

Strict Liability Versus Policy and Regulation for Environmental Protection and Agricultural Waste Management in Malaysia

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Abstract

Basically, strict liability is part of the mechanism for expressing judgment or sentence by using direct evidence. This principle is very useful in order to obtain remedies from any damage either directly or indirectly. The principle in *Rylands v Fletcher* is responsible on imposing strict liability where if something brought onto land or collected there escapes liability under this rule can include not only the owner of land but also those who control or occupation on it. However, as a matter of fact, policy and regulation are also important in taking any action against any party who are responsible for environmental pollution or damage, which may include mismanagement of waste or industrial waste or agricultural waste. There are certain policies and regulations on environmental protection such as the National Environmental Policy, certain Acts and several regulations under the Environmental Quality Act 1974 (Act 127), which are very useful for agricultural waste management inter alia: Waters Act 1920 (Act 418), Environmental Quality (Prescribed Premises) (Crude Palm Oil) Regulations 1977, Environmental Quality (Prescribed Premises) (Raw Natural Rubber) Regulations 1978, Environmental Quality (Sewage and Industrial Effluents) Regulations 1979, and Environmental Quality (Compounding of Offences) Rules 1978. As a matter of fact, we should realize that time is of an essence for any parties which are involved in court cases and especially in avoiding the element of externality, which is commonly suffered by the government. In making this paper, therefore, some element of comparison with certain developed jurisdiction such as in the United Kingdom and Japan could not be avoided in order to obtain better outcome and to be more practical for the purpose of environmental protection and agricultural waste management.

Keywords: strict liability; policy and regulation; environmental protection; agricultural waste management.

1. Introduction

Generally, it is internationally understood that statutory and non-statutory approach are very important in controlling environmental pollution including agricultural waste management worldwide. Therefore, strict liability as part of the mechanism for non-statutory approaches on environmental protection and agricultural waste management can be used as an important tool to support other approaches i.e. statutory. This would help a party to develop cause of action against another party which is responsible for polluting the environment or with their causing damage to the environment. On the other hand, policy and the law or regulation otherwise known as statutory approach is also needed as a basis in taking any action to any polluters who are responsible for damaging the environment or land, which is considered as part of the environment.

2. The importance of *Strict Liability*, the rule in *Ryland's v. Fletcher*

Basically, the statute presently defines most offences. In fact, it is a question of construction whether the offences is a mental element and, if so, what that mental element is. Commonly, the definition uses a word or a phrase such as: *knowingly*, *with intent to*, *recklessly*, *willfully*, *dishonestly* etc, which gives guidance to the court. Often the definition uses a verb or a noun, which imports a mental element of some kind such as, *permits*, and *posses*; therefore there cannot be an *actus reus* without that mental element (Burnett, 1995) As a matter of fact, there are many offences known as offences of *strict liability* where it is commonly said that no *mens rea* need to be proved, and this means that *mens rea* need not be proved with respect to one or more elements of the offence.

It can be concluded that *strict liability* means liability without fault, not even negligence, in respect of one or more elements of the offence. Crimes of *strict liability* are almost invariably the creation of statute. In fact, it is commonly said that there were only two exceptions at common law to the rule requiring *mens rea*. These are public nuisance and criminal libel. In the former any employer might be held liable for the act of his employee although he himself did not know it had taken place; while in the latter a newspaper proprietor is liable for libels published by his employee without his consent. Public nuisance is an anomalous crime and it is treated in several respects rather as if it were civil action than an indictable offence (Salter, 1992).

3. The imposition of *strict liability* for environmental damage under criminal law

The general rule is that criminal liability is not imposed unless a person intends to or foresees that he may bring about the constituents of a crime; there is an increasing tendency for legislation relating to the environment to create offences which are absolute and impose strict liability so that the prosecution does not have to prove that the accused had a guilty mind and that the accused has no defense that he had made a genuine mistake (Shelbourn, 1994).

The mental element may be connoted by expressions *inter alia*: 'with intent', 'recklessly', 'knowingly', or 'permitting'. However, commonly criminal liability is imposed on a person where he intends to or foresees that he may, by his actions bring about the constituents of crime. However, in some circumstances, strict liability is imposed, which means that criminal liability can be incurred without proof of any mental element in the accused and where there may be no negligence or default by him (Seago, 1995).

As a matter of fact, criminal liabilities may arise under both common law and statute. The fact that in almost every case in which strict liability is imposed, the offence is created by statute would tend to suggest that it was parliament who created strict liability and indeed in many cases the judges have said it was clearly the intention of parliament to impose strict liability.

There are a lot of examples of offences which stem directly from environmental harm. Therefore, it is possible to obtain the primary definition of a particular offence directly from the words of the relevant statute. For example, under the Water Resources Act (WRA) 1991 (UK), section 85 for example, there is a general offence of causing or knowingly permitting any

poisonous, noxious or polluting matter to enter control waters. In this respect it is not always necessary to show actual harm to the environment. That is why under section 85 someone can be liable as strict liability. This can be seen in the case of water pollution, *R vs. Dovermoss Ltd* (Environmental Law, 1995). Indeed, section 161 of the WRA 1991, also provides that any person who caused or knowingly permitted the presence of the actual or potentially matter, so as to commit an offence. Then, under section 73 (6) of the EPA 1990, where it is ruled that any person who deposits the waste or agricultural wastes or knowingly caused or knowingly permits it to be deposited, so as to commit an offence under EPA 1990 section 33(1) or section 63 (2) (Ball and Bell, 1997).

As a matter of fact, all of the offences under section 1 and 2 of the Clean Air Act 1993 (UK) are strict liability offence, where the prosecution need not prove that the defendant intended to cause the emission or indeed, even knew of the emission provided that he is the occupier of the source of the dark smoke. There are different maximum levels of fine for private dwellings (level 3 of the standard scale) and for any other case (level 5 on the standard scale). The maximum fine is 5,000.00-pound sterling except in the case of section 1 (1) in respect of domestic premises where 1,000.00-pound sterling is the maximum stated under section 1 (5).

4. The meaning of 'cause' and 'knowingly permit'

Section 85 of the WRA provides for the criminal offence of causing or knowingly permitting any poisonous, noxious or polluting matter or solid waste or agricultural waste to enter controlled water. The offences under this section require that the defendant 'cause' or 'knowingly permit' the relevant discharge or entry. In fact, this phrase has been interpreted in many cases and obviously there are two separate offences, 'causing and knowingly permitting' and that the former lays down an offence of strict liability because it is not conditioned by any requirement of knowledge (Smith, 1996).

As a matter of fact, this strict liability formula can be seen in the case of *Alphacell vs. Woodwind*,¹ where the defendant company had polluted the river Irwell river when washing manila fibres, a raw material for paper making. The House of Lords held that the prosecution did not need to prove that the company had knowingly, intentionally or negligently caused the polluted water to enter the river. In fact, the company had caused the pollutant to enter the river by their positive and deliberate acts in building and operating the system which led to the overflow into the river and

(Footnotes)

¹ See [1972] 2 All ER, page 475.

that was sufficient for liability. Furthermore, the House of Lords adopted a common-sense approach, 'If reasonable people would say that the accused has caused something to happen then a conviction is appropriate without the need for *mens rea*'. This decision has been followed by many cases *inter alia*: in *FJH Wrothwell Ltd vs. Yorkshire Water Authority*,² where it was held that a director of a company who had poured herbicide into what he thought was a drain leading to the public sewer, but which in fact led to a nearby stream, was guilty of causing pollution of the stream, despite the unintended result of his action.

With respect to the offence of 'knowingly permitting', it has given rise to fewer cases and is more clearly more limited than 'causing' offence because of the knowledge requirement. However, it may be of use in situations where a person is passive even after knowing of the polluting incident (Graham, 1995). This can be exemplified by *Price vs. Cromack*,³ where the judge suggested the farmer should well have been charged with knowingly permitting the pollution; and where in *Wychyon District Council vs. National River Authority*,⁴ it is fairly clear that the local authority could have been charged with knowingly permitting the pollution once it had been drawn to its attention (on the facts it had delayed for some time before taking steps to remedy the situation).

5. The imposition of *Strict Liability* under Civil Law

Specifically, Strict Liability in civil law was introduced firstly in the case of *Rylands v. Fletcher (1866) LR1; LR 3 HL 330*. It involved the construction of a reservoir on the defendant's land. The contractors failed to block off mine shafts with the result that when the reservoir was filled up, water went into the shafts and flooded a mine owned by the plaintiff. Although there is no negligence on behalf of the defendants, the House of Lords held that they should be liable. In the Lower Court, Blackburn Judge first expounded the principle:

"...That the person who for his own purposes brings onto his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in his peril, and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequences of its escape".

Therefore, from this judgment, obviously, this principle imposes strict liability if something brought onto land or collected their escape. The implications

as far as environmental protection is concerned are clear. In fact, over the years the rule has been applied in relation to water, fire, gases, electricity, oil etc. Liability under this rule can include not only the owner of the offending site but also those who have controlled or occupation of it.

However, there are some cases in which the rule does not apply inter alia: two things naturally on the land; where the plaintiff consented to the presence of the things on the defendant's land or caused its escape; where the escape is due to an act of god or action by a stranger. For example, in the Fletcher's case it means only that there is no liability if the water had been a natural lake or naturally flooded area rather than a man made reservoir; or where the defense of statutory authority is upheld. All these are the restriction of the strict liability.

Based on the above principles, in relation to waste or industrial waste management or agricultural waste management, if the factory operator or anybody such as a farmer takes anything such as water or industrial waste or agricultural waste onto their land, therefore, they are liable under the rule in *Ryland's vs. Fletcher*. Lord Cranworth in *Fletcher's case* also mentioned that:

"If a person brings, or accumulates, on his land anything, which, if it should escape may cause damage to his neighbor, he does so at his peril. If it does escape and cause damage, he is responsible, however careful he may have been, and whatever precautions he may taken to prevent the damage".

6. The defense

It is very important to highlight that there are a number of defenses to an action brought under this rule in *Ryland's vs. Fletcher*. It has been suggested that there is a defense where the plaintiff benefits from the harmful activity. Therefore, where gas, electricity or water supplies have caused damage on the plaintiff's property, no liability should accrue. It seems that this concept wants to limit the strict liability in order not to become absolute liability. In fact the act of God can be also used as a defense, however, this defense is somewhat restricted. The only things, which fall under this defense, would be escapes caused by such things as earthquake, tornadoes or freak acts of nature, but not caused by vandalism.

7. Policy and regulation on environmental protection and agricultural waste management.

Generally, there are policy and regulation for the purpose of environmental protection and agricultural

(Footnotes)

² See [1984] Criminal LR, page 43.

³ See [1975] 1 WLR page 988.

⁴ See [1993] 1 WLR page 125.

waste management in Malaysia. However, in practice although there are laws and regulations to be followed in order to manage the environment nicely but if there are specific policy activated by the government, therefore, in what ever action that will be taken by any party must be examined carefully and it would not be contradicted with the present policy or directive in the United Kingdom or European Union (Shelbourn, 1994).

8. National Policy on the Environment

Basically, there are three main aims of this policy;

1. To achieve a clean, safe, healthy and productive environment for present and future generations
2. To achieve conservation of the country's unique and diverse cultural and natural heritage with effective participation by all sectors of society.
3. To achieve sustainable lifestyles and patterns of consumption and production.

The National Policy on the Environment is commonly based on eight principles that harmonize economic development aims with environmental imperatives *inter alia*:

1. Stewardship of the environment
Exercise respect and care for the environment in accordance with the highest moral and ethical standards.
2. Conservation of Nature's vitality and diversity
Conserve natural ecosystems to ensure integrity of biodiversity and life support systems.
3. Continuous improvement in the quality of the environment
This is to ensure continuous improvement in the productivity and quality of the environment while pursuing economic growth and human development objectives.
4. Sustainable use of natural resources
This is to manage natural resource utilization to sustain the resource base and prevent degradation of the environment.
5. Integrated Decision Making
Integrate environmental dimensions in the planning and implementation of the policies, objectives and mandates of all sectors to protect the environment
6. Role of the Private Sector
Strengthen the role of the private sector in environmental protection and management
7. Commitment and Accountability
This is to ensure highest commitment to environmental protection and accountability by all decision-makers in the public and private

sectors, resource users, non-governmental organizations and the general public, in formulating, planning and implementing their activities.

8. Active Participation in the International Community
Participate actively and effectively in regional and global efforts towards environmental conservation and enhancement.

9. The Law and Regulation on Environmental Protection and Agricultural Waste Management

Basically, there are certain Act and Regulation under the Environmental Quality Act 1974 that will be discuss under this heading especially either expressly or impliedly related to agri-waste management, *inter alia*:

10. Waters Act 1920 (ACT 418)

Generally, this Act shall only apply to certain states such as the States of Negeri Sembilan, Pahang, Perak, Selangor, Malacca, Penang and the Federal Territory.

In this Act, it is interpreted that unless the context otherwise requires: - River includes:

- a) A tributary of a river and any other stream or natural water course, and
- b) Any canal declared by the State Authority of the State in which such canal is situated by notification in the Gazette to be subject to this Act.

Section 3 of this Act highlight that subject to the terms of any express grant made by or on behalf of the Ruler of the State, the entire property in and control of all rivers in any State is and shall be vested solely in the Ruler of such State; provided that in the case of lands held by the government under grant or lease or reserved for a public purpose and maintained by a Government Department, such control may be exercised by the Head of such Department, under the direction of the State Authority.

It is also stated in section 4 that any person who shall in any State interfere with the bank of any river may by order of the State Authority be required to restore the same to the condition in which it was immediately prior to such interference or to remake the same in such manner as may be specified in such order.

Section 5 of this Act provides provision on prohibition of acts affecting rivers, except under license. It is stated that no person shall, except under and in all accordance with the terms of a license under this Act: a) fell any tree so that it falls into a river, b) in

any manner obstruct or interfere with any river, and c) build any bridge, jetty, or landing stage (other than bath-house) over or beside any river at a point where the width of such river exceeds twenty feet.

Section 7 of this Act provides prohibition of diversion of water from rivers, except under license. In fact, under sub-section 4 it is stated that license to divert water from a river in any district for use: a) for private or domestic purpose, b) in the cultivation of rice, c) for industrial and other purposes, may be granted by the District Officer of such district with the approval, in each case falling under paragraph (a) or (c) of the above sub-section, of the State Authority.

Section 7A of this Act provides that no person shall except under and in accordance with the terms and conditions of license issued under this section cause to enter or discharge into any river: a) any poisonous, noxious or polluting matter that will render or is like to render or contribute to rendering such river or part thereof harmful or detrimental or injurious to public health, safety or welfare, or to animal or vegetable life or health or to other beneficial uses of such river, c) any matter which by virtue of its physical nature, or its effect in discoloring waters, makes or contributes to making such water, difficult to treat; or d) oil of any nature, used, waste or otherwise.

Section 15 provide provision on penalties; sanction for prosecution. It is stated under this section that any person who fails to obey any order given under section 4 shall be liable to a fine of five hundred ringgit and additionally to a fine of ten ringgit for every day during which such disobedience shall continue. Sub-section 2 highlight that any person who shall contravenes section 5 or 7 shall be liable to a fine of one thousand ringgit (Water Act, 2001).

11. Environmental Quality (Prescribed Premises) (Crude Palm Oil) Regulations 1977 (PCR 77)

This regulation is basically created in exercising the power conferred by section 51 of the EQA 1974. By virtue of the above section, the Minister, after consultation with Environmental Quality Council (EQC), makes the following regulations:

Regulations 2, 3 (1), 5, 11 to 17 came into force on 4th November 1977, whereas regulations 3 (2), 4, 6 to 10 and 18 came into force on 1st July 1978.

Under regulation 2, 'Effluent' means liquid waste or wastewater produced by reason of the production processes taking place at prescribed premises. 'Water-course' includes any reservoir, lake, river, stream, canal, drain, spring or well, any part of the sea abutting on the foreshore, and any other body, natural or artificial surface or subsurface water.

In regulation 8 it is stated that no person shall dilute, or cause or permit to dilute, any effluent, whether raw or treated, at any time or point after it is produced at any prescribed premises unless prior written authorization of the Director General has been obtained for the dilution, and the dilution is done according to the terms and conditions of the authorization. Regulation 12 concerned the limits for parameters of effluent to be discharged into watercourse. This regulation applies in respect of effluent to be discharged into a watercourse.

Moreover, regulation 13 is concerned with limit for parameters of effluent to be discharged onto land. In fact, this regulation provides that the Director General may in any particular case impose, in respect of effluent to be discharged during any period, a less stringent limit than 5,000 mg/l, if he is satisfied that research on effluent disposal or treatment of a kind or scale that is likely to benefit the cause of environmental protection is being or is to be carried out at the prescribed premises, and that such a concession is necessary for the conduct of such research (Ishak, 2003).

12. Environmental Quality (Prescribed Premises) (Raw Natural Rubber) Regulations 1978 (RNRR 78)

Under this regulation, 'Prescribed Premises' means any premises prescribed by the Environmental Quality (Prescribed Premises) (Raw Natural Rubber) Order, 1978, being used or occupied for the production or processing of:

- a) Raw Natural Rubber in technically specified forms, latex form including prevulcanised or the form of modified and special purpose rubber, and
- b) Conventional sheet, skim, crepe or any other form of raw rubber not already described in quantities of 5 tones or more per day or with a production or processing capacity of a similar quantity.

Regulation 8 concerned on the dilution of effluent. It provides that no person shall dilute, or cause or permit to be diluted, an effluent, whether raw or treated, at any time or point after it is produced at any prescribed premises except if the Director General has awarded such person prior written authorization and the dilution is done according to the terms and conditions of the authorization.

Regulation 12 concerns acceptable conditions for the discharge of effluent from prescribed premises occupied or used for the production of concentrated latex or its associated products into a watercourse. Whereas regulation 15 concentrates on acceptable

conditions for the discharge of effluent from prescribed premises occupied or used for the production of products other than concentrated latex or its associated products onto land.

Regulation 19 concerns points of discharge, where it provides that in every license, the Director General shall specify, for the purposes of these regulations, the point or points of discharge of effluent for the prescribed premises to which the license relates (Ishak, 2003).

13. Environmental Quality (Sewage and Industrial Effluents) Regulations 1979 (SIER 79)

Under this regulation, 'Effluent' is defined as sewage or industrial effluent. However, 'Industrial Effluent' means liquid water or wastewater produced by reason of the production processes taking place at any industrial premises. 'Sewage' is defined as any liquid water or wastewater discharge containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

Part II of this Regulation is concerned with new sources of discharge where regulation 4 provides that prohibition against new and altered sources of effluent discharge.

Part III is concerned on acceptable conditions of discharge into inland waters. In particular, regulation 6 provides that no person shall discharge or cause or permit the discharge of any of the substances, i.e., any inflammable solvent; any tar or other liquids immiscible with water and refuse, garbage, sawdust, timber, human or animal waste or solid matters and also including agricultural waste.

Part IV concerns the discharge of effluent and sludge onto land, where regulation 9 provides that no person shall discharge or permit or cause the discharge of any effluent in or any soil or surface of any land without the prior written permission of the Director General, whereas, regulation 10 concerns the restriction on disposal of sludge (Mohd Bakri, 2003).

14. Environmental Quality (Compounding of Offences) Rules 1978 (COR 78)

This Regulation came into force on 1st October 1978. It was created by virtue of section 45 (2) of the EQA1974 and applicable throughout Malaysia. Regulation 2 is concerned with the sum to be collected and the method of payment, whereas regulation 3 provides that payment may be delivered personally to the person making the offer to compound, but if sent by post, should be addressed to the Director General of Environment. Regulation 3 also concerns the form for offer to compound as in the schedule (Mohd Bakri, 2003)

15. Relevant statute on waste or industrial waste or agricultural waste management in the United Kingdom and Japan.

There are several relevant Acts such as: Control of Pollution Act 1974, Environmental Protection Act 1990 etc, however this paper will only focus on the Environment Act 1995.

16. Environment Act 1995 (EACT95)

The EACT95 has several important Parts, *inter alia*: Part I is on Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA); Part II concerns contaminated land and abandoned mines; Part III concentrates on miscellaneous, general and supplemental provisions relating to the new agencies; Part IV concerns on air quality, and finally Part V is concerned with general and supplemental provisions on waste which may include industrial and also agricultural waste.

Section 57 of the EACT95 is responsible for inserting the new provision in the EPA90 such as Part IIA particularly section 78A (2), (4) and (9) on remediation of contaminated land although it was not yet enforce in 1998. Part IIA contains a new legal regime for dealing with pollution arising from contaminated land (Mohd Bakri, 2003).

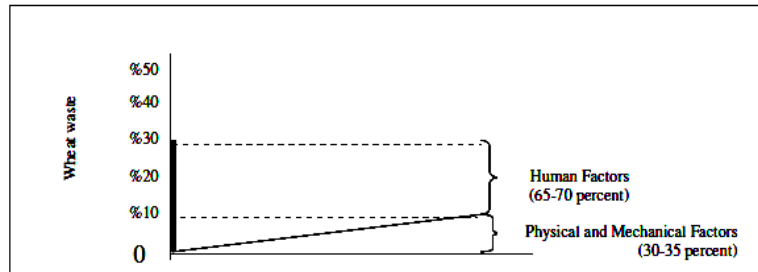
Section 93 to 95 is related to the new elements of the producer's responsibility of waste. In fact, the major purpose of the Regulations which was created by the Secretary of State is to promote or secure an increase in the aspect of recovery, re-use, and recycling of materials, which might ultimately produce environmental and economic benefits in the UK.

Section 92 of the EACT95 is responsible for inserting section 44A in the EPA90, whereby in the new provision, the EA has a very important duty and responsibility pertaining to the production of National Waste Strategy by the Secretary of State.

However, in Japan for the year 2000, there are several statutes which were introduced for the purpose of Environmental Protection *inter alia*: Law for recycling of industrial wastes in the construction sector; Law for recycling for food wastes; Law for promoting the green procurement by the government; Law for recycling automobiles and Law for promoting Environmental Management (Yamamoto, 2005).

17. The Relationship of Agriculture Waste Management

Basically the globalization in the agricultural waste industry is increasingly competitive. In response, extension should be capable of tackling a diversity of challenges in effectively linking more clientele to



Source: Mohammadi, 2006

Figure1. The human and physical and mechanical factors in wheat waste

domestic and international markets (Farrington, 1998) promoting environmental conservation (Sulaiman and Hall, 2004) and natural resources management. Malaysia has experienced phenomenal economic growth in the last two decades about the agriculture sector. It has undergone a major structural transformation, moving from an agriculture to manufacturing-based economy, with significant social changes in this country. Below has showed the comparing human factors with physical and mechanical factors in agricultural waste management indicates that human factors (social, cultural, economical, professional, etc.) were involved in wheat lose and waste twice as more than mechanical and physical (Mohammadi, 2006).

Thus, in early days of abundant resources and negligible development pressures, little attention was paid to environmental issue, although some environment related legislation pertaining to different sectors was enacted especially in agriculture waste management. Realizing this, the government has since as early as 1974 taken concrete steps by introducing an enabling legislation called the Environmental Quality Act, 1974. The main objective of this act is to prevent, abate and control pollution, and further enhancing the quality of the environment in this country. The Department of Environment has been entrusted to administer this legislation to ensure that Malaysia will continue to enjoy both industrial grow and a healthy living environment. The government of Malaysia had very much depended on the existing legal and institutional arrangements for the implementation of its environment policy objectives and strategies. To make further progress in the protection and preservation of the environment, the existing legal and institutional arrangements ought to be augmented by other policy instruments, including trade and economic measures, tax and financial mechanisms, further R&D and technology development and transfer, and other institutional support, including national-wide data-based management information system. Above all is the support of the public for a common future, the environment.

In order to achieve the national environmental objectives, the Department on Environment (DOE) has

adopted a strategy based on pollution control and prevention. The pollution control and strategy or remedial approach is implemented through the enforcement of the Environmental Quality Act, 1974. DOE has adopted a three-pronged strategy in managing the environment, namely, short medium and long-term measures. Short-term measures effectively implemented the existing legislation to control discharges and emissions from existing sources. The medium-term strategy involved the incorporation of an environmental component into the development planning process. The long-term strategy ensures that all development contain both physical environment and quality of life aspects in their planning.

The act is the most comprehensive legislation to date for pollution prevention, abatement and control as well as for environment enhancement. The enforcement of this act and the accompanying 16 sets of Regulations and Orders has played a significant role in the management of the environment, and in particular, with respect to pollution control. The following regulations and orders have been introduced under the Environment Quality Act, 1974 and strictly enforced.

18. Control of Agro based Water pollution management

- Environmental Quality (licensing): Regulation 1977
- Environmental Quality (Prescribed Premises): (Crude Palm Oil) Order 1977
- Environmental Quality (Prescribed Premises): (Raw Natural Rubber) regulations 1978

The main environmental agency involved in controlling environmental issues is the Department of Environment (DOE). DOE has recently taken a more complete and integrated role, deviating from “problem-solving approaches” to more systematic and holistic approaches that encompass monitoring enforcement, development and planning.

Control of Agro-Based Prescribed and Non-Prescribed Premises In 1996, enforcement emphasis was placed on 3 sectors: sewage discharge, textiles

and metal finishing. Violations were mainly due to inadequate affluent treatment, increase in production without commensurate increase in treatment plant capacity, and slow response to plant upset. The licenses of 4 palm oil mills and 4 rubber factories were temporarily suspended and withdrawn upon repeated violations of licensing conditions. Therefore for non-prescribed premises, under the Environmental Quality (Sewage and Industrial Effluents) Regulations 1979, metal finishing and leather industries have yet to comply with the requirements of the Regulations. The orders to prescribe the draft regulations for specific control are still under vetting by the Attorney General's Chambers. The overall industrial compliance with the Environmental Quality (Clean Air) Regulations, 1978 was generally satisfactory, though odour and fugitive emissions remained problematic.

19. Conclusion and certain recommendations

In conclusion we should understand that where in public law, the proof of the breach of a regulation involves scientific evidence that is more or less irrefutable, there is great difficulty in showing a cause of action for environmental pollution in common law. Therefore, that is why *strict liability* is one of the most significant elements in protecting the environment because for example, the Environment Agency in the United Kingdom (as a prosecution) does not need to prove the intention of the polluter. Then, in the case where there is lack of evidence, the Environment Agency has discretion whether to prosecute or not. As a result, it is recommended that strict liability is really needed because without it, many guilty people or parties would escape. We should understand that there is neither time nor personnel available to litigate the culpability of each particular infraction. So, this argument assumes that it is possible to deal with these cases without deciding whether defendant had *mens rea* or not, or whether he has negligent or not. In fact, dealing with environmental protection or industrial waste or agricultural waste management, it is true that many polluters would escape if the *strict liability* were not imposed. Therefore, the implementation of *strict liability* will definitely favor environmental protection, which may include agricultural waste management. It is suggested that Malaysia should practice this approach in order to establish a cause of action against any party who are responsible in damaging the environment and any party who are responsible for mismanagement of agricultural waste.

The policy, regulations and institutions that deal with agricultural waste management should be strengthened and restructured because at this moment

there is no specific definition on agricultural waste is stated in any of our statute. In fact, in term of institutions who are fully responsible in managing agricultural waste in Malaysia is not so clear although there are certain institutions which might be involved such as: the Department of Environment in the aspect of open burning, the local authority which is responsible to collect waste from garden, or responsible in controlling the management of pig farm if it is situated under the jurisdiction of certain local authority etc., and the Drainage Irrigation Department which is responsible in managing and take care for the river in this country. Therefore, it is suggested that the Malaysian government can established a specific agency to be fully responsible in managing and controlling environmental pollution and agricultural waste management in this country. On the other hand, it is a good move if we can have a specific statute on Agricultural waste management in order to ensure that agricultural waste might not caused harm to human health or to avoid environmental pollution which might caused by mismanagement of agricultural waste.

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