

The Bangladesh Environment Conservation Act, 1995

Act No. 1 of 1995

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Un-official English Version

The Bangladesh Environment Conservation Act, 1995
Act No. 1 of 1995

[Bangla text of the Act was published in the Bangladesh Gazette, extra-ordinary issue of 16-2-1995 and amended by Act Nos 12 of 2000 and 9 of 2002.]

An Act to provide for conservation of the environment, improvement of environmental standards and control and mitigation of environmental pollution.

Whereas it is necessary and expedient to provide for conservation of the environment, improvement of the environmental standards, and control and mitigation of environmental pollution;

It is hereby enacted as follows:

1. **Short title and commencement.-** (1) This Act may be called the Bangladesh Environment Conservation Act, 1995.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, ¹specify and it shall be brought into force in different areas on different dates.

2. **²Definitions.-** In this Act, unless there is anything contrary in the subject or context-

"conservation of environment" means improvement of the qualitative and quantitative characteristics of different components of environment as well as prevention of degradation of those components; [*Ref: Clause (f).*]

"Department" means the Department of Environment established under section 3 of this Act; [*Ref: Clause (a).*]

"Director General" means Director General of the Department; [*Ref: Clause (m).*]

"ecosystem" means the inter-dependent and balanced complex association of all components of the environment which can support and influence the conservation and growth of all living organisms; [*Ref: Clause (g).*]

¹ The Act was brought into force by MoEF notification of 30th May in Dhaka, Chitagong, Rajshahi, Khulna and Barisal Divisions w.e.f. 1st, 2nd, 3rd, 4th, and 5th of June 1995, respectively.

² The definitions are rearranged in English alphabetical order with reference to relevant clause of the original Bangla text of section 2.

"environment" means the inter-relationship existing between water, air, soil and physical property and their relationship with human beings, other animals, plants and micro-organisms; [Ref: Clause (d).]

"environment pollutant" means any solid, liquid or gaseous substance which causes harmful effect to the environment and also includes heat, sound and radiation; [Ref: Clause (e).]

"hazardous substance" means a substance, the chemical or biochemical properties of which are such that its manufacture, storage, discharge or unregulated transportation can be harmful to the environment; [Ref: Clause (j).]

"occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises, and in relation to a product, means the person in possession of the product; [Ref: Clause (c).]

"person" means a person or group of persons, and includes any company, association or corporation, whether incorporated or not; [Ref: Clause (h).]

"pollution" means the contamination or alteration of the physical, chemical or biological properties of air, water or soil, including change in their temperature, taste, odor, density, or any other characteristics, or such other activity which, by way of discharging any liquid, gaseous, solid, radioactive or other substances into air, water or soil or any component of the environment, destroys or causes injury or harm to public health or to domestic, commercial, industrial, agricultural, recreational or other useful activity, or which by such discharge destroys or causes injury or harm to air, water, soil, livestock, wild animal, bird, fish, plant or other forms of life; [Ref: Clause (b).]

"rule" means rule made under this Act; [Ref: Clause (k).]

"use", in relation to any material, means manufacturing, processing, treatment, package, storage, transportation, collection, destruction, conversion, offering for sale, transfer or similar activity relating to such material; [Ref: Clause (i).]

"waste" means any solid, liquid, gaseous, radioactive substance, the discharge, disposal and dumping of which may cause harmful change to the environment; [Ref: Clause (l).]

¹2A. Overriding effect of the Act.- Notwithstanding anything contained to the contrary in any other law for the time being in force, the provisions of this Act, rules and directions issued under this Act shall have effect.

3. Department of Environment.- (1) The Government shall, for carrying out the purposes of this Act, establish a Department to be called the Department of Environment and headed by a Director General.

¹Section 2A was inserted by section 2 of Act 9 of 2002.

(2) The Director General shall be appointed by the Government and the terms and conditions of his service shall also be determined by the Government.

(3) For proper performance of the functions of the Department, necessary officers and employees shall be appointed in the manner and on the terms and conditions prescribed by rules.

4. Power and functions of the Director General.- (1) Subject to the provisions of this Act, the Director General may take such measures as he considers necessary and expedient for the conservation of the environment, and improvement of environmental standards, and for the control and mitigation of environmental pollution, and he may issue necessary directions in writing to any person for the discharge of his duties under this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include all or any of the following :-

- (a) co-ordination with the activities of any authority or agency having relevance to the objectives of this Act;
- (b) prevention of probable accidents which may cause environmental degradation and pollution, undertaking safety measures and determination of remedial measures for such accidents and issuance of directions relating thereto;
- (c) giving advice or, as the case may be, issuing directions to the concerned person regarding the environmentally sound use, storage, transportation, import and export of a hazardous substance or its components.
- (d) conducting inquiries and undertaking research on conservation, improvement and pollution of the environment and rendering assistance to any other authority or organization regarding those matters;
- (e) searching any place, examining any equipment, manufacturing or other processes, ingredients, or substance for the purpose of improvement of the environment, and control and mitigation of pollution; and issuance of direction or order to the appropriate authority or person for the prevention, control and mitigation of environmental pollution;
- (f) collection and publication of information about environmental pollution;
- (g) advising the Government to avoid such manufacturing processes, commodities and substances as are likely to cause environmental pollution;

- (h) carrying out programs for observation of the quality of drinking water and preparation of reports thereon, and rendering advice or, as the case may be, issuing direction to the concerned persons to follow standards for drinking water.

(3) A direction issued under this section may include matters relating to closure, prohibition or regulation of any industry, undertakings or processes, and the concerned person shall be bound to comply with such direction:

¹[Provided that-

- (a) the Director General shall, before issuing a direction of closure or prohibition of an industry, undertaking or process, send to the owner or occupier thereof a written notice so that he gets reasonable opportunity to make that industry, undertaking or process environmentally sound; and
- (b) where the Director General considers it appropriate, he may also specify in the notice that actions under sub-section (2) of section 4A may be taken if, pursuant to the notice, measures are not taken to make the relevant activities environmentally sound:]

Provided further that, if the Director General considers that, due to a particular environmental pollution, the public life is likely to be in danger and that urgent action is necessary, he may immediately issue necessary directions.

(4) A time limit may be specified by the Director General for carrying out a direction issued under this section.

²[4A. **Assistance from law enforcing agencies and other authorities.-** (1) The Director General or a person authorized by him may, for the purpose of exercising any power or performing any function under this Act, request any law enforcing agency, or any other Government or statutory authority to render necessary assistance, and upon such request that agency or authority shall render the assistance.

(2) Where the Director General issues a direction for closure, prohibition or regulation of an industry, undertaking or process under section 4(3) and the owner or occupier thereof does not comply with the direction, the Director General may direct the provider of electricity, gas, telephone or water or all such services or any other service provided to the industry, undertaking or process to disconnect the service.

(3) Where a direction is issued under sub-section (2), the concerned person or institution shall be bound to take necessary action as specified in the direction.]

¹The first proviso to sec 4(3) was inserted by sec 3 of Act 9 of 2002.

²Section 4A was inserted by section 4 of Act 9 of 2002.

5. **Declaration of ecologically critical area.-** (1) If the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such situation, the Government may, by notification in the official ¹Gazette, declare such area as an ecologically critical area.

(2) The Government shall, in the notification published under sub-section (1) or in a separate notification, specify the activities or processes that cannot be initiated or continued in an ecologically critical area.

²[6. **Restrictions regarding vehicles emitting smoke injurious to environment.-** (1) A vehicle emitting smoke or gas injurious to health or environment shall not be operated nor shall such vehicles be switched on except for the purpose of test-operation for stopping the emission of such smoke or gas.

Explanation.- In this section “smoke or gas injurious to health or environment” means any smoke or gas which exceeds the standards fixed by rules.

(2) For the purposes of sub-section (1), the Director General or any person authorized by him may test any vehicle at any place or may stop a vehicle in motion for testing, and instantly test it or detain it for necessary period or may, if any vehicle violates that sub-section, seize it and other related documents, or may give necessary direction for testing the vehicle.

(3) A report of the test under sub-section (2) shall be admissible as evidence in the proceedings of a court.

(4) For the violation of sub-section (1) or a direction given under sub-section (2), the driver or, as the case may be, the owner or both shall be liable.]

³[6A. **Restrictions on manufacture, sale etc. of articles injurious to environment.-** If, on the advice of the Director General or otherwise, the Government is satisfied that all kinds or any kind of polythene shopping bag, or any other article made of polyethylene or polypropylene, or any other article is injurious to the environment, the Government may, by notification in the official Gazette, issue a ⁴direction imposing absolute ban on the manufacture, import, marketing, sale, demonstration for sale, stock, distribution, commercial carriage or commercial use, or allow the operation or management of such activities under conditions specified in the notification, and every person shall be bound to comply with such direction :

Provided that such direction shall not be applicable to the following cases:-

¹ Certain areas declared as ecologically critical area by four notifications of MoEF.

² Section 6 was substituted for the old section 6 by Sec. 5 of Act 9 of 2002.

³ Section 6A was inserted by Sec. 5 of Act 9 of 2002.

⁴ All kinds of Poethin shopping bag have been banned by a notification of MoEF and certain bags have been exempted by another notification.

- (a) if the article specified in the notification is exported or used for export;
- (b) if the direction mentions that it is not applicable to any particular kind of polythene shopping bag.

Explanation.- In this section “polythene shopping bag” means a bag, *thonga* or other container which is made of polyethylene or poly propylene or any compound or mixture thereof and is used for purchasing, selling, keeping or carrying another article.]

¹[7. **Remedial measures for injury to ecosystem.**- (1) If it appears to the Director General that any act or omission of a person is causing or has caused, directly or indirectly, injury to the ecosystem or to a person or group of persons, the Director General may determine the compensation and direct the firstly mentioned person to pay it and in an appropriate case also direct him to take corrective measures, or may direct the person to take both the measures; and that person shall be bound to comply with the direction.

(2) If a person, to whom a direction under sub-section (1) has been issued, fails to comply with the direction, the Director General may file a suit for compensation in the competent court or file a criminal case for failure to comply with the direction or file both kinds of cases.

(3) For the purposes of determination of compensation or corrective measures under sub-section (1), the Director General may engage any specialist and other persons.

(4) The Government may direct the Director General to take any action under this section and to submit a report thereon.]

8. **Information to the Director General regarding environmental degradation or pollution.**- (1) Any person affected or likely to be affected as a result of pollution or degradation of the environment may, in the manner prescribed by rules, apply to the Director General for remedy of the damage or apprehended damage.

(2) The Director General may hold a public hearing and take other measures for disposing of an application made under this section.

9. **Discharge of excessive environmental pollutant etc.**- (1) Where, due to an accident or other unforeseen incident, the discharge of any environmental pollutant occurs or is likely to occur in excess of the limit prescribed by the rules, the person responsible and the person in charge of the place of occurrence shall take measures to control or mitigate the environmental pollution.

¹Section 7 was substituted by sec. 2 of Act 12 of 2000.

(2) The persons referred to in sub-section (1) shall immediately inform the Director General of the occurrence or the likelihood of such occurrence as mentioned in that sub-section.

(3) On receipt of information under this section with respect to the accident or other incident, the Director General shall take necessary remedial measures to control or mitigate the environmental pollution, and the said person shall be bound to render assistance and co-operation as required by the Director General.

(4) The expenses incurred with respect to remedial measures to control and mitigate the environmental pollution under this section shall be payable to the Director General and may be realized from the persons referred to in sub-section (1) as public demand.

10. **Power of entry etc.**- (1) Subject to the provisions of this section, any person generally or specially authorized in this behalf by the Director General shall have the right to enter any building or other place at all reasonable times, with such assistance as he considers necessary for the following purposes, namely :-

- (a) to perform his duties under this Act or rules;
- (b) to inspect any activity carried out at such place or building under this Act or rules or a notice, order or direction issued thereunder;
- (c) to test or verify any equipment, industrial plant, record, register, document or any other significant material;
- (d) to conduct a search of a building or place if such person has reason to believe that an offence has been committed in that building or place in contravention of this Act or rule or any notice, order or direction issued thereunder;
- (e) to seize any equipment, industrial plant, record, register, document or other material that may be used as evidence of the commission of any offence punishable under this Act or rules.

(2) The person operating any industry, activity or process or the person handling any hazardous substance shall be bound to render all assistance to the said authorised person in discharging his duties under this Act.

(3) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall be followed in conducting any search and seizure under this section.

11. **Power to collect samples etc.**- (1) A person authorised in this behalf by the Director General may, in the manner prescribed by rules, collect from any factory, premises or other place any sample of air, water, soil or other substance for analysis.

¹[(2) Subject to the provisions of sub-section (3) or (4), as the case may be, the report of a sample collector or the report of a laboratory or both the reports shall, in relation to a sample collected under this section, be admissible as evidence in the concerned proceedings.]

(3) Subject to the provisions of sub-section (4), the person collecting the sample under sub-section (1) shall --

- (a) serve, in the manner prescribed by rules, a notice to the occupier of the place or his agent specifying his intention to collect any sample;
- (b) collect samples in presence of that occupier or his agent;
- (c) place the sample in a container and seal the container after recording signatures of himself and of the occupier or his agent on the container;
- (d) prepare a report on the collection of the sample and record signatures of himself and of the occupier or his agent;
- (e) without delay send the container to the laboratory specified by the Director General.

(4) Where, after issuing a notice under clause (a) of sub-section (3), the sample collector collects the sample under sub-section (1), but the occupier or his agent remains absent at the time of collecting sample or being present refuses to put signature on the container of the sample and report, then the collector shall, in the presence of two witnesses, secure the container by putting his own signature and seal the sample, and without delay send the samples to the laboratory ²specified by the Director General for analysis and shall state the fact of willful absence of the occupier or his agent or, as the case may be, of his refusal.

12. **Environmental Clearance Certificate.-** No industrial unit or project shall be established or undertaken without obtaining, in the manner prescribed by rules, an Environmental Clearance Certificate from the Director General.

13. **Formulation of environmental guidelines.-** The Government may, by notification in the official Gazette from time to time, formulate and publish environmental guidelines relating to the control and mitigation of environmental pollution, conservation and improvement of the environment.

14. **Appeal.-** (1) Any person aggrieved by a notice, order or direction issued under this Act or rules may, within 30 days from the date of issuance of the notice, order or direction, appeal to the ³Appellate Authority constituted by the Government

¹ Section 11(2) was substituted by section 6 of Act 9 of 2002.

² Under sub-sec 11(4) DG, DoE by a circular dated 23/7/2002 has specified DoE divisional laboratories for the purpose of this Act.

³ An appellate authority has been constituted by MoEF by a notification dated 1/11/1997.

and the decision of such Authority on the appeal shall be final and shall not be called in question in any court :

Provided that the Appellate Authority may, if it is satisfied that for some unavoidable reason the aggrieved person could not file the appeal within that time, extend the period for filing the appeal by a period not exceeding thirty days.

(2) The Appellate Authority constituted under sub-section (1) may consist of one or more members:

Provided that where the Appellate Authority consists of more than one member, the Government shall appoint one of the members to be the Chairman of the Authority.

(3) An appeal filed under this section shall be disposed of within 3 months from the date of its filing.

¹[15. **Penalties.**- (1) For violation of a provision or for non-compliance of a direction, or for the activities specified in the following Table, the penalty mentioned against them may be imposed :

TABLE

Sl. No.	Description of Offence	Penalty that may be imposed
1	Non-compliance of a direction issued under sub-section (2) or (3) of section 4	Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.
2	Violation of sub-section (2) by continuing activities or processes or by initiating activities or processes, prohibited under sub-section (1) of section 5 in an area declared as an ecologically critical area	Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.
3	Violation of sub-section (1) of section 6	In case of first offence, a fine not exceeding taka 5 (five) thousand; in case of second offence, a fine not exceeding taka 10 (ten) thousand; in case of each subsequent offence, an imprisonment not exceeding 1 year or a fine not exceeding taka 10 (ten) thousand or both.

¹Section 15 was substituted for old sec. 15 by sec. 7 of Act 9 of 2002.

- 4 If, in violation of a direction issued under sub-section (1) of section 6A, any article specified in the direction is –
- | | |
|---|---|
| (a) manufactured, imported, marketed; | (a) Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both. |
| (b) sold, exhibited for sale, stocked, distributed, commercially transported or commercially used | (b) Imprisonment not exceeding 6 months or fine not exceeding 10 thousand taka or both. |
- 5 Non-compliance of a direction issued under sub-section (1) of section 7 Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.
- 6 Violation of sub-section (1) or (2), or failure to take remedial measures in accordance with sub-section (3) of section 9 Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both :
- Provided that where a lower penalty is fixed by rules for violation of section 9(1), that penalty shall be applicable.
- 7 Failure to render, without reasonable excuse, assistance or cooperation to the Director General or a person authorized by him as required by sub-section (2) of section 10 Imprisonment not exceeding 3 years or fine not exceeding 3 lac taka or both.
- 8 Violation of section 12 Imprisonment not exceeding 3 years or fine not exceeding 3 lac taka or both.
- 9 Violation of any other provision of this Act or a direction issued under the rules or obstructing the Director General or a person authorized by him in discharging his duties or intentionally delaying the discharge of such duty. Imprisonment not exceeding 3 years or fine not exceeding 3 lac taka or both.

(2) Subject to the other provisions of this section, certain offences and penalties for such offences may be specified in the rules, but the penalty so

specified shall not exceed imprisonment for 2 (two) years or a fine of Tk. 10 (ten) thousand or both.]

¹[15A. **Confiscation of materials and equipments involved in offence.**- Where a person is found guilty and sentenced under section 15, all equipments or parts thereof, transport, substance or any other thing used in the commission of the offence may be confiscated under order of the court.]

²[15A. **Claim for compensation.**- Where a person or a group of persons or the public suffers loss due to violation of a provision of this Act or the rules made thereunder or a direction issued under section 7, the Director General may file a suit for compensation on behalf of that person, group or the public.]

16. **Offences committed by companies.**- ³[(1) Where a company violates any provision of this Act or fails to perform its duties in accordance with a notice issued under this Act or the rules or fails to comply with an order or direction, then the owner, director, manager, secretary or any other officer or agent of the company, shall be deemed to have violated such provision or have failed to perform the duties in accordance with the notice or failed to comply with the order or direction, unless he proves that the violation or failure was beyond his knowledge or that he exercised due diligence to prevent such violation or failure.

Explanation.- For the purposes of this section -

- (a) “company” means any statutory public authority, registered company, partnership firm, and association or organisation,
- (b) director, in relation to a commercial establishment, also includes any partner or member of the board of directors.]

⁴[(2) Where a company mentioned in sub-section (1) is a body corporate, such company, apart from any person charged and convicted under that sub-section, may also be charged and convicted under that sub-section in the same proceedings, but the penalty of fine only may be imposed on such company in a criminal proceedings.]

⁵[17. **Cognizance of offence and claim for compensation.**- No court shall take cognizance of an offence or receive any suit for compensation under this Act except on the written report of an Inspector of the Department or any other person authorized by the Director General :

¹Section 15A was substituted by sec. 7 of Act 9 of 2002.

²Section 15A was inserted by sec. 4 of Act 9 of 2002.

³Existing provisions of sec. 16 was numbered as sub-sec.(1) by sec 8(a) of Act 9 of 2002.

⁴Sub-section (2) of sec. 16 was inserted by section 8(b) of Act 9 of 2002.

⁵Section 17 was substituted by sec. 9 of Act 9 of 2002.

Provided that if the competent court is satisfied that a person presented a written request to the said Inspector or authorized person to accept a complaint about an offence or a claim for compensation and no action was taken within 60 (sixty) days after such request, and that the complain or claim deserves to be taken into cognizance for the purpose of trial, then the court may, after giving the Inspector or the authorized person or the Director General a reasonable opportunity of being heard, directly receive the complaint or claim for compensation without such written report, or may, if it considers appropriate, direct the said Inspector or the authorized person to investigate the offence or claim.]

18. **Action taken in good faith.-** No civil or criminal case or other legal proceeding may be instituted against the Government, Director General, or any other person of the Department for any action which caused or is likely to cause injury to any person, if such action is taken in good faith under this Act or rules.

19. **Delegation of Power.-** (1) The Government may delegate to the Director General or any other officer any of its powers under this Act or rules.

(2) The Director General may ¹delegate to any other officer of the Department any of his powers under this Act or rules.

20. **Power to make rules.-** (1) The Government may, by notification in the official ²Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

- (a) determination of the standards of air, water, sound, soil and other components of the environment in relation to different areas for different purposes :

Provided that the Government may, by notification in the official Gazette, for a specified period suspend the application of such standard, generally or individually, in respect of industries or projects existing at the time of commencement of this Act;

- (b) regulation of the establishment of industries and other development activities for conservation of environment;
- (c) determination of safe procedures for the use, storage and transportation of hazardous substances;
- (d) determination of safety and remedial measures for prevention of accidents which may cause pollution of the environment;

¹ DG, DoE has delegated certain powers to DoE officers by a notification dated 9/9/1998 and by a circular dated 23/7/2002.

²The Government has made Environment Conservation Rules 1997.

- (e) determination of the standards for effluent and discharge;
- (f) procedures for assessment of the environmental impact of various projects and activities, and procedures for their review and approval;
- (g) procedures for protection of the environment and ecosystem;
- (h) determination of fees for obtaining environmental clearance certificates and other services.

21. **Repeal and saving.**- (1) The Environment Pollution Control Ordinance, 1977 (Act XIII of 1977) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the repealed Ordinance shall be deemed to have been done under the provisions of this Act.

(3) The Department of Environment existing before the commencement of this Act shall be deemed to have been established under section 3, and the Director General and other officers and employees of that Department shall be deemed to have been appointed under this Act.