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## **Singapore's Transboundary Haze Pollution Act: Silver Bullet or Silver Lining?**

*By Raman Letchumanan*

### **Synopsis**

*Singapore's Transboundary Haze Pollution Act came into effect on 25 September 2014. The impending dry season in the coming months will be the first test of its effectiveness in curbing transboundary haze pollution.*

### **Commentary**

2014 WAS A year of unprecedented weather conditions in the region. Whether there will be a repeat of the prolonged dry season in the coming months is on everyone's mind. On 26 January 2015, the 24-hour Singapore Pollution Standards Index (PSI) hit 76, crossing the half-way mark of the moderate air quality zone of 50-100. Beyond that the air quality becomes unhealthy. Satellite pictures showed very few scattered hotspots in neighbouring countries. The deterioration in air quality is therefore purely from local sources.

In 2014, Indonesia finally ratified the ASEAN Agreement on Transboundary Haze Pollution after a delay of more than a decade while Singapore enacted its Transboundary Haze Pollution Act. How significantly will these two legal instruments impact on the region's haze pollution problem?

### **Moving regional cooperation on haze a notch up**

When the Haze Pollution Act was enacted by the Singapore parliament, there was wariness among neighbouring governments, apprehension from targeted entities, debates in the legal fraternity, and hopes tinged with scepticism among the long-suffering public.

The Act is, in fact, in line with and complements the provisions of the region-wide ASEAN Agreement which calls upon all States *to take legislative, administrative and/or other measures to implement their obligations to prevent and monitor transboundary haze pollution*. Furthermore, the Agreement obliges the State *where transboundary haze pollution originates to respond promptly to a request for relevant information or consultation sought by an affected State*.

The Singapore Act makes it an offence to engage in or condone *a conduct which causes or contributes to any haze pollution in Singapore*, which is distinct though related, from an offence of

*open burning* which is illegal in most ASEAN countries. Therefore if a prosecution has commenced under the Act, the concerned government is obliged under the ASEAN Agreement to share relevant information, and most importantly to act correspondingly through their national laws against the *open burning* that is causing transboundary haze in Singapore.

Indonesia, for example, claims foreign entities are the cause of open burning, and other governments have told Indonesia to act on these entities through the full force of their national laws. The Agreement and Act should now put such rhetoric in the past to joint legal action. Indonesia has recently dealt severely with foreign illegal fishing, and such vigour should be pursued also for transboundary violations in another country.

In fact, regional cooperation will certainly alleviate the need to rely on the tenuous provisions on presumptions, and collection of evidence under the Act if Singapore were to act unilaterally.

### **Casting a wider net on violators**

The Act presumes that there is haze in Singapore, if about the same time there is a fire in a land outside Singapore, and the smoke from that fire is moving in the direction of Singapore. It also presumes ownership or occupation of a land causing the fire from maps furnished by appropriate persons, governments or departments.

This presumption of causal link has caused some concern among entities. Generators of satellite hotspot information claim about 80% accuracy (actual fires vs number of hotspots). Entities dispute that it is, at best, only up to 30% based on ground monitoring. Such satellite information should be validated by near surface aerial surveillance and ground investigation by authorities.

Determining the direction of smoke movement can pose similar difficulties. In Indonesia, entities contest concession land boundaries and actual ownership, which the government is trying to address through its *OneMap* initiative.

Major companies have taken upon themselves to publish their own concession maps overlaid with hotspot information through the Roundtable for Sustainable Palm Oil (RSPO) Secretariat. This is a proactive trend among these companies to ensure they are not unfairly targeted, much less to be charged under the Act.

Entities cannot now “outsource” their offending conduct, because that entity is also liable if it participates in the management including operational affairs, exercises decision-making or control, in another entity that commits the offence. In addition, the Act covers both owners and occupiers of land and those having the authority or right to operate on the land.

### **Deterrence and prevention**

The Act tilts towards deterrence and prevention than punitive action, and closing the loopholes that violators have been frequently using so far.

The Act provides for preventive measures in advance by entities concerned if there is air pollution in Singapore caused by fire *that is likely to move in the direction of Singapore*. A notice in writing to prevent, mitigate or control the fire will be issued, and failure to comply attracts a fine of up to SGD50,000 per day to a maximum SGD2 million.

More than the criminal (maximum fine of SGD2 million) and civil liability (no cap on damages), entities will be greatly concerned of the reputational risks to their core business and image, which arises the moment they are charged under the Act.

The Singapore Act induces entities to be more truthful upfront in their claims of sound environmental management practices and challenges if they are to rely on the defence of a *grave natural disaster or phenomenon* causing haze. It also tightens the defence of shifting blame to other persons.

However, the Act would not be an appropriate tool to use against small holders and farmers, who can collectively cause transboundary haze. They need to be assisted with locally adapted small farm

equipment, on a cooperative or community basis, to prepare their land without fire. Such equipment can also assist the community as the front line of attack to better control initial fires in their surroundings, than to expect them to swat fires by hand.

Governments should be better prepared with pre-mobilised necessary resources and appropriate equipment to put out fires in remote, inaccessible and difficult terrains as soon as the dry season starts. Urban fire-fighting equipment and methods does not work in these areas.

### **Silver Lining?**

Dr. Vivian Balakrishnan, Singapore's minister responsible for the environment has reiterated the Act is "no silver bullet". He further added that there will be challenges faced. Certainly he is being very frank and realistic in order to manage public expectations expecting immediate or even short-term relief.

Sustained and enhanced coordinated preventive action among governments and entities will certainly address many of the challenges faced, including of course in tackling the root causes focusing on sustainable management of fire-prone peatlands.

Singapore's Act has taken on a novel and bold legal approach on the transboundary haze issue. It could well pave the way for governments to act decisively on the greater global threat of climate change.

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