Enhancement and Conservation of National Environmental Quality Act (No. 2) B.E. 2561 (2018)

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun
Given on the 16th Day of April B.E. 2561;
Being the 3rd Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to amend the law on the enhancement and conservation of national environmental quality;

This Act contains certain provisions that restrain the rights and freedoms of persons which Section 26 along with Sections 33, 37, and 40 of the Constitution of the Kingdom of Thailand requires powers of a law to do so;

The reason and necessity to restrain the rights and freedoms of persons under this Act are to efficiently carry on the country's environmental management which will benefit enhancement and conservation of environmental quality, people's health, and public interest. Passing this Act is therefore consistent with the conditions provided in Section 26 of the Constitution of the Kingdom of Thailand.

Be it, therefore, enacted by the King, and with the advice and consent of the National Legislative Assembly serving at the National Assembly, as follows:

Section 1: This Act is called the "Enhancement and Conservation of the National Environmental Quality Act (No. 2) B.E. 2561 (2018)."

Section 2: This Act shall come into force after an expiration of 90 days from the date of its publication in the Government Gazette.

Section 3: The term "environmental impact analysis report" in the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535, shall be amended to "environmental impact assessment report" at all places.

Section 4: The definition of "state agency" shall be added between the definitions of "conservation area" and "local official" in Section 4 of the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535:

"state agency" means a civil service unit, state-owned enterprise, public organization, local government administration, and any other state agency established by law."

Section 5: The text in Part 4: Providing Environmental Impact Analysis Reports, Sections 46, 47, 48,49,50, and 51 of Chapter III: Environmental Protection of the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by Order of National Council for Peace and Order No. 9/2559 on Amendment to the Law on Enhancement and Conservation of National Environmental Quality, dated 7 March B.E. 2559, shall be repealed and replaced by the following provisions:

"Part 4
Providing Environmental Impact Assessment Reports

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Section 46: In this part, unless it is stated otherwise:

"environmental impact assessment" means a procedure for studying and assessing impacts that may occur due to carrying on any project, undertaking, or operation of the State or which the State will give permission to operate, that may directly or indirectly impact natural resources, environmental quality, health, sanitary, life quality, or other interests of people or communities by going through the process of public participation, in order to determine measures to prevent and rectify such impacts. Results of the study shall be called an "environmental impact assessment report;

"permit/permission" means an act that a government official consents to a person's action which the law requires a consent, and shall include issuing a license/permit, authorization, registration, enrollment, notification receipt, and granting a concession and license;

"operator" means an owner of the project, undertaking, or operation which is required to provide an environmental impact assessment report under Section 48 and shall include a juristic person manager of a condominium for common property under the law on condominiums as well as an allocator of land or a housing complex committee of the juristic person of the housing complex to provide public facilities under the law on land allocation;

Section 47: In case where there is a strategic environmental assessment in accordance with any other regulation or law, the environmental impact assessment shall take into consideration the findings of such strategic environmental assessment.

Section 48: For the benefit of enhancing and conserving environmental quality, the Minister, with the National Environmental Board's approval, shall have the power to issue a notification specifying that any project, undertaking, or operation of the State or which the State will give any person permission to operate, is a project, undertaking, or operation that impacts the environment or may seriously impact natural resources, environmental quality, health, sanitary, life quality, or other important interests of people, communities, or environment, which an operator or person asking for permission must provide an environmental impact assessment report.

Rules, procedure, and conditions on providing an environmental impact assessment report under paragraph one, shall be prescribed in the Minister's notification with the National Environmental Board's approval. Those rules, procedure, and conditions may be different due to categories or sizes of projects, undertakings, or operations and shall at least consist of the subject matter of detail of the project, undertaking, or operation; current environmental situation; assessment of alternatives that can be operated; assessment of environmental impact which may directly and indirectly occur due to implementing the project, undertaking, or operation; public participation in the environmental impact assessment; and measures to prevent and rectify impacts and to compensate and remedy injuries and damages.

In addition to the requirements under paragraph two, when providing an environmental impact assessment report for a project, undertaking or operation of the State or which the State will give any person permission to operate, that may seriously impact natural resources, environmental quality, health, sanitary, life quality, or other important interests of people, communities, or environment, an operator or person asking for permission shall also assess health impact and hold a public hearing for the people with interests and relevant people and communities in accordance with the rules, procedure, and conditions prescribed in the Minister's notification, with the National Environmental Board's approval.

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The Office of Natural Resources and Environmental Policy and Planning shall recommend that the National Environmental Board review the notification under paragraph one every five years or, if necessary, within a shorter timeframe.

Section 49: In case where the project, undertaking or operation that is required to provide an environmental impact assessment report under Section 48, is a project, undertaking or operation of a state agency or which a state agency jointly implements with a private sector, that shall be submitted for the Cabinet's approval pursuant to a governmental regulation, the state agency responsible for that project, undertaking, or operation, shall provide an environmental impact assessment report from feasibility study of the project, undertaking, or operation and submit it to the National Environmental Board who will submit its opinions to the Cabinet for consideration. In submitting the National Environmental Board's opinions, there shall also be the expert committee's opinions attached for consideration.

In considering the environmental impact assessment report pursuant to paragraph one, the Cabinet may request that any person or institution with proficiency or expertise in environmental impact assessment conduct a study and submit a report or opinions for consideration.

In case where the project, undertaking or operation which is required to provide an environmental impact assessment report under Section 48, is a project, undertaking, or operation of a state agency, that is not required a submission for the Cabinet's approval or not required a legal permission, the state agency responsible for that project, undertaking, or operation, shall *mutatis mutandis* provide and submit an environmental impact assessment report in accordance with the rules, procedure, and conditions as prescribed in Sections 50 and 51/1.

In case where the project, undertaking or operation which is required to provide an environmental impact assessment report under paragraph one, is a project, undertaking, or operation on transportation, irrigation, disaster prevention, hospitals, or residences which is urgently necessary for the public interest, during the waiting period that the environmental impact assessment report is considered, the state agency responsible for such project, undertaking, or operation, may propose the Cabinet to approve a procedure or process to acquire a private sector who will undertake such work. However, the state agency shall not sign a contract for commitment or granting a right to such private sector.

Section 50: In case where the project, undertaking, or operation which is required to provide an environmental impact assessment report pursuant to Section 48, is a project, undertaking, or operation that is required a legal permission before starting construction or operation, the operator or person asking for permission shall submit an environmental impact assessment report to an official with the legal power to grant permission under such specific law as well as submit it to the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf. The report to be submitted in this case may be an initial environmental impact assessment report in accordance with the rules, procedure, and conditions as prescribed by the Minister pursuant to Section 48, paragraph two.

The official with the legal power to grant permission shall suspend an order to grant permission to implement the project, undertaking, or operation under paragraph one until the environmental impact assessment report is approved or deemed approved from the expert committee as well as he/she receives a letter notifying findings of the environmental impact

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assessment report from the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf.

The Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf, shall examine the environmental impact assessment report and relevant documents submitted. If it considers that such environmental impact assessment report is not provided in accordance with the rules, procedure, and conditions as prescribed in Section 48, paragraph two or three, or the documents are not complete, the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf, shall inform the operator or person asking for permission, who has submitted the environmental impact assessment report, within fifteen days from the date of receipt of that environmental impact assessment report.

In case where the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf, considers that the environmental impact assessment report is accurate and the documents are complete, or corrections have been made according to paragraph three, the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf, shall submit its initial opinion on such environmental impact assessment report within thirty days from the date of receipt of that environmental impact assessment report for submission to the expert committee's consideration.

In proceeding under this Section, the Office of Natural Resources and Environmental Policy and Planning with the National Environmental Board's approval, may assign another state agency to act on its behalf unless the project, undertaking, or operation which is required to provide an environmental impact assessment report under paragraph one, is a project, undertaking, or operation that may seriously impact natural resources, environmental quality, health, sanitary, life quality, or any other important interests of people, communities, or environment, or is a project, undertaking, or operation under Section 49, paragraph four. This shall be in accordance with the rules and procedure prescribed in the National Environmental Board's notification.

A state agency assigned by the National Environmental Board to act on the Office of Natural Resources and Environmental Policy and Planning's behalf under paragraph five, shall report results of its work and the expert committee's consideration of the environmental impact assessment report to the National Environmental Board within the time period under the rules and procedure as prescribed in the National Environmental Board's notification.

Section 51: The National Environmental Board shall appoint expert committees to perform duties in considering environmental impact assessment reports. Each expert committee shall comprise qualified or expert persons from different relevant academic fields. There shall also be officials with the legal power to grant permission to the undertaking that is a subject matter in continuing the project, undertaking, or operation as committee members.

The rules, procedure, and conditions in appointing expert committee members under paragraph one, shall be as prescribed in the National Environmental Board's notification.

Sections 16 and 17 shall apply *mutatis mutandis* to meetings of expert committees under paragraph one.

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Section 51/1: An expert committee shall consider an environmental impact assessment report within forty-five days from the date of receipt of that environmental impact assessment report from the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf. If the expert committee does not complete its consideration within the time period, it shall be deemed that the expert committee gives approval.

In case where the expert committee does not give its approval, the operator or person asking for permission shall amend or provide anew the environmental impact assessment report in accordance with the guidelines, details, issues, or topics as required by the expert committee within one hundred and eighty days from the date of receipt of the expert committee's notification of its findings. Otherwise, it shall be deemed that the operator or person asking for permission does not intend to submit that environmental impact assessment report and shall be also deemed that the consideration process of that environmental impact assessment process is concluded. However, this shall not affect the right of the operator or person asking for permission to submit a new environmental impact assessment report pursuant to Section 50.

When the operator or person asking for permission submits the environmental impact assessment report which has been amended or provided anew, the expert committee shall complete its consideration within thirty days from the date of receipt of such report. If the expert committee does not complete its consideration within the time period, it shall be deemed that the expert committee gives approval.

In case where the expert committee does not approve the environmental impact assessment report submitted pursuant to paragraph three, it shall be deemed that the process of considering the environmental impact assessment process is concluded. However, this shall not affect the right of the operator or person asking for permission to submit a new environmental impact assessment report pursuant to Section 50.

Whether the expert committee gives approval or not, such opinion of the expert committee shall be final.

Section 51/2: For the benefit of considering an environmental impact assessment report pursuant to Sections 49, 50, and 51/1, the expert committee or competent officials assigned by the expert committee, shall have the power to inspect the premises of the project, undertaking, or operation for which the environmental impact assessment report is submitted. Such inspection shall be conducted in front or with consent of the operator or person asking for permission.

Section 51/3: When the expert committee gives approval, or in case where it is deemed that the expert committee gives approval under Section 51/1, an official with the legal power to grant permission shall bring the measures proposed in the environmental impact assessment report to prescribe as conditions in giving permission or renewing a license. Those conditions shall be deemed as required by law in that particular matter.

The official with the legal power to grant permission shall bring the implementation report of measures indicated in paragraph one which the operator or person asking for permission shall provide under Section 51/5, to prescribe as conditions in giving permission or renewing a license as well.

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Section 51/4: For the benefit of proceeding under Sections 49 and 50, the Minister with the National Environmental Board's approval, may require that an environmental impact assessment report pursuant to Section 48 shall be provided or certified by a licensee as provider of environmental impact assessment reports.

Request for and issuance of a license, qualifications of licensees as providers of environmental impact assessment reports, renewal, issuance of replacement documents, and suspension and withdrawal of a license shall be in accordance with the rules, procedure, and conditions as prescribed in the ministerial regulation.

Section 51/5: For the benefit of monitoring, inspecting, and developing the system of environmental impact assessment, the operator or person asking for permission who provides an environmental impact assessment report and is granted permission to proceed, shall provide an implementation report of measures required in the environmental impact assessment report and submit it to the official with the legal power to grant permission at least once a year in accordance with the rules and procedure prescribed in the Minister's notification with the National Environmental Board's approval.

The official with the legal power to grant permission shall gather the reports received under paragraph one and send them to the Provincial Office of Natural Resources and Environment in that locality or the Office of Natural Resources and Environmental Policy and Planning in Bangkok within sixty days from the date of receipt of such report.

The Office of Natural Resources and Environmental Policy and Planning shall gather the reports under paragraph two and provide an implementation report of such measures with recommendations and opinions submitted to the National Environmental Board at least once a year.

In case where it appears that the operator or person asking for permission avoids or does not proceed with the measures required in the environmental impact assessment report which are the conditions for granting permission or renewing a license under Section 51/3, the Office of Natural Resources and Environmental Policy and Planning shall make a recommendation to the state agency or the official with the legal power to grant permission to proceed with a legal procedure to enforce the operator or person asking for permission to correctly implement such measures required in the environmental impact assessment report which are the conditions for granting permission or renewing a license. The state agency or the official with the legal power to grant permission, as the case may be, shall report their actions to the Office of Natural Resources and Environmental Policy and Planning within the period of ninety days.

Section 51/6: An environmental impact assessment report which is received opinions from the National Environmental Board or approved or deemed to be approved by an expert committee, may be used in requesting for the Cabinet's approval or in a permission consideration process as required by law within a period of five years from the date the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf issues a letter notifying opinions of the National Environmental Board or the expert committee's approval, as the case may be.

In case where the operator or person asking for permission intends to bring the environmental impact assessment report which is received opinions from the National Environmental Board or is approved or deemed to be approved by an expert committee to request for the Cabinet's approval or to be used in a permission consideration process as required by law,

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when the period as prescribed in paragraph one is expired, the project, undertaking, or operation to be operated, shall not be modified, expanded, extended, increased, deducted, or adjusted in a manner that will impact or damage the environment in the area or community more than that indicated in the environmental impact assessment report which is received opinions from the National Environmental Board or approved or deemed to be approved by the expert committee, or shall not be a project, undertaking, or operation which may seriously impact natural resources, environmental quality, health, sanitary, life quality or other important interests for people, communities, or environment.. The operator or person asking for permission shall review the measures to prevent and rectify environmental impacts in the environmental impact assessment report which is received opinions or is approved and submit it to the National Environmental Board or the expert committee to reconsider, as the case may be.

Section 51/7: Expert committees shall receive meeting allowances as prescribed in the Royal Decree.

In considering environmental impact assessment reports pursuant to Sections 49 and 51/1, an expert committee may assign any person or institution to provide an opinion to be considered along with the environmental impact assessment report. That person or institution shall be paid compensations as prescribed in the Royal Decree.

A person who is assigned by an expert committee pursuant to paragraph two shall not be a government official or official or personnel in the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf, as the case may be, and shall have qualifications and not have prohibited qualifications as prescribed in the National Environmental Board's notification.

An environmental impact assessment report for which an expert committee will assign a person under paragraph two to give an opinion for consideration process, shall be an environmental impact assessment report for the project, undertaking, or operation of the State or that the State will give any person permission to operate, which may seriously impact natural resources, environmental quality, health, sanitary, life quality or other important interests of people, communities or environment or has complication, involves high technology, or must require specialized expertise. This shall be as prescribed in the National Environmental Board's notification."

Section 6: The provision of Section 86 of the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 shall be repealed and replaced by the following provision:

"Section 86: In performing the duties of an official pursuant to Section 65, or performing the duties of a pollution control official pursuant to Section 82(1), such action shall be taken in front of owner or person in possession of the place or vehicle, if that person cannot be found, the action shall be taken in front of at least two other persons whom the official or pollution control official requests to be witnesses."

Section 7: The following provisions as follows shall be added as Sections 101/1 and 101/2 of the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535:

"Section 101/1: Any operator or person asking for permission who constructs or implements a project, undertaking, or operation before the environmental impact assessment report

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under Section 48 is approved or deemed to be approved by an expert committee, shall be subject to a fine of no more than one million Baht and a daily fine of no more than 100,000 Baht during the period of non-complying with the law or not ceasing such offense.

If the offense under paragraph one is a construction or operation in any project, undertaking, or operation which may seriously impact natural resources, environmental quality, health, sanitary, life quality, or any other important interests of people, communities or environment, the perpetrator shall be subject to a punishment harsher than that provided under paragraph one by half.

Section 101/2: Any operator or person asking for permission who does not submit an implementation report of measures required in the environmental impact assessment report under Section 51/5, paragraph one, shall be subject to a fine of no more than one million Baht."

Section 8: The following provisions shall be added as Sections 110/1 and 110/2 of the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535:

"Section 110/1: The Minister shall have the power to appoint case settlement committees in Bangkok and in regional areas as appropriate.

Each case settlement committee shall comprise three members and shall be appointed from representatives from the Office of the Attorney-General, the Royal Thai Police, and the Ministry of Natural Resources and Environment. They shall hold office for a two-year term and may be reappointed after end of his/her term.

Removal from the position before end of an office term, meetings, and consideration procedure of case settlement committees shall be as prescribed in the Minister's notification.

Section 110/2: A case settlement committee shall have the power to settle cases of those offenses under this Act that prescribe only a fine punishment or a fine punishment or imprisonment of no more than two years.

In case where an inquiry official, pollution control official, or official finds that any person commits an offense under paragraph one and that person consents to case settlement process, the inquiry official, pollution control official, or official, as the case may be, shall submit the matter to the case settlement committee within seven days from the date that person expresses his/her consent to settle.

When the suspect pays fine of the amount as determined for settlement within thirty days of the determination, it shall be deemed that the case is settled in accordance with the provisions of the Criminal Procedure."

Section 9: No. 1 of the fee rates attached to the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 shall be repealed.

Section 10: The provision in No. 2 of the fee rates attached to the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 shall be repealed and replaced by the following provision:

"2. License as a provider of environmental impact assessment reports	5,000 Baht per year

Section 11: The following text shall be added as No. 7 of the fee rates attached to the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535:

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"7. License renewal	same amount as the fee for a new license

Section 12: Expert committees to consider environmental impact analysis reports that the National Environmental Board appointed pursuant to the Enhancement and Conservation of the National Environmental Quality Act B. E. 2535, shall perform its duties until expert committees to consider environmental impact assessment reports are appointed pursuant to the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act.

Section 13: Those environmental impact analysis reports for a project or undertaking under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 that have been submitted before this Act takes effect and are still under consideration, shall be considered an environmental impact assessment report under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act. They shall be proceeded under the rules and procedure as required under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act.

Those environmental impact analysis reports for a project or undertaking under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 that have been approved or deemed to be approved by an expert committee to consider environmental impact analysis reports or have been received the National Environmental Board's opinions, may be used in submission for the Cabinet's approval or in permission consideration process required by law within a period of five years from the date this Act enters into force.

Section 14: The project or undertaking received a consent from the Office of Natural Resources and Environmental Policy and Planning to implement measures as required with an exception that they did not have to provide an environmental impact analysis report under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 before this Act enters into force, shall be able to proceed with obligations to implement those measures which they consented to implement and to report the implementation result of those measures in accordance with the rules and procedure pursuant to the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535.

Section 15: A licensee having the right to provide environmental impact analysis reports under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535, shall be a licensee to provide environmental impact assessment reports under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act until his/her license expires.

Section 16: Those requests for a license to have the right to provide environmental impact analysis reports under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 that have been submitted before this Act takes effect, shall be considered requests for a license to provide environmental impact assessment reports under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act. They shall be considered and proceeded under the rules, procedure, and conditions as provided for under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act. Any action rightly taken under the procedure under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535, shall be deemed rightly taken

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under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act.

Section 17: All the ministerial regulations, rules, regulations, notifications, or orders issued under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 only for the matters related to providing environmental impact analysis reports that have been effective before the date this Act takes effect, shall remain effective as long as they do not conflict or contradict this Act until royal decrees, ministerial regulations, or notifications issued under the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 as amended by this Act enter into force.

The process of issuing royal decrees, ministerial regulations, or notifications under this Act shall be completed within ninety days from the date this Act comes into force. If that cannot be done, the Minister shall report the Cabinet reasons of such failure in completing the task.

Section 18: The Minister of Natural Resources and Environment shall be in charge of this Act.

Countersigned by
General Prayut Chan-o-cha
Prime Minister

Notes: - The reasons to pass this Act are: the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 provided that providing an environmental impact analysis report for a project or undertaking that may seriously impact communities in the aspects of environmental quality, natural resources and health, shall be as prescribed in the Ministry of Natural Resources and Environment's notification, which is inconsistent with Sections 58 and 278 of the Constitution of the Kingdom of Thailand providing that there shall be necessary provisions of law to require that any operation of the State or that the State will give any person permission to operate, if that operation may seriously impact natural resources, environmental quality, health, sanitary, life quality, or any other important interests of people, communities, or environment. There were also obligations to proceed to conduct a study and assessment of the impacts on environmental quality and health of people or communities and to hold a public hearing for the people with interests and relevant people and communities in order to be used in consideration on operation or legal permission. The process and procedure of providing reports, submission, and consideration of environmental impact assessment reports as specified in that Act have been the rules of operation in force for a long time and at present are no longer consistent with the changing situation. It is therefore appropriate to improve the legal provisions on providing environmental impact analysis reports and a system of analyzing environmental impacts so that they become consistent with provisions in the Constitution of the Kingdom of Thailand. This is also to have standards that are acceptable and trustworthy to all sectors in maintaining conservation of environmental quality and natural resources along with development of the country in balance. It is thus necessary to pass this Act.

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