

Prevention of Environmental Nuisances (Actions by Citizens) Law, 1992
(Translation)

This recent Law was designed to empower citizens to take a more active role in direct enforcement against the entire range of environmental hazards. It also provides standings for citizens' environmental groups.

Definitions 1. In this Law:

"Court" means "Magistrate Court";

"air pollution", "noise", and "odor" have the same meaning as in the Abatement of Nuisances Law, 1961;

"water pollution" has the same meaning as in the Water Law, 1959;

"sea-water pollution" has the same meaning as in the Prevention of Sea Pollution by Oil Ordinance (New Version), 1980, the Prevention of Sea Pollution (Dumping of Waste) Law, 1983, and the Prevention of Sea Pollution From Land Based Sources Law, 1988.

"waste pollution" means dumping of solid, semi-solid, liquid, or gaseous material in a place not designated for that purpose by law; for this purpose, "dumping" includes throwing, spilling, abandoning, or littering in any other manner;

"hazardous material pollution" means pollution by hazardous materials listed in Part A of Annex One of the Regulation of Goods and Services Ordinance (Transport and Towing Services), 1978;

"radioactive pollution" means ionized or non-ionized radioactive pollution as defined in the Pharmacists Regulations (Radioactive Materials and Their Byproducts), 1980;

"environmental nuisance" means air pollution, noise, odor, fresh and sea-water pollution, litter, hazardous waste pollution, radioactive pollution, or anything in contravention of legislation, order, plan, business license or any other permit or license, or that is dangerous to human health or may cause people to suffer; for

this purpose, "plan" has the same meaning as in the Planning and Building Law, 1965;

"the Authority" means the Minister of the Environment or a person who he has authorized for the purpose of this Law, in part or wholly.

Demand for an order 2. (a) At the request of a person damaged by, or likely to be damaged by an environmental nuisance, the Court may order the person causing or likely to cause an environmental nuisance (hereinafter "the person causing the nuisance") to do one or more of the following:

(1) refrain from the act causing or likely to cause the environmental nuisance, or to desist from the act.

(2) repair damage or return the situation to the state existing prior to the environmental nuisance (hereinafter "repair damage");

(3) do everything necessary to prevent the recurrence of the environmental nuisance.

(b) "act" includes failure to act.

Considerations in serving an order 3. In preparing to serve an order according to Section 2, the Court considering the action will weigh the amount of damage caused or likely to be caused to the plaintiff or to the public interest, against the damage likely to be caused to the person responsible for the nuisance or to the public interest by the issuing of the order.

Negligence 4. In an action filed against a person causing a nuisance according to this law, it is not relevant whether or not the person was negligent.

Announcement prior to filing an action 5. A person will not file an action according to Section 2 until 60 days after he has notified the person causing the nuisance and the Authority of his intention to file an action and --

(1) The person causing the nuisance has not taken reasonable steps to stop the environmental nuisance or to prevent its recurrence or to repair the damage as the case may be;

(2) The Authority has not taken reasonable steps within its powers to stop the environmental nuisance or to prevent its recurrence or to repair the damage as the case may be;

Status of non-profit organizations 6. A registered non-profit organization whose primary purpose is the protection of the environment is eligible to file an action if at least one of its members is eligible to do so.

Maintaining the water supply 7. (a) A Court order served to the person causing a nuisance which will impair the supply of water to the consumers of a water supplier will go into effect only after the Water Authority has arranged for the full provision of water to those consumers for as long as the order is in effect.

(b) The Water Authority will provide the service in Subsection (a) within 45 days of serving of the order.

Repair of damage 8. (a) In an order to repair damages, the Court will determine the amount of time within which the damage must be repaired; the Court will not determine the time limit until the Authority has been heard on the matter.

(b) When the plaintiff or the Authority reports to the Court that repair of damage has not been carried out according to Subsection (a), the Court will determine how to repair the damage after hearing testimony of the plaintiff, the Authority and the person who has caused the nuisance on the matter; the cost of the repair will be paid by the person who has caused the nuisance.

Recurring environmental nuisance 9. (a) For the purposes of this section, a "recurring environmental nuisance" has occurred if one of the following has occurred:

- (1) the person causing the nuisance has caused the same nuisance again;
- (2) the person causing the nuisance or the person whom the Court has ordered to repair the damage has ceased to repair the damage.

(b) When the Court has served an order according to Sections 2 or 8, and within two years from the date of the order to stop the nuisance or repair damage a recurring environmental nuisance has occurred, the plaintiff is entitled to file an action within the same two years and Section 5 does not apply.

(c) The Court may order the person who causes a recurring environmental nuisance to compensate the plaintiff for damages caused to him by the recurring nuisance.

Legal action 10. A person who suffered damages or is likely to suffer damages due to an environmental nuisance is eligible to file for a Court order in the name of a group of people damaged by, or likely to be damaged by the same nuisance (hereinafter, "class action").

Classification of a class action 11. (a) The Court may order that an action filed according to section 10 not be managed as a class

action if it is convinced of one of the following:

- (1) the action was not filed in good faith;
- (2) the size of the group does not justify submission of the action as a class action;
- (3) there exists a reasonable basis to assume that the plaintiff does not represent the interests of all of the members of the group;

(b) The Court is authorized to manage an action as a class action when it deems it proper to ensure fair and efficient proceedings for responding to the common needs of all interested parties.

Definition of group and announcement 12. (a) When a class action is filed, the Court will first define the group, and will notify the members of the group that an action has been filed. Group members will be personally notified unless this is not possible, in which case there will be a public announcement as the Court sees fit.

(b) The action will be considered as filed on behalf of all who are included within the specified class of persons, unless someone has submitted in writing his desire to be a part of the action.

Agreement or compromise 13. The plaintiff will not abandon a class action and will not come to an agreement or compromise with the defendant without the permission of the Court.

Regulations concerning filing and expenses 14. (a) Filing and management of actions filed according to this Law are subject to the Civil Procedure Regulations, 1984, unless the Minister of Justice has determined otherwise.

(b) If the Court rules to grant court costs to whoever filed a class action, it may determine that the expenses will be paid, fully or in part, to the person who filed the action and proved it.

Appeal 15. An appeal of an order under this Law will be decided by a single judge in the District Court.

Responsibility of salaried employees of corporations 16. When an event according to this Law was caused by a corporation, an individual will be deemed responsible, even if he was an active director or partner (except a limited partner) or a high ranking employee, unless he can prove the following two things:
(1) the event occurred without his knowledge;
(2) he took all reasonable steps to prevent the event.

Saving of rulings 17. The instructions found in this Law are intended to add to, and not subtract from, any other

legislation.

Implementation and regulations 18. The Minister of the Environment is responsible to implement this Law, and is authorized to promulgate regulations for its implementation, except regulations relating to civil procedure.

Amendment of Abatement of Nuisances Law 19. Amendment of Abatement of Nuisances Law, 1961, inserted after Section 11.

Commencement 20. This Law will come into effect six months from its date of publication.

Publication 21. This Law will be published within thirty days of its approval.