Environment is to be empowered to issue:
  - a) standards for pollution control including safe industrial waste discharge levels;
  - b) standards for conducting environmental audits;
  - c) guidelines governing processes for the discharge of industrial waste;
  - d) guidelines for applicants to follow for notification to the public of an application for a licence and for public consultation about a licence application;
  - e) rules for fees for applications, licences, registrations and transfers under this Law;
  - f) rules which specify notifiable chemicals;
  - g) guidelines for storage of hazardous or dangerous chemicals;
  - h) amounts to be paid into the Clean-up Fund in respect of storage premises registered under this Law.
  - i) rules or guidelines which are required for the administration of this Law.
- 2) Fees under **subsection (1)** may vary according to the size and type of scheduled premises.

**Section 25.       Records of the Division of Environment**

In any proceedings before a Court about an offence under this Law, the records of the Division of Environment are sufficient to establish any fact the records relate to in those proceedings, until the contrary is proven.