

Ministry of the Environment and Water Resources (MEWR)
40 Scotts Road, #24-00
Environment Building
Singapore 228231

16th March 2014

Feedback on Draft Transboundary Haze Pollution Bill

Dear Sir/Madam,

We applaud MEWR's openness to public consultation in order to incorporate feedback and suggestions that will help create an act that is effective and enforceable.

We represent the views of the interest group, People's Movement to Stop Haze (PM.Haze). We welcome the proposed draft Transboundary Haze Pollution Bill as it demonstrates the Singapore government's commitment and initiative to tackle the haze issue. It also sends a strong signal to errant companies as they would face financial penalties under the proposed Bill and reputation risks.

Summary of suggestions for improving the bill

- Peg the maximum fine to a percentage of the company's revenue.
- Consider size of area burnt and whether fires occurred on peat soil in determining fine amount
- Extend liability to company which owns a controlling stake in accused entity
- Extend liability to company which owns burnt land
- Shift emphasis of section 7 (Defences) to evidence of due diligence and transparency
- Protect whistleblowers
- Donate fines towards rehabilitation of peatlands and forests, as well as humanitarian aid
- Allow members of the public to file civil suit in foreign courts

Background: Our hopes for the Transboundary Haze Pollution Bill/ Act

In order to safeguard the health, well-being and economic prosperity of Singapore and her people, we hope that the final bill and resulting act can achieve the following:

- Deter plantation companies from deliberately burning vegetation while encouraging these companies to implement best practices to prevent and control fires from any source,
- Create greater transparency among companies especially in terms of the concession maps and the ownership structures,
- Empower civil society to complement the public service in taking action against companies responsible for the haze, and
- Be a model for other ASEAN countries to implement similar laws that complement the ASEAN Agreement on Transboundary Haze Pollution.

Feedback and suggestions for improving the Bill/ Act

1) Fairer Penalties

The proposed maximum fine of \$300,000/ \$450,000 may not by itself serve as an effective deterrence for companies which earn billions in annual revenue. The actual fine imposed should reflect the severity of the smoke produced from the fire. We suggest

- a) Pegging the maximum fine to a percentage of the company's revenue - similar to the Rapid Transit Systems (Amendment) Bill 2014 which imposes a fine on rail operators capped at 10% of their annual fare revenue or S\$1 million, whichever is higher, for failing to maintain service standards.¹
- b) Including a guideline that the fine imposed should consider the size of area burnt as well as whether the fires occurred on peat soil, which are the dominant contributor to transboundary haze.²

2) Clearer accountability and responsibility for parent company

The draft bill places a parent company liable if and only if it "participates in the management" of the subsidiary directly responsible for burning vegetation. However, large agri-businesses may own a controlling stake but not directly manage their subsidiaries. In addition, these agri-businesses may rent out parts of their concession to small-holders. To acknowledge the responsibility of these agri-businesses for their subsidiaries and concession land, we suggest that if entity B starts a fire, liability is extended to:

- a) The entity which owns a controlling stake in entity B, and
- b) The entity which owns the land and knowingly allows the land to be managed by entity B

3) Acknowledging and encouraging due diligence and transparency

In the draft bill, the accused entity can defend itself based on whether its employee was responsible for the burning or whether the entity authorized or condoned the fire. This may result in the unintended outcome of the entity paying a third party, for example a poor unemployed man, to act as a scapegoat. The use of grave natural disaster as a defence is also open to abuse as most fires occur during periods of drought anyway. Given the difficulties faced by the prosecutor in gathering evidence and witnesses due to the extra-territorial nature of this bill, we recommend that the provision for defence should be redefined to focus on:

- a) Evidence of due diligence by entity in adopting best practices in preventing and controlling the fires, for example, third-party certification which verifies the use of best practices.
- b) Evidence of transparency such as voluntary release and updating of concession maps.

4) Protection for whistleblower

To encourage whistleblowers to provide evidence on wrongdoings, we suggest

- a) Protecting whistleblowers from harm and giving immunity from prosecution.
- b) Protecting whistleblowers regardless of nationality.

5) Donation of fines

To further increase the impact of this act, we propose that:

- a) Fines collected to be channeled towards rehabilitation of peatlands and forests in Indonesia, as well as humanitarian aid for local people in Indonesia who are worst affected by the haze and fires.

6) Expanding geographical scope of enforcement

For practical reasons, enforcement of the bill/ act may only be possible on entities which have assets and representatives in Singapore. To expand the geographical scope of enforcement, we suggest:

- a) Incorporating terms similar to Order 11, Service of Process Out of Singapore, to allow members of the public to file civil suit in foreign courts to recover damages due to haze in Singapore.

¹ *Rapid Transit Systems (Amendment) Bill*, 20 January 2014.

² Heil, A, et al. "Indonesian peat and vegetation fire emissions: Study on factors influencing large-scale smoke haze pollution using a regional atmospheric chemistry model" *Mitigation and Adaptation Strategies for Global Change* 12.1 (2007): 113-133.

Complementing the Bill/ Act

To complement the Act's objective of safeguarding Singapore from the haze, a multi-faceted strategy is required. We therefore submit the following suggestions for the Government's consideration:

1) Divestment and trade restrictions

Public money should not be used to invest in entities (and their parent companies) which are found guilty under the Act. The Government should discourage trade with these errant entities and the various Government agencies should not be allowed to procure products from them.

2) Mandatory submission of land-concession maps

In view of the potential disputes regarding land ownership, the Government should make it mandatory for Singapore-based or Singapore-listed companies with plantations in Indonesia and Malaysia to submit land concession maps. These concession maps should be reviewed yearly.

3) Setting up of a Non-Governmental Organisation (NGO)

We recommend that a NGO, with the support of the government, be set up with the following functions:

- a) Facilitate and advise public on civil suits in a similar manner as CASE, and
- b) Collate and monitor agri-businesses' documentation of licenses and land-concession maps, in a similar manner as BankTrack.³

This NGO should have access to information such as high resolution satellite imagery, which could be pivotal to the civil suit case but is not accessible by public. The NGO would serve as an independent watchdog, to assist both the state and the public with the monitoring process and promoting transparency among agri-businesses.

4) Sharing of information with Indonesia and Malaysia

It would also be helpful if Singapore could establish a channel with the Indonesia and Malaysia police and judiciary to share information on criminal investigations and trials regarding the fires.

5) Engagement with ASEAN countries

Singapore could suggest that other countries adopt a similar law to prosecute entities whose conduct cause haze. In this way, the effectiveness of the Bill can be extended geographically.

6) Facilitate industry in shifting towards sustainable palm oil

The Government should mandate that the types of vegetable oil used in food products must be stated explicitly on the label. This means that manufacturers will no longer be able to hide palm oil in their ingredients under the generic term 'vegetable oil'. Responsible consumer choices, such as choosing products with the Roundtable on Sustainable Palm Oil (RSPO)'s *Certified Sustainable Palm Oil* label, should also be encouraged. In addition, the Ministry of Education could include responsible consumer choices in the formal education curriculum. Ultimately, we hope that businesses would be incentivised to produce and use sustainable palm oil.

7) Funding for research on sustainable agriculture

More research is needed to understand more sustainable pathways for agro-based production and trade. With government funding, studies can be conducted on ways to mitigate the yearly haze occurrence and provide better management of plantations to prevent and mitigate fire. Singapore institutes and/or NGOs can then share their findings publicly through publications, seminars, training and outreach programmes to stakeholders in this region.

³ "About BankTrack." BankTrack, 2012. 16 Mar. 2014. <http://www.banktrack.org/show/pages/about_banktrack>.

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