

**Submission
from La'o Hamutuk
regarding the draft Petroleum Regime for Timor-Leste**

Annex 1: Annotated *Timor-Leste Petroleum Act, 2004*

29 September 2004

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TIMOR-LESTE PETROLEUM ACT	COMMENTS FROM LA'O HAMUTUK
Preamble	The draft laws contain many errors in section numbering and cross-referencing that we trust will be fixed by others.
The purpose of Timor-Leste Petroleum Act (the "Act") is to create a regulatory regime for petroleum companies to explore for and develop petroleum resources which belong to Timor-Leste in such a way as to provide maximum benefit to Timor-Leste. It empowers the Ministry to encourage petroleum companies to train and employ Timor-Leste nationals and use Timor-Leste goods and services. The Act also aims to ensure stability and transparency, and to allow Timor-Leste to compete successfully with other countries for international investment.	The principal purpose of this Act is to facilitate the process of converting Timor-Leste's petroleum resources into cash resources which can be used to benefit current and future generations of citizens of Timor-Leste. The petroleum companies are merely a means to this end. Other goals are to protect Timor-Leste's environment, human rights and property both during and after operations.
The Petroleum resources that belong to Timor-Leste have great potential value, and are expected to generate significant revenues for Timor-Leste. Revenues from Petroleum will allow Timor-Leste to address more fully its development needs and priorities, further strengthen its human resources, consolidate the gains achieved so far, accelerate and sustain economic growth, reduce poverty and improve the welfare of the people of Timor-Leste.	
Timor-Leste has title to all Petroleum resources in the ground, whether on land or at sea.	This refers to the State of Timor-Leste, not the Government of the day. It only refers to such resources within the territory of Timor-Leste. Is title retained after the resource is extracted, until it is sold?
According to international law, Timor-Leste has sovereign rights for the purpose of exploring and exploiting its natural resources, including its Petroleum resources, and the management of these resources, located in all its territories or in its maritime zones.	
The Timor-Leste Constitution sets out the territory of Timor-Leste. The Timor-Leste Petroleum Act applies to these areas, except areas that are subject to temporary international agreements as long as those agreements are in force.	It should also apply to the IUA, and perhaps make specific reference to the maritime boundaries law. Only the JPDA is excepted, and this could be stated explicitly. Further, "temporary international agreements" should be spelled out specifically -- is this the 2002 Timor Sea Treaty and its Annexes only?
PRELIMINARY	
Article 1 Definitions	
In this Act:	
"Access Authorisation" means an authorisation granted pursuant to Section 7.4;	
"Act" means this Timor-Leste Petroleum Act, as amended, modified or replaced from time to time, and regulations made and directions given under it;	

“Affiliate” means, in respect of an Authorised Person (or, if more than one person, in respect of each such person), a person that Controls, is Controlled by, or is under common Control with, the Authorised Person or any such person, as the case may be;	
“Authorisation” means an Access Authorisation, a Petroleum Contract, a Prospecting Authorisation or a Seepage Use Authorisation and any agreement made in respect of such an Authorisation or Contract;	
“Authorised Area” means the area from time to time the subject of an Authorisation;	
“Authorised Person” means:	
(a) in respect of a Petroleum Contract, a (check the Contractor for problems) Contractor; and	
(b) in respect of any other Authorisation, the person to whom the Authorisation has been granted;	
“Calendar Year” means a period of twelve months commencing on January 1 and ending on the following December 31, according to the Gregorian calendar;	
“Code” means the Petroleum Mining Code adopted pursuant to Article 7(a) of the Treaty , as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;	
“Contract Area” means the Authorised Area under a Petroleum Contract;	
“Contractor” means a person with whom the Ministry has made a Petroleum Contract;	
“Control” means, in relation to a person, the power of another person to secure:	
(i) by means of the holding of shares or the possession of voting power, in or in relation to the first person or any other person; or	
(ii) by virtue of any power conferred by the articles of association of, or any other document regulating, the first person or any other person,	
that the affairs of the first person are conducted in accordance with the wishes or directions of that other person;	
“Government” means the Government of the Democratic Republic of Timor-Leste;	
“Inspector” has the meaning in Section 21.1;	

<p>“Ministry” means the ministry or other agency, from time to time, responsible for the administration of this Act;</p>	<p>Petroleum Ministry of the government of RDTL. At present, the lack of definition of this Ministry is a serious omission which makes it difficult to evaluate and comment on the effectiveness, consequences and shortcoming of the entire draft Petroleum Regime.</p> <p>This should be more specific, as the administration of different parts of this Act should involve not only the Petroleum Ministry, but also other ministries responsible for environmental protection, human rights and local communities. This Act should say “Petroleum Ministry” throughout the Act when that is what is meant.</p>
<p>“Official Gazette” means the Jornal da República;</p>	
<p>“Operator” means an Authorised Person or other person named in an Authorisation or unitisation agreement to organise and supervise Petroleum Operations;</p>	
<p>“Parliament” means the parliament of Timor-Leste;</p>	
<p>“Petroleum” means:</p>	
<p>(i) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;</p>	
<p>(ii) any mixture of naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state; or</p>	
<p>(iii) any Petroleum (as defined in paragraphs (i) and (ii) above) that has been returned to a reservoir.</p>	
<p>“Petroleum Contract” means a contract, licence, permit or other authorisation made or given pursuant to Article 7;</p>	
<p>“Petroleum Operations” means activities for the purposes of:</p>	
<p>(i) prospecting for Petroleum;</p>	
<p>(ii) exploration for, development, exploitation, transportation or export of Petroleum; or</p>	<p>define terms “development”, “exploitation”, “transportation” and “export”. Does this also include refining, liquification, and consumption within Timor-Leste?</p>
<p>(iii) construction, installation or operation of any structures, facilities or installations for the development, exploitation, transportation and export of Petroleum, or decommissioning or removal of any such structure, facility or installation;</p>	
<p>“Prospecting Authorisation” means an authorisation granted pursuant to Article 6;</p>	
<p>“Public Officer” means a civil servant, a member of Parliament or a member of Government;</p>	<p>Presumably of RDTL only. Should include agents and representatives of government, as well as local government.</p>
<p>“Reservoir” means an accumulation of Petroleum in a geological unit limited by rock, water or other substances without pressure communication through liquid or gas to another accumulation of Petroleum;</p>	

“Seep” means, in respect of Petroleum, Petroleum which is seeping to the surface, naturally, through natural conduits;	
“Seepage Use Authorisation” means an authorisation granted pursuant to Article 9;	
“Territory of Timor-Leste” consists of the territory of Timor-Leste, including its territorial sea, together with its exclusive economic zone and continental shelf where, by international law, Timor-Leste has sovereign rights for the purposes of exploring for and exploiting its natural resources.	Specify which international laws. Also, refer to Timor-Leste Maritime Zones Act. Treaties signed and ratified by Timor-Leste (i.e. boundary agreements) should also be included.
“Timor-Leste” means the Democratic Republic of Timor-Leste.	
“Treaty” means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002;	Better to say “Timor Sea Treaty” everywhere as there will be other relevant Treaties, such as boundary agreements.
“Well” means a perforation in the earth’s surface dug or bored for the purpose of producing Petroleum;	
“Wellhead” means the point where Petroleum exits the confines of the Well and associated systems; and	
Article 2 General Provisions	
2.1. Citation	
This Act may be cited as the Timor-Leste Petroleum Act, 2004.	
2.2. Application of Act	
(a) This Act applies to the Territory of Timor-Leste.	‘throughout’ would be preferable.
(b) Except as otherwise provided, this Act does not apply to any area that is subject to a provisional arrangement within the meaning of Article 83, paragraph 3 of the United Nations Convention on the Law of the Sea, done at Montego Bay December 10, 1982.	Is this about the JPDA only? If there is a new or expanded IUA or JPDA for Sunrise, this act should apply if appropriate. If this is meant only to exempt territories covered by Annex F of the Timor Sea Treaty, it would be best to make that clear.
2.3. Scope of Act	
(a) This Act applies to Petroleum Operations.	It applies also to those persons, natural and corporate, responsible for and conducting Petroleum Operations, as well as to the government of RDTL.
(b) The existence of Petroleum Authorisations in force in a given area does not prevent authorization of the exploration and exploitation of mineral substances other than Petroleum, provided that such other activity does not hinder the proper performance of the Petroleum Operations.	define “hinder” and “proper” -- this could be construed very broadly. It also should discuss fishing and other maritime activities.
2.4. Entry Into Force	
This Act shall enter into force on the day after its publication in the Official Gazette.	
2.5. Title to Petroleum	

(a) Title to and control over Petroleum in the Territory of Timor-Leste are vested in Timor-Leste.	
(b) A person may acquire title to Petroleum only after it has been recovered.	define “recovered”
Article 3 Exercise by the Ministry of its Powers and Functions	
3.1. Exercise of Powers	
The Ministry shall exercise its powers and discharge its functions, under this Act and Authorisations made hereunder, in such a manner as to ensure sound resource management and develop Petroleum in a way that minimises damage to the natural environment, is economically sustainable, promotes further investment and contributes to the long-term development of Timor-Leste.	Needs to be broader. “Economically sustainable” is inappropriate for such operations, as the petroleum reserves will be irreversibly depleted. But contributes to the long-term welfare of the people of Timor-Leste would be appropriate. This should be a basis for exercising some control over development options, including downstream.
3.2. Representations to the Ministry	
Before exercising any such power or discharging any such function, the Ministry may give opportunity to persons likely to be affected to make representations to it, and shall give consideration to representations received by it.	Should explicitly include civil society, local communities and a public comment period, public hearings, environmental impact assessments and decommissioning plans in advance, etc. Should be mandatory (“may” should be “shall”) Should be the responsibility of other agencies independent from the Petroleum Ministry.
Article 4 Public Officers	
4.1. Public Officers Holding Authorisations	The intention of this section is good, but we are concerned that it is unenforceable without supporting legislation requiring transparency of public officers’ personal finances. Penalties should also be specified, as well as provisions for blind trusts or some other mechanism.
(a) Except as a nominee of the Government, Public Officers shall not acquire, attempt to acquire or hold:	Does Timor-Leste have mandatory disclosure laws for Public Officers that would make this section enforceable?
(i) an Authorisation or an interest, whether direct or indirect, in an Authorisation; or	
(ii) a share in a corporation (or an Affiliate of it) that is carrying out Petroleum Operations.	Does this refer only to operations in Timor-Leste? Or is it all petroleum operations worldwide? In other words, are TL MPs prohibited from owning any mutual funds owning oil company stocks?
(b) Any instrument which purports to grant to a Public Officer, an interest, whether direct or indirect, in an Authorisation shall be, to the extent that it purports to do so, of no effect.	
(c) The acquisition or holding of an Authorisation, interest or share by the minor children or spouse of a Public Officer shall be deemed to be an acquisition or holding by the Public Officer.	Given Timor-Leste’s extended family structure, perhaps this needs to be broader?

Article 5 Graticulation	
For the purposes of this Act, the Territory of Timor-Leste, or parts thereof, shall be divided into blocks according to a grid system.	
Part I – AUTHORISATION OF PETROLEUM OPERATIONS	
Article 6 Prospecting Authorisations	
6.1. Power of Ministry	
The Ministry may grant a Prospecting Authorisation, in respect of a specified area, with a person or a group of persons.	<p>“with” should be “to”</p> <p>Is nobody allowed to prospect without a PA? (such as contractors, or holders of PAs for adjacent areas)</p> <p>Can payments be required?</p>
6.2. Rights and Obligations	
(a) A Prospecting Authorisation grants a right to perform geological, geophysical, geochemical and geotechnical surveys in the Authorized Area.	<p>Is a PA exclusive for a given area?</p> <p>Environmental Impact assessment and remediation plans and other pre-approvals should be required before seismic surveys are authorized? Will the Prospecting Authorization spell out more conditions and restrictions, or is it just a statement of who and where? Perhaps a template PA should be part of this legislation.</p>
	<p>Add: “All prospecting activity must be in compliance with laws and regulations in effect in the territory of Timor-Leste, even if those laws are modified during the term of the Authorisation.” (This is important for areas more than 12 miles from ET’s coast, outside the “territorial sea.”)</p> <p>Should specify penalties for non-compliance.</p> <p>Is a PA indefinite or for a specific time period? Can it be extended?</p>
(b) The Prospecting Authorisation may require the Authorised Person to report on the progress and results of such prospecting, and to maintain confidentiality with respect thereto.	<p>Report to whom?</p> <p>The Prospector should also be required to follow TL laws, prepare and execute environmental plans, etc.</p>
(c) Nothing in a Prospecting Authorisation authorizes the holder to drill a Well or to have any preference or right to make a Petroleum Contract.	
6.3. Grant Where Previous Authorisation Exists	
Prior to granting a Prospecting Authorisation in respect of an area that is the subject of an existing Authorisation, the Ministry shall give written notice to the holder of the existing Authorisation.	

6.4. Surrender and Termination	
(a) The holder of a Prospecting Authorisation may surrender it at any time by written notice to the Ministry, provided that the Authorised Person has fulfilled all its obligations there under.	May expire in a particular amount of time?
(b) If the holder has not complied with a condition to which the Prospecting Authorisation is subject, the Ministry may terminate it by written notice to the holder.	Is one condition that exploration be actively undertaken? Can it be terminated if the holder does nothing?
Article 7 Petroleum Contracts	
7.1. Power of Ministry	
The Ministry may conclude a Petroleum Contract, in respect of a specified area, with a person or a group of persons provided that if a group, such group has entered into a joint operating agreement approved by the Ministry under Article 14.	Time-limited?
7.2. Requirement of Contractor	
A Contractor shall:	
a) have, or have access to, the financial capability, and the technical knowledge and technical ability, to carry out the Petroleum Operations; and	Also have a proven record of compliance with standards for environmental protection, fiscal integrity, and economical operation.
b) be a limited liability corporation or entity with limited liability.	Are no government entities -- either RDTL or publicly owned oil companies from other countries (e.g. Petronas) -- eligible? Or does this assume a new corporation is created for each contract? Joint ventures? T-L National Oil Company can be required to participate in joint ventures?
c) [new clause]	7.2(c) All Authorisation holders shall remain compliant with the TNC norms of the United Nations Sub-Commission on the Promotion and Protection of Human Rights. The Ministry shall determine the Holder's compliance with said norms. Should the Ministry determine non-compliance, it shall be entitled to apply penalties. Further additional clauses could be added to require companies to follow the principles and practices of EITI, PWYP, and the Voluntary Principles on Security and Human Rights.
7.3. Rights and Obligations	
(a) A Petroleum Contract grants to the contracting parties the exclusive right to conduct Petroleum Operations in the Contract Area.	Are they allowed to sell, assign or subcontract those rights? If there is only one contractor, "contracting parties" should be "Contractor" -- if not, other parts of this section need to be changed. (The other party (the Gov't) is not conducting Petroleum Operations.)

(b) The Petroleum Contract may be limited by reference to Crude Oil, Natural Gas or other constituents of Petroleum.	What does “by reference” mean here? Add “one or more of” before “crude”.
	Add: All Petroleum Operations must be in compliance with domestic and international laws, conventions and regulations in effect in the territory of Timor-Leste, even if those laws are modified during the term of the Contract. Should specify penalties for non-compliance.
7.4. Discovery of petroleum	
(a) An Authorised Person shall give written notice to the Ministry within twenty four (24) hours whenever Petroleum is discovered in its Authorised Area.	
(b) The Contractor shall provide any information relating to the discovery requested by the Ministry.	
7.5. Work Approvals	
A Petroleum Contract shall oblige the Contractor to carry on Petroleum Operations only in accordance with work programmes, plans and budgets approved by the Ministry.	Environmental Impact Assessments and decommissioning plans should also be required in advance, subject to the approval of a separate environmental agency. No exploration or exploitation should take place until the contractor obtains the approval of the environmental agency.”
Article 8 Access Authorisations	Shouldn't this article come before the “Petroleum Contracts” one? Does a Contractor also need an Access Authorisation?
8.1. Power of Ministry	
The Ministry may grant an Access Authorisation, in respect of a specified area, with a person or a group of persons.	What about the rights of other users ? Is there a need of establishing a negotiation mechanism with other users of the land and sea?
8.2. Rights and Obligations	
(a) An Access Authorisation, while it remains in force, authorizes the holder to do one or more of the following:	Is an AA exclusive?
(i) construct, install and operate structures, facilities and installations,	Needs to be more specific
(ii) carry out other works,	This is ambiguous and needs to be rewritten to specifically say what is allowed and not allowed and in what areas the holder can carry out its activities.
as specified in the Authorisation in the Authorized Area.	
(b) Nothing in an Access Authorisation authorizes the holder to drill a Well.	
8.3. Surrender and Termination	
(a) An Access Authorisation:	

(i) may be surrendered by the holder by written notice to the Ministry, provided that the Authorised Person has fulfilled all its obligations there under; and	Can AA be time-limited to expire on a certain date?
(ii) may be terminated by the Ministry at any time by written notice to the holder, if the holder has not complied with a condition to which the Authorisation is subject.	
(b) The Ministry shall provide written notice of the surrender or termination to any Authorised Person in whose Authorised Area operations were authorised to be carried on by the Access Authorisation concerned.	
8.4. Directions	
The Ministry may give directions to the holders of Access Authorisations and to other Authorised Persons regarding the coordination of their respective Petroleum Operations.	
Article 9 Seepage Use Authorisations	
9.1. Power of Ministry	
a) The Ministry may grant a Seepage Use Authorisation in respect of a specified area.	Can be time-limited?
b) The Ministry may grant a Seepage Use Authorisation to a person who is acting for this purpose on behalf of a class of persons specified in the Authorisation.	
9.2. Rights and Obligations	
(a) A Seepage Use Authorisation grants an exclusive right to exploit a Seep in a specified area.	
(b) A Seepage Use Authorisation may require the Authorised Person to report on the progress and results of such exploitation.	“may” should be “shall”
(c) A Seepage Use Authorisation will specify the maximum depth to which the Authorised Person may drill a Well.	Also location(s) of well(s)?
9.3. Grant Where Previous Authorisation Exists	9.3 and 9.4 are not clear enough and they may bring unnecessary conflicts. Under what circumstances can the former right be superseded by the new grant? What remedies can the former owner obtain from the government and subsequent owner?
(a) Notwithstanding paragraph 7.3(a), a Seepage Use Authorisation may be granted in respect of an area that is already the subject of an Authorisation other than a Seepage Use Authorisation, and prevails if there is conflict.	SUA prevails over Contract? Can subsequent PA or Contract be granted in an area already covered by an SUA?
(b) Prior to granting a Seepage Use Authorisation in respect of an area that is the subject of an existing Authorisation, the Ministry shall give written notice to the holder of the existing Authorisation.	Does Contractor need to agree? Or will this be written into the contract?

(c) Any Authorisation granted subsequent to the Seepage Use Authorisation shall be subject to the rights of holders of Seepage Use Authorisations.	
9.4. Surrender and Termination	
(a) A Seepage Use Authorisation:	
i) may be surrendered by the holder by written notice to the Ministry, provided that the Authorised Person has fulfilled all its obligations thereunder; and	
ii) may be terminated by the Ministry at any time by written notice to the holder, if the holder has not complied with a condition to which the Seepage Use Authorisation is subject.	Does it last forever if the holder is in compliance and neglects to surrender it voluntarily?
(b) The Ministry shall provide written notice of the surrender or termination to any Authorised Person in whose Authorised Area operations were authorised to be carried on by the Seepage Use Authorisation concerned.	
Article 10 Invitation to Apply	
10.1. Invitation to Apply	
The Ministry may invite, by public notice, applications for Authorisations.	How much time between invitation and decision on Authorisation? Protection against use of insider information.
10.2. Content of Invitation	
(a) An invitation shall specify the area concerned, the proposed activities, the criteria upon which applications will be assessed and the time by which, and the manner in which, applications may be made.	Add time periods for conducting activity pursuant to Authorisation. Also exclusivity (or lack thereof), overlapping authorisations. Perhaps some of the criteria for assessing applications should be specified in this law.
(b) Unless the invitation otherwise states, the Ministry may choose not to award an Authorisation to any of the applicants.	It would be useful to also add a provision which immunizes the government and its officers from any claim or suit in respect of a rejected bid/tender/application, and any early termination of a particular invitation.
10.3. Proposals in respect of Health, Safety and the Environment	
An application for an Authorisation shall include proposals for:	
(a) securing the health, safety and welfare of persons involved in or affected by the Petroleum Operations; and	

(b) protecting the environment, and preventing and minimising pollution and other environmental harm from the Petroleum Operations.	See further elaboration in the narrative part of our submission. Including EIS covering operations, accident avoidance and recovery, waste disposal and remediation. “Minimising environmental harm” is not strict enough. The application shall be reviewed and approved by an environmental agency [or ministry or committee] outside the Petroleum Ministry, as well as by other agencies with responsibility for land, water, agriculture, local communities etc. It shall include an action plan, which will be
10.4. Proposals in respect of Training, Employment, and Local Goods and Services	
An application for an Authorisation shall include proposals for:	
(a) training of, and giving preference in employment in the Petroleum Operations to, nationals of Timor-Leste; and	Also basing operations in Timor-Leste (to maximize RDTL tax revenue) Local employment and training should not be left entirely to the company. Contract proposal should include general outline of development plan, including how and where downstream processing will be done.
(b) the acquisition of goods and services from persons based in Timor-Leste.	
10.4½ [Proposed new section] Proposals in respect of Decommissioning and Environmental Restoration	10.4½ Proposals in respect of Decommissioning and Environmental Restoration An application for an Authorisation shall include a proposal for decommissioning the project and restoring the environment at the end of an Authorization. The standard should be to leave the environment in at least as good a state following the closure of a project than before the project began.
10.5. Ministry to Consider Applications	This should not only the Petroleum Ministry, but also others responsible for the environment, human rights, and local communities.
The Ministry shall not grant an Authorisation in respect of an area until it has given due consideration to all applications made in response to, and in compliance with, an invitation.	Criteria should be public, perhaps with possibility for appeal of decision or at least requirement for public explanation by Ministry why an Authorisation was selected.

	<p>Public comment should be solicited, with hearings, prior to granting any application.</p> <p>For an application relating to on-shore activities, a public hearing near the location of the activity should be required. Also, the consent of the owners of the property to be covered, as well as the community. This raises the larger question of whether private landowners can undertake exploration, seepage exploitation, or other petroleum activities on their land.</p>
10.5½ [Proposed new section] Restrictions	<p>10.5½ Restrictions</p> <p>Petroleum-related activities cannot be carried out in:</p> <ul style="list-style-type: none"> (a) cemeteries, places considered sacred, public places, public facilities and infrastructures, nature preserves, indigenous lands, cultural preserves, or land belonging to communal society. (b) areas which are environmentally fragile, habitats for endangered species, ecologically unique, or especially hazardous (c) Buildings, residences, farms, fisheries habitats or factories surrounding yard land, except under license from government institutions and with approval from communities and individuals in regard to the said matter.
10.6. Ministry not Obligated to Invite Applications	This section should be deleted or very sharply limited to Authorizations involving less than 1 year and less than \$25,000 in total production.
(a) This Article 10 does not oblige the Ministry to invite applications.	
(b) If the Ministry grants an Authorisation without inviting applications, it shall publish a notice of granting such Authorisation in the Official Gazette.	The Ministry should not be allowed to grant an Authorisation without <u>prior</u> public notice and the opportunity for challenge. Perhaps no such application should be granted without a public invitation.

Article 11 Succession of Petroleum Operations Under the Treaty	Better to say “Timor Sea Treaty” as there could be other relevant Treaties in the future, such as boundary agreements.
Once the Treaty is no longer in force, the Ministry shall grant an Authorisation or conclude a Petroleum Contract with those persons who were engaged in Petroleum Operations under the terms of the Treaty under conditions equivalent to those that were in place under the Treaty.	This binds RDTL to follow agreements made by the TSDA. Is that a good idea, or should there be more flexibility? Perhaps the “equivalent conditions” should only apply to Contracts under which significant investment has already been made. How does the “without prejudice” clause of the Treaty relate to this provision? If a future boundary agreement puts, for example, Laminaria-Corallina in Timor-Leste’s territory, is T-L obligated to continue terms agreed between the companies and Australia? Additionally, the mandatory granting of continuing Authorisations should only be permitted if the holder remains compliant with Timor Leste law, with a right of appeal or judicial review from any adverse administrative finding in this regard.
Article 12 Petroleum Operations Generally	
12.1. Third Party Access	
A Petroleum Contract and an Access Authorisation shall include conditions as to third party access.	The Government (Petroleum and other relevant Ministries, inspectors, Provedor, etc.) should have an absolute right of access, including to inspect employment conditions, environment, etc.
12.2. Joint and Several Liability	
If there is more than one Authorised Person in respect of a particular Authorisation, the obligations and liabilities of the Authorised Person under an Authorisation are the obligations and liabilities of them all, jointly and severally.	
12.3. Authorisation Void	
An Authorisation is void ab initio, if obtained in violation of the laws of Timor-Leste, including laws concerning corruption.	How about if violations of the laws are committed after the authorisation has been obtained?
Article 13 Unauthorised Activities	
13.1. Liability for Unauthorised Activities	
(a) Any person who engages in Petroleum Operations engaged in other than pursuant to an Authorisation shall:	or violates the terms of the Authorisation
(i) make restitution to Timor-Leste of an amount equal to the market value of Petroleum developed, exploited or exported, together with interest thereon at a rate to be determined by the Ministry,	Restitution should include a penalty -- perhaps double -- if unauthorised activities were deliberate. This should not be a recoverable cost.

(ii) either forfeit all infrastructure and equipment used in engaging in those Petroleum Operations, or remove such infrastructure and equipment or be liable for the cost of such removal; and/or	Costs in this and the next clause are not recoverable
(iii) clean up pollution resulting from those Petroleum Operations to the satisfaction of the Ministry, or reimburse the costs of clean up to Timor-Leste;	Add: “and remediate” after “clean up”
as is determined to be appropriate by the Ministry.	
(b) The liabilities under paragraph 13.1(a) of persons who, together, are engaged in, or have engaged in, Petroleum Operations are the liabilities of them all, jointly and severally.	The might be specific provision for director and officer liability, for example, in environmental incidents that were preventable or foreseeable.
13.2. Transitional Provisions	
(a) This Act applies to all Petroleum Operations engaged in other than pursuant to an Authorisation engaged in from 28 November 1975.	This provision is poorly worded and perhaps means something other than what it literally says. Is the intention “This Act applies to all Petroleum Operations, including those carried out pursuant to other than an Authorisation, from and after November 28, 1975.” ? No legal authorizations could have been issued prior to 20 May 2002, and therefore all operations prior to that violate 12.3. No authorisations issued by Australia within TL’s territory but outside the JPDA should be considered legal.
(b) At its discretion, the Ministry may issue regulations setting out the procedure to be followed, as well as obligations to be undertaken, by persons who have engaged in or are engaging in Petroleum Operations engaged in other than pursuant to an Authorisation as of the date of entry into force of this Act in order for past and/or ongoing such Petroleum Operations to be deemed, for purposes of this Act, to be engaged in pursuant to an Authorisation.	Should be a more public process, requiring separate legislation and public consultation. This should not be up to the Ministry alone. “At its discretion” is troubling. Regulations should be issued through the normal process, with Council of Ministry approval and public notice, not simply by administrators. All Petroleum Operations conducted subsequent to the entry into force of this Act must comply with this Act.
Article 14 Restrictions on Exercise of Rights	
14.1. Onshore	

An Authorised Person shall not exercise any of its rights under an Authorisation or under this Act:	Prior informed consent should be required of local communities, not just the national Gov't authority or private landowner, before a petroleum project is started in a community. This is elaborated in our narrative submission.
(a) on any public immovable property ¹ without the consent of the responsible authority;	All consents should be written. Define "responsible authority"
(b) on any private immovable property of the State without the consent of the responsible authority; or	
(c) on any private immovable property without the written consent of the owner.	Consent of the owner should be required before the Ministry can grant an Authorisation. Also, there should be protection of the owner's and community's rights, such as full access to the Register, EIS and other information in accessible languages. See our narrative submission. The Government has the responsibility to protect the rights of local communities and private landowners from predation by oil companies. To avoid conflict of interest, this responsibility should be fulfilled by an agency separate from the Petroleum Ministry.
14.2. Continuing Rights	This applies to both onshore and near-shore, and should come after "14.3 Offshore."
The owner of any immovable property in an Authorised Area retains rights to the use of its land except in so far as the use interferes with Petroleum Operations.	If "Petroleum Operations" use fences, this may be difficult to implement. Also, are there provisions in other TL law about these issues, and about eminent domain and involuntary evictions? This is discussed more fully in the narrative part of La'o Hamutuk's submission.
14.3. Offshore	
An Authorised Person shall not exercise any of its rights under an Authorisation or under this Act in a way that interferes with fishing, navigation or any other lawful offshore operation without the written consent of the responsible authority.	The "responsible authority" should be defined, and should be independent of the Petroleum Ministry.
14.4. Compensation	This applies both onshore and offshore.
(a) The Authorised Person is liable to pay fair and reasonable compensation if, in the course of Petroleum Operations, it:	"fair and reasonable" defined by whom? Does aggrieved party have right to appeal to court?

¹ [Note to draft (KK): The expression used in the Portuguese version of the land law is "bens imóveis". This is translated as "real estate" in the UN's unofficial translation of the land law, but is more correctly translated as immovable property.]

(i) disturbs the rights of the owner of any immovable property, or causes any damage thereon, or	The local community as well as the owner may be entitled to compensation. This should also apply to agricultural lands, irrigation, water, or anything else that interferes with farming or other livelihood activities.
(ii) demonstrably interferes with fishing, navigation or any other lawful offshore operation.	Should also apply to farming, transportation, irrigation or other on-shore activities. Define “demonstrably”. Does this apply to pollution or other disruption of marine habitats?
(b) Where the value of any rights have been enhanced by the Petroleum Operations, compensation payable in respect of such rights shall not exceed any amount which would be payable if the value had not been so enhanced.	Who defines the value of an enhancement? What a Petroleum company may see as an improvement (such as a chain-link fence along a road) may not be perceived that way by a goat herder.
14.5. Public Infrastructure and Resources	
An Authorisation may limit or otherwise control the use by an Authorised Person of public infrastructure, and the taking of trees, sand, gravel, rock and water.	How about modification of infrastructure, such as widening or paving roads? Taking of soil or other damage to agricultural land? Use of electricity? Damage to infrastructure?
14.6. Disputes	
Any dispute under this Article 14 as to whether consent is required, or being unreasonably withheld, or as to compensation, shall be decided by the Ministry, whose decision shall be final.	Dispute could also be about who receives compensation, and how much. The Petroleum Ministry should not make the final decision. The appeal and other provisions of Section 17.2 should apply here, including the right to appeal to the judicial system and/or other agencies distinct from the Ministry.
Article 15 Approvals by Ministry	All such approvals should be included in the public Register (see narrative text of our submission). Does the Ministry have the right or obligation to withhold approval in certain circumstances? If so, the reasons should be public, with a right to appeal.
15.1. Approval of Agreements	
A joint operating agreement, a lifting arrangement and any agreement related to the Petroleum Operations, as well as any changes to such agreements, shall be subject to approval by the Ministry.	
15.2. Approval of Change in Control	
(a) All changes in Control of an Authorised Person shall be subject to prior approval by the Ministry.	
(b) Where a change in Control occurs without the prior approval of the Ministry, the Ministry may terminate the applicable Authorisation.	

(c) paragraph 15.2(a) does not apply if the change in Control is the direct result of an acquisition of shares or other securities listed on a recognised stock exchange.	How about a corporate takeover or merger? This can happen through the acquisition of shares on an exchange (such as Phillips by Conoco or Woodside by Shell), but still requires government approval in some countries.
(d) For the purposes of paragraph 15.2 (a), change in Control includes a person ceasing to be in Control (whether or not another person becomes in Control), and a person obtaining Control (whether or not another person was in Control).	
15.3. Approval of Assignment	
Except with the prior written consent of the Ministry, or as explicitly provided in the terms of the Petroleum Contract, no assignment, transfer, conveyance, novation, merger, encumbering or other dealing in respect of an Authorisation shall be of any force or effect.	
Article 16 Unitisation	How about if part of the reservoir is outside the territory of TL, or in the TSDA? If Kuda Tasi-Jahal is in the same reservoir as Laminaria-Corallina, can this be dealt with?
16.1. Power of Ministry	
(a) Where a Reservoir is partly within a Contract Area, and partly in another Contract Area:	
(i) the Ministry may require the Contractors to enter into a unitisation agreement with each other for the purpose of securing the more effective and optimised production of Petroleum from the Reservoir.	
(ii) If no agreement has been reached within a reasonable time, the Ministry shall decide on the unitisation agreement.	
(b) Where a Reservoir is partly within a Contract Area and partly in an area that is not the subject of a Petroleum Contract,	
(i) the Ministry may require the Contractor to enter into a unitisation agreement with the Ministry for the purpose of securing the more effective and optimised production of Petroleum from the Reservoir.	Or require the Contractor to sign a second Petroleum Contract for the area outside the Contract Area?
(ii) If no agreement has been reached within a reasonable time, the unitisation agreement shall be referred to arbitration in accordance with Section 17.2	
16.2. Content of Unitisation	
Without limiting the matters to be dealt with, the unitisation agreement shall define the amount of Petroleum in each area covered by the unitisation agreement, and shall appoint the Operator responsible for production of the Petroleum covered by the unitisation agreement.	Provision for technical reassessment of amounts over time? (Or will this be irrelevant to RDTL if both areas are within RDTL territory?)
16.3. Approval of Development	

The Ministry may approve the development or exploitation of the Reservoir only after it has approved or decided the unitisation agreement.	
16.4. Changes to Unitisation	
Any changes to the unitisation agreement shall be subject to approval by the Ministry.	
Article 17 Resolution of Disputes	
17.1. Resolution of Disputes by Ministry	
(a) Where agreements between parties do not specify a dispute resolution mechanism, the Ministry may inquire into and decide all disputes between persons engaged in Petroleum Operations, either among themselves or in relation to third parties (other than the Government) not so engaged.	
(b) The Ministry may refuse to decide any dispute referred to it and, if it does so, it shall notify the parties to the dispute in writing.	
(c) The Ministry may make any decree or order which may be necessary for the purpose of giving effect to its decision in proceedings pursuant to this Article 17, and may order the payment, by any party to a dispute, to any other party to the dispute of such compensation as may be reasonable.	Decrees and orders, including negotiated or arbitrated agreements, should be public. If the parties don't like the Ministry's decision, they should be able to invoke the provisions of section 17.2.
17.2. Resolution of Disputes between Authorised Person and the Ministry	
(a) If a dispute arises between an Authorised Person and the Ministry relating to a Petroleum Contract, the parties shall attempt to resolve that dispute by means of negotiation.	
(b) If such a dispute cannot be resolved by negotiation, either party may submit the dispute to arbitration or to a competent judicial authority.	Timor-Leste courts should be involved, especially on issues relating to taxation, safety/workers' compensation, human and community rights, and environmental protection.
(c) Any arbitration between the Ministry and an Authorised Person shall be conducted in accordance with:	Arbitrations should be conducted publicly with their results reported in the public domain. If one party rejects the arbitration decision, there should be a right to appeal in certain cases. International arbitration can be dangerous as it works against small states like East Timor. The laws of East Timor and mechanisms in East Timor should be preferred for settling these disputes. This international agreement should supplement rather than override East Timor law. Specific language could say: 17.2(c): "Any arbitration between the Ministry and an Authorised Person shall be conducted in accordance with East Timor law:

<p>(i) the rules of the International Centre for the Settlement of Disputes between States and Nationals of other States, adopted in Washington on 15 March 1965, or pursuant to the Convention on the Settlement of Disputes between States and Nationals of other States;</p>	<p>17.2(c)(i): “with guidance from the rules of the International Centre ...</p>
<p>(ii) the rules set out in the ICSID Additional Facility adopted on 27 September 1978 by the Administrative Council at the International Centre for Settlement of Investment Disputes between States and Nationals of other States, whenever the foreign entity does not meet the requirements provided for in Article 25 of the Convention; or</p>	
<p>(iii) the rules of such other international instances of recognised standing as agreed by the parties to the Authorisations referred to in this Act, provided that the parties have expressly defined in the Authorisation the conditions for implementation including the method for the designation of the arbitrators and the time limit within which the decision must be made.</p>	
<p>17.3. [proposed new section] Resolution of Disputes between Authorised Persons or the Ministry and Other Persons</p>	<p>17.3 Resolution of Disputes between Authorised Persons or the Ministry and Other Persons If a dispute arises between an Authorised Person or the Ministry and another person relating to a Petroleum Contract, and alleging a violation of the Petroleum Act, or unauthorised civil damage as a result of the Contract, then either party should have the right to submit the dispute to a competent judicial authority or to arbitration. This should help protect for local landowners, nearby residents, and local communities.</p>
<p>Article 18 Exemption from or Variation of Conditions</p>	
<p>The Ministry may exempt an Authorised Person from complying with the conditions of its Authorisation, and may also agree to vary or suspend those conditions, either with or without conditions and either temporarily or permanently.</p>	<p>This section should be deleted. See “Accountability” text in narrative submission.</p>
<p>Part II – CONDUCT OF PETROLEUM ACTIVITIES</p>	
<p>Article 19 Work Practices</p>	
<p>19.1. Production of Petroleum</p>	
<p>(a) Production of petroleum shall take place:</p>	
<p>(i) in such a manner such that as much as possible of the petroleum in place in each individual petroleum deposit, or in several deposits in combination, will be produced;</p>	<p>Also to maximize the revenue to RDTL, including downstream tax revenues.</p>
<p>(ii) in accordance with prudent technical and sound economic principles; and</p>	<p>Add environmentally responsible and sustainable. Global environmental responsibility (such as no flaring of gas and carbon sequestration where practical) should also be included; this will become more relevant when downstream activities are conducted in Timor-Leste.</p>

(iii) in such a manner that waste of petroleum or reservoir energy is avoided.	
(b) Contractors shall carry out continuous evaluation of production strategy and technical solutions and shall take the necessary measures in order to achieve this.	
Article 20 Cessation of Petroleum Operations	
20.1. Decommissioning	Decommissioning and environmental restoration plans should be required prior to granting of an Authorisation or Contract. (see proposed new Article 10.4½).
An Authorised Person shall, on the earlier of:	
(a) termination of the Authorisation; and	even if the Authorization is terminated by the Ministry for non-compliance.
(b) when no longer required for Petroleum Operations;	
and, in either case:	
(a) except with the consent in writing of the Ministry and in accordance with the conditions of the consent; or	If the Ministry is to grant an exception, there should be a public hearing and comment process, and perhaps a higher level of approval required. (We should learn from the experience of Ecuador with Texaco.)
(b) unless the Authorisation otherwise provides;	
abandon, decommission, remove and dispose of the property and other works, clean up the Authorised Area and make it good and safe, and protect the environment.	This needs to be more specific. It must also be in conformance with (hopefully strict) RDTL regulations. The Environment Ministry should decide when decommissioning and clean-up is adequate, with a right of public appeal. If this is not carried out properly, there should be sanctions. (Once the company is gone, it will be hard to enforce them, so precautions must be taken.) Timor-Leste should have the right to take ownership of property and other works which were paid for out of recoverable costs -- see our narrative submission.
Part III – INFORMATION AND INVESTIGATION	
Article 21 Data and Information	
21.1. Ownership of Data	define “data”

<p>All data obtained pursuant to any Authorisation is the property of Timor-Leste. The terms and conditions for the exercise of rights in respect of data shall be established in the respective contract and by regulation.</p>	<p>What is TL entitled to do with the data? Can it be shared with other companies, or used to inform the authorisation process for other areas? There should be some specifics here, in addition to what will be in each contract.</p> <p>There should be a presumption for public release of the data, subject to limited, narrowly-defined exceptions.</p> <p>The PSC provisions about this are extremely problematic, as is discussed in our narrative submission.</p>
<p>21.2. Records and Reporting</p>	
<p>Data and information acquired during the course of Petroleum Operations may be freely exported by Authorised Persons provided that the Ministry may require that an original, or in the case of a core, rock, fluid or other physical sample, a usable portion of the original, of all data and information, both physical and electronic, be kept in Timor-Leste.</p>	
<p>Article 22 Audit and Inspection</p>	
<p>22.1. Inspection</p>	
<p>(a) The Ministry may, by written notice, appoint a person to be an inspector for the purposes of this Act (an “Inspector”).</p>	<p>This office should be made independent, permanent and with the authority to investigate the Ministry and refer cases to the court. See narrative text.</p> <p>For example, oil companies have a habit of trying to inflate the costs of oil production, because “cost oil” accrues to them, not to the government. They also have a habit of underpaying their taxes: we know of a specific case where oil companies cheated a government of tens of millions of dollars. Unless you have a powerful, well-resourced and independent-minded audit office, this will be a risk in Timor Leste too.</p>
<p>(b) The Inspector will have the powers and rights provided to it in the regulations.</p>	<p>Some general principles should be here, including the right of access to all areas and facilities covered by any Authorisation or Contract.</p>
<p>22.2. Audit</p>	
<p>On request, an Authorised Person shall make its books and accounts available to the Ministry for auditing.</p>	<p>All books? Or just those relevant to activities pursuant to the Authorisation? This needs to be more specific, given the experience of Alaska, among others. Books and accounts should also be available to the Inspector.</p>
<p>Article 23 Termination of Authorisations</p>	
<p>23.1. Power of Ministry</p>	

(a) Termination of an Authorisation for any reason is without prejudice to rights and obligations expressed in this Act or the Authorisation to survive termination, or to rights and obligations accrued thereunder prior to termination, and all provisions of an Authorisation reasonably necessary for the full enjoyment and enforcement of those rights and obligations survive termination for the period so necessary.	
(b) The Ministry shall have the power to terminate an Authorisation as set out in the Authorisation or Petroleum Contract.	Right to appeal?
23.2. Partial Termination	
(a) If there is more than one Authorised Person in respect of a particular Authorisation and circumstances arise in which the Ministry may terminate an Authorisation, the Ministry may elect to terminate an Authorisation only in respect of those Authorised Persons whose acts or omissions (or in relation to whom acts, omissions or events have occurred which) have led to such circumstances, and shall so notify the remaining Authorised Persons.	Does the Ministry have the authority to break up a Joint Venture?
(b) The remaining Authorised Persons may terminate an Authorisation where there has been partial termination by the Ministry pursuant to paragraph 23.2(a).	
Article 24 Indemnification of the Government and Ministry	
An Authorised Person shall:	
(a) defend, indemnify and hold harmless the Government and Ministry from all claims by third parties resulting, directly or indirectly, from Petroleum Operations; and	
(b) maintain insurance in respect thereof on a strict liability basis for such amount as the Ministry requires from time to time.	
Part IV – PUBLIC INFORMATION	
Article 25 Publication of Details of Authorisations	
The Ministry shall publish a summary of the terms of Authorisations upon their grant and shall publish notice of their termination.	Not just a summary -- the entire Authorisation should be published. Publication and the opportunity for public and community comment should be <u>before</u> the authorization is granted, with the possibility of amending or canceling it.
Article 26 Public Register	
26.1. Copies of Authorisation	
The Ministry shall maintain a register containing copies of all Authorisations and amendments thereto, whether or not terminated, and unitisation agreements.	See the narrative portion of our submission for a minimum list of what should be included in the registry, as well as a prohibition on redaction.

26.2. Public Inspection	
The register shall be available for inspection by any person at all convenient times on payment of the fee therefor.	No fees for Timor-Leste citizens. Register must be in Dili, and probably also on the internet. Some materials should be in accessible languages: Tetum and/or Bahasa Indonesia.
Part V – REGULATIONS AND DIRECTIONS	
Article 27 Regulations	
27.1. Making Regulations	
(a) The Ministry, with the approval of the Council of Ministers, may make regulations under this Act relating to the following:	There should be a regulation-making process, including the opportunity for public notification and input. Many of the topics below are large and important, and are or should be subject to Parliamentary legislation. Regulations should be within the context of applicable laws.
(i) graticulation of the Territory of Timor-Leste;	
(ii) the exploration for and the production of Petroleum;	
(iii) the use and disclosure of data, information, records and reports;	
(iv) the measurement and sale or disposal of Petroleum;	
(v) health and safety;	
(vi) protection of the environment;	Should be “protection and restoration”. This should be the responsibility of the Environment Ministry or another agency separate from the Petroleum Ministry.
(vii) resource management;	
(viii) structures, facilities and installations;	
(ix) the clean-up or other remedying of the effects of the escape of Petroleum;	Should cover all potential environmental damage from Petroleum operations, not just leaks of petroleum. This should be the responsibility of the Environment Ministry or another agency separate from the Petroleum Ministry.
(x) abandonment and decommissioning;	
(xi) the control of movement into, within and out of Timor-Leste of persons, vessels, aircraft and vehicles;	
(xii) work programmes and budgets;	

(xiii) the control of tariffs charged for third party access;	
(xiv) the auditing of an Authorised Person and of its accounts and records;	
(xv) fees to be paid, including by applicants for Authorisations, Authorised Persons, and persons wishing to inspect the public register; and	No fee for Timor-Leste citizens to inspect the public register.
(xvi) any other matters relating to this Act.	This is too broad. Regulations cannot override the Act. Also, there's no need for the previous 15 clauses if this one is here.
(b) The Ministry shall publish regulations in the Official Gazette.	And in the public register established by this Act.
Article 28 Directions	
28.1. Power of Ministry	
The Ministry may give a direction relating to any matter set out in Article 27 to an Authorised Person by written notice.	This gives the Ministry unfettered power to arbitrarily override any laws, contract and regulations. Directions must be consistent with established laws and regulations. They should also be publicly announced and in the register. This provision could be used to circumvent the more formal, public regulation making procedure, above.
28.2. Conflict	
In the event of a conflict between a regulation and a direction, the direction shall prevail.	This clause should be reversed, so that Regulations override Directions, as it is contrary to accepted principles of legislative hierarchy: (1) Act; (2) Regulation; (3) Decree; (4) Administrative Decision/Direction. If there is a need to override a Regulation, that Regulation should be amended with public notice and the approval of the Council of Ministers.
28.3. Failure to Comply	
Where a person fails or neglects to comply with a direction, the Ministry may cause to be done all or any of the things required by the direction at the cost and expense of that person.	Should be deleted. Why is this clause included when there is no analogous clause for Regulations or for the Act itself? Each Direction or Regulation can include its own sanctions, as appropriate.
Part VI – PENALTIES	
Article 29 Application	
This Part applies to the Territory of Timor-Leste, including areas that are subject to the Treaty .	Specify land and maritime territory, including the EEZ as specified in the 2002 Maritime Zones Act, perhaps as limited by subsequent boundary agreements.
Article 30 Penalty Units	
30.1. Unauthorised Activities	

(a) A person shall not engage in Petroleum Activities other than pursuant to an Authorisation.	
(b) A person who contravenes paragraph 30.1(a) shall be liable to ? .	There should be both civil and criminal penalties. This and following provisions should refer to Timor-Leste's Penal Code and/or administrative penalties enactment.
30.2. Hindering an Inspector	
(a) A person shall not hinder an Inspector appointed under this Act or under the Code in the exercise of his or her powers or rights.	Should also apply to other unlawful concealment of information (e.g. from Auditor) or restriction of access.
(b) A person who contravenes paragraph 30.2(a) shall be liable to ? .	
30.3. Misleading Information	
(a) A person shall not:	
(i) in, or in connection with, any application under this Act or the Code, knowingly or recklessly give information which is materially false or misleading; or	Delete "knowingly or recklessly"; negligence or carelessness should also be a violation, especially if a company has set up internal systems which facilitate distortion or concealment of information.
(ii) in any report, return or affidavit submitted under any provision of this Act or the Code or an Authorisation thereunder, knowingly or recklessly include or permit to be included, any information which is materially false or misleading.	See previous comment.
(b) A person who contravenes paragraph 30.3(a) shall be liable to ? .	
30.4. Offence by company	
Where an offence, which have been committed by a corporation or other entity with limited liability, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the corporation or entity, or of any person who was purporting to act in any such capacity, he or she, as well as the corporation or entity, shall be guilty of that offence and liable to be proceeded against and punished accordingly.	We support this provision. The company has an affirmative responsibility to ensure that all its employees comply with the law, and should establish policies and exercise internal oversight to carry that out. Consequently, any offences are presumed to be the responsibility of the company, with sanctions applicable up the chain of command (including intermediate levels) to the CEO, unless there can be a specific demonstration that the guilty employee took personal initiative to violate company policies for personal gain. Oil companies are experts at building shields to protect the company from responsibility, and extra efforts must be taken to penetrate them. If a multinational company sets up a subsidiary for a particular contract, is there a way to keep the parent responsible?

30.5. suggested additional provisions

There should also be civil and/or criminal, penalties for willful, reckless or negligent activity leading to HSE consequences, or for failing to implement HSE and other plans required under the PA or PSC. Remediation should be required, with the costs not recoverable. Premiums for insurance which would cover for non-recoverable costs (such as remediation of willful or negligent environmental damage) should not be recoverable.