

Protection of Environment Act 2053 B.S. (1997)

The Following Act issued by His Majesty the King Birendra Bir Bikram Shah Dev has been published for the information of the public general.

Act No. 24 of the Year 2053 (1997)

An Act Made to Provide for the Protection of Environment

Preamble:

Whereas, it is expedient to make legal provisions in order to maintain clean and healthy environment by minimizing, as far as possible, adverse impacts likely to be caused from environmental degradation on human beings wildlife, plants, nature and physical objects, and to project environment with proper use and management of natural resources, taking into consideration that sustainable development could be achieved from the inseparable inter-relationship between the economic development and environment protection:

Now; therefore, Parliament has made this Act in the twenty fifth year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

Short Title and Commencement

There may be cited as (the) "Environment Protection Act, 2053 (1997)

This Act shall commence on such date as His Majesty's government may, by a notification in the Nepal Gazette, appoint.

Definitions: Unless the subject or context otherwise requires, in this Act:

"Environment" means the interaction and inter-relationship among the components of natural, cultural and social systems, economic and human activities and their components

"Pollution" means the activities that significantly degrade, damage the environment or harm on the beneficial or useful purpose of the environment, by changing the environment directly or indirectly.

"Protection" means the safety, care, maintenance, promotion, management and proper utilization of the environment and national heritage.

"Proposal" means a proposal prepared in regard to the carrying out of such development work, physical activity that may bring about change in the existing environmental conditions or any plan, project or programme which changes the land use.

"Proponent" means a person, governmental, semi-governmental or non-

governmental agency or institution applying for approval of a proposal and getting approval for the implementation of such a proposal.

"Initial Environmental Examination" means a report on analytical study or evaluation to be prepared to ascertain as to whether, in implementing a proposal, the proposal does have significant adverse impacts on the environment or not, whether such impacts could be avoided or mitigated by any means or not.

"Environmental Impact Assessment" means a report on detailed study and evaluation to be prepared to ascertain as to whether, in implementing a proposal, the proposal does have significant adverse impacts on the environment or not, whether such impacts could be avoided or mitigated by any means or not.

"Wastes" means the liquid, solid, gas, slurry, smoke, dust, radiated element or substance or similar other materials disposed in a manner to degrade the environment.

"Disposal" means the act of emission, storage, or disposal of sound, heat or wastes.

"Biological Diversity" means ecosystem diversity, species diversity and genetic diversity.

"National Heritage" means any such object, site, plant and animal related with the environment available within the Kingdom of Nepal as is likely to be important to the human being from natural, cultural, historical, archaeological, scientific, spiritual, aesthetic or social point of view.

"Ministry" means the Ministry of Population and Environment of His Majesty's Government.

"Prescribed" or "As Prescribed" means prescribed or as prescribed in the Rules framed under this Act.

To Carry Out Initial Environmental Examination or Environmental Impact Assessment:

A proponent shall have to carry out Initial Environmental Examination and Environmental Impact Assessment of the Proposals as prescribed.

Prohibition on Implementation of Proposal Without Approval:

Upon the commencement of this Act, No one shall implement or cause to be implemented a prescribed proposal without getting it approved from the concerned agency or the Ministry.

To submit Proposal for Approval:

A proponent who is desirous of implementing any proposal shall have to submit such a proposal, accompanied by the report on Initial Environmental

Examination or Environmental Impact Assessment of the proposal, to the concerned agency for the approval of such a proposal.

Approval for Implementation of a Proposal May be Given:

On receipt of any proposal pursuant to Section 5, and while examining the Initial Environmental Examination or Environmental Impact Assessment report submitted with a proposal, if such a proposal does not appear to have significant adverse impacts on the environment, the concerned agency shall itself grant approval in respect of the proposal with the Initial Environmental Examination and shall forward the proposal along with its opinion thereon to the Ministry, in respect of the Environmental Impact Assessment report.

Notwithstanding anything contained in sub-section (1), in case, while examining the Initial Environmental Examination report of the proposal, it is found necessary also to carry out Environmental Impact Assessment of such a proposal, the concerned agency may issue order to carry out Environmental Impact Assessment of proposal. In case any proponent, after having assessed environmental impacts pursuant to the order so issued by the concerned agency, submits and Environmental Impact Assessment report for approval, the concerned agency shall carry out necessary examination of such a proposal and forward the proposal along with its opinion to the Ministry.

In the event of receipt of the Environmental impact Assessment report with any proposal pursuant to sub-section (1) or (2) the Ministry shall arrange so that all the general public may copy the report, by oneself, to render opinions and suggestions on the report.

The Ministry may form a committee comprising also of experts of the concerned agencies to render opinions and suggestions on the Environmental impact Assessment report received along with the proposal pursuant to sub-section (1) and (2).

If on the basis of opinions and suggestions, if any, rendered by the general public and also opinions and suggestions rendered by the Committee, if any, formed pursuant to sub-section (4), on the Environmental Impact Assessment report received pursuant to sub-section (1) or (2), it does not appear that such a proposal may have significant adverse impacts on the environment, the Ministry shall grant approval to the proponent to implement such a proposal.

Notwithstanding anything contained in sub-section (1) or (5), in case it appears from the Initial Environmental Examination or Environmental Impact Assessment report that significant adverse impacts to be caused on the environment while implementing the proposal can be mitigated or controlled, the concerned agency or Ministry may grant approval, with prescription of necessary terms, to the proponent to implement the proposal.

The period within which approval is to be granted to implement the Initial Environmental Examination of the proposal and the Environmental Impact Assessment report and other provisions thereon shall be as prescribed.

Prevention and Control of Pollution:

Nobody shall create pollution in such a manner as to cause significant adverse impacts on the environment or likely to be hazardous to public life and people's health, or dispose or cause to be disposed sound, heat, radioactive rays and wastes from any mechanical devices, industrial enterprises, or other places contrary to the prescribed standards.

If it appears that anyone has carried out any act contrary to sub-section (1) and caused significant adverse impacts on the environment, the concerned agency may prescribe necessary terms in regard thereto or may prohibit the carrying out of such an act.

If it appears that the use of any types of substance, fuel tools or device has caused or is likely to cause significant adverse impacts on the environment, the Ministry may by a notification in the Nepal Gazette, forbid the use of such substance, fuel, tools or device.

Other provisions relating to the prevention and control of pollution shall be as prescribed.

Environmental Inspector:

In order to effectively carry out or cause to be carried out the acts of the mitigation, avoidance or control of pollution or the acts required to be carried out in accordance with the Initial Environmental Examination or the Environmental Impact Assessment report, the Ministry may, by fulfilling the procedures prescribed by the Public Service Commission, appoint Environmental Inspectors or designate any employee to carry out functions of such Inspectors. The qualifications for the Environmental Inspectors shall be as prescribed.

The functions, duties and powers of the Environmental Inspector shall be as follows:

To inspect as to whether or not the acts of mitigation, avoidance or control of pollution have been carried out in accordance with this Act or the Rules framed under this Act,

To inspect as to whether or not sound, heat or wastes have been disposed or emitted from any place contrary to this Act or the Rules framed under this Act,

To examine and inspect as to whether or not the acts have been carried out in accordance with the terms prescribed while granting approval to implement a proposal.

To submit to the prescribed authority a report of the matters found while inspecting pursuant to clauses (a), (b) and (c)

In the course of inspection pursuant to clauses (a), (b) and (c) or sub-section (2), the Environmental Inspector may, by giving a prior notice to the concerned person, organisation or proponent, inspect, examine or investigate

any house, land, building, factory, industry, vehicle, industrial device, tools, machinery, animal, object, records, document or other materials or goods.

The concerned person, organisation or proponent shall render necessary assistance to the Environmental Inspector in the course of inspection pursuant to sub-section (2) or (3).

In case the concerned person or organisation does not allow inspecting while on inspection pursuant to sub-section (2) or (3), or inhibits on the works while doing inspection, the Environmental Inspector may impose a fine of up to five thousand rupees on such person or organisation.

One who is not satisfied with the punishment awarded by the Environmental Inspector pursuant to sub-section (5) may file a complaint with the prescribed authority, and the decision made by the prescribed authority on such a complaint shall be final.

Other functions, duties and powers of the Environmental Inspector shall be as prescribed.

Protection of National Heritage:

It shall be the duty of the concerned agency to protect National Heritage. For the purpose of the protection of National Heritage, the concerned agency shall be required to prepare and maintain an inventory and such an inventory shall also include the objects or places listed in the World Heritage List available within the Kingdom of Nepal.

The objects, places, plants, animals etc, included in the inventory referred to in sub-section (2) shall be protected as prescribed.

Environment Protection Areas:

His Majesty's Government may by a notification in the Nepal Gazette maintain any place within the Kingdom of Nepal containing natural heritage or aesthetic, rare wildlife, biological diversity, plant, and places of historical and cultural importance, which are considered extremely important from viewpoint of environment protection, as an Environment Protection Area. The performance of any act as prescribed may be prohibited in the Environment Protection Area maintained pursuant to sub-section (1).

Establishment of a Laboratory:

His Majesty's Government may establish different laboratories as required or may prescribe any existing laboratory to help the act relative to environment protection and pollution control.

Other functions, duties and powers of the laboratory established or prescribed pursuant to sub-section (1) shall be as prescribed.

To Allow Collection of Samples:

In order to study, examine or analyze the pollution, sound, heat and wastes to be or likely to be generated from any industry, factory, machine, vehicle etc., the concerned person, organisation or proponent shall be required to allow the person or institution authorized from the concerned agency to collect samples of such objects or substances, as per necessity.

Establishment and Operation of Environment Protection Fund:

Fund named Environment Protection Fund shall be established for the protection of environment, prevention and control of pollution and protection of the National Heritage.

The following amounts shall be deposited in the Fund referred to in sub-section (1):

Amount received from His Majesty's government

Amount received from foreign governments or international organisations

Amount received from other sources.

The operation of the Environment Protection Fund Shall be as prescribed.

The fund shall be audited by the Auditor General.

Power to constitute Environment Protection Council:

His Majesty's Government may, to provide policy guidance and suggestions to His Majesty's Government with regard to environment protection, and also to have coordination among different agencies, constitute an Environment Protection Council comprising of environmental experts and representation of the persons from recognized political parties at national level as well.

Concession and Facility May be Provided:

In addition to the concessions and facilities provided under the prevailing law. His Majesty's Government may, to encourage any industry, enterprise, technology or process which causes positive impacts on environment protection, by publishing a notification in the Nepal Gazette, provide additional concessions and facilities as prescribed.

Committee May be Formed:

In order to accomplish the objectives of this Act, the Ministry may form different committees consisting also of experts in the relevant subjects. The functions, duties and powers of the committees formed pursuant to sub-section (1) shall be as prescribed by the Ministry.

Compensation May be Given:

In case, in consequence of the creation or disposal of pollution, sound, heat or wastes by anybody contrary to this act or rules or guidelines framed hereunder any person or organisation happens to suffer any loss or damage., the person or organisation affected from such actions may, if he desires to have compensation recovered from the person or institution or proponent doing such act, make an application to the prescribed authority setting out the details thereof.

In case any application is filed pursuant to sub-section (1), and while doing examination by the prescribed authority of the application and the state of situation of that place as well, if it is proved that the pollution, sound, heat or wastes produced or disposed by any person, organisation or proponent has caused adverse impacts on, and resulted in any loss or damage to any person or organisation.

Punishment:

In case any person carries out any act without getting a proposal approved under Section 6 or any act contrary to the approved proposal, the prescribed authority may close down such act immediately, and if any person or organisation has done such act, may according to the degree of offence punish him with a fine up to one hundred thousand rupees.

In case any person commits any other acts under this Act or the Rules or guidelines framed hereunder, the prescribed authority may require to close down such act immediately, and if any person or organisation has don such act, punish him, according to the degree of the offence, with a fine up to fifty thousand rupees.

Appeal:

A person who is not satisfied with the decision or order made by the prescribed authority may appeal to the concerned Appellate Court within thirty five days from the date of the decision or order.

Procedures to be followed:

The prescribed authority shall, while carrying out any act or action referred to in this Act, follow the procedures as prescribed.

Delegation of Power:

The Ministry may, as per necessity, delegate any of the powers conferred on it

pursuant to this Act to any agency of His Majesty's Government, the Environmental Inspector or to any officer employee.

This Act to Prevail:

The matters set forth in this Act shall be governed by this Act, and other matters shall be governed by the prevailing laws.

Power to Frame Guidelines:

His Majesty's Government may, subject to this Act or the Rules framed hereunder, frame and implement necessary guidelines, and it shall be the duty of all the concerned to abide by such guidelines.

Power to Frame Rules:

His Majesty's Government may frame necessary Rules for carrying out the objectives of this Act

Without prejudice to the generality of the power conferred by sub-section (1), it may frame Rules in particular on the following matters.

Proposal

Conduction of initial Environmental Examination or Environmental Impact Assessment

Sources, standards, prevention and control of pollution

Biological diversity and the protection of National Heritage

Water, air, noise, soil pollution

Management and transportation etc. of wastes,

Operation of the Environment Conservation fund, and

Other necessary matters.

Date of Royal Seal: 2053/10/17.5 (30 Jan. 1997)

By order

Suresh Man Shrestha

Secretary to His Majesty's Government