

SINGAPORE'S TRANSBOUNDARY HAZE POLLUTION ACT 2014

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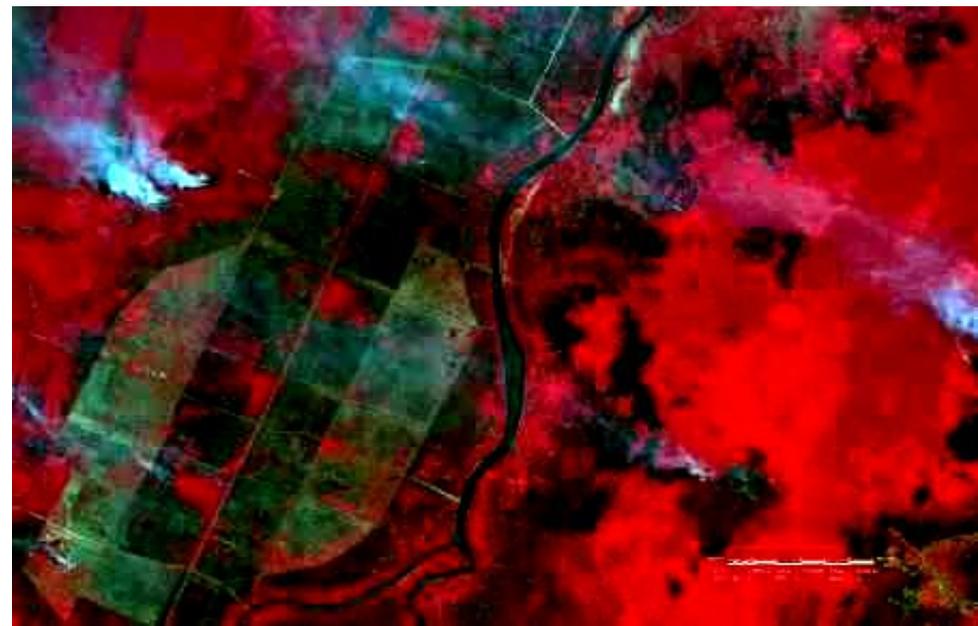
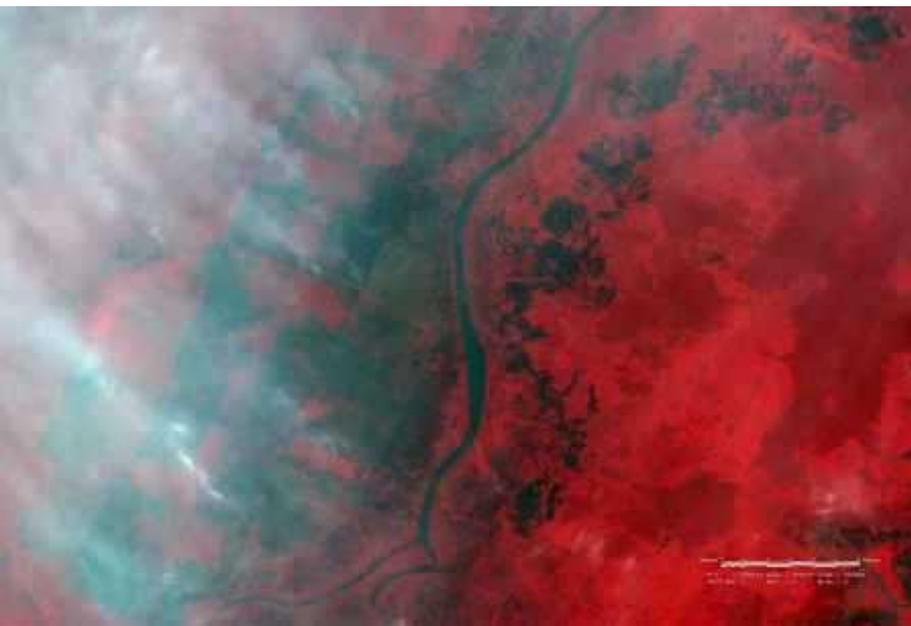
Causes of Fires and ‘Haze’

Plantations or Local Communities?

The 2002 ASEAN Agreement

Why are the Maps so Crucial?

**Singapore’s 2014 Transboundary Haze
Pollution Act**



New 2014 Transboundary Haze Pollution Act

Rebuttable presumptions:

1. If maps show company owns/occupies land, so presumed.
2. When a bad haze occurs in Singapore and satellite evidence shows that at or about the time, there are fires on that land in question causing smoke that is moving in Singapore's direction, it shall be presumed that the haze in Singapore involves smoke resulting from that fire on that land. Irrelevant if there are other fires from other nearby/adjacent lands.

Rebuttable presumptions:

3. Third, it shall be presumed that the company that owns or occupies that land has engaged in conduct, or engaged in conduct that condones any conduct by another, which caused or contributed to that haze pollution in Singapore

Subsidiaries/related companies

Further, the Act extends liability to any entity that (i) participates in the management of another (second) entity, and (ii) that second entity engaged in conduct, or engaged in conduct that condones any conduct by another, which caused or contributed to any haze pollution in Singapore.

It shall be presumed, until the contrary is proved, that the first entity also did engage in conduct, or did engage in conduct that condones any conduct by another, which caused or contributed to that haze pollution in Singapore.

Penalties:

Fine of up to S\$100,000 (about US\$70,000) for every day of haze pollution.

Additional fine of up to S\$50,000 (US\$35,000) for every day of failure to comply with any preventive measures notice

Total not to exceed S\$2 million (US\$1.4 million)

Also, civil action possible

The civil damages recoverable will be determined by the courts based on evidence of personal injury, physical damage or economic loss (latter is important ... hotels, tourist attractions etc!)

The first presumption on ownership/occupation is problematic

Source and accuracy of maps? What if contested?

Reality on the ground: concession boundaries not clear.
Contradictory maps issued by different agencies.

Even if boundaries clear, encroachment by local communities is common, often due to overlapping claims and “land grabs” by local authorities.

Ownership/occupation concepts unclear in Indonesia

Rights falling short thereof? Rights to a harvest?

Sub-contracting problem? Common, mandated by law.

More fundamentally, extra-territorial prosecution by Singapore cannot be a long-term solution

Still requires “on the ground” enforcement by Indonesia - needs co-operation of central and local governments in Indonesia.

The role of the prosecution and courts in Indonesia to deal with the problem effectively – this is absolutely critical!