

# Requesting the Construction Suspension and Submitting the Environmental Impact Assessment Report<sup>\*</sup>

Supreme Administrative Court Judgment No. A. 977/2561, dated 5<sup>th</sup> October B.E. 2561 (2018)

*Plaintiffs No.1 - 16*

v.

*Mayor of Ubon Ratchathani (D1)*

*The Municipality of Ubon Ratchathani (D2)*

Pursuant to the Notification of the Ministry of Natural Resources and Environment on Projects, Undertakings, or Operations Required to Provide an Environmental Impact Assessment Report and Rules, Procedure, and Conditions in Providing an Environmental Impact Assessment Report, dated 16<sup>th</sup> June B.E. 2552, any building which was located by a riverside has to submit the Environmental Impact Assessment (EIA) report. In addition, riverside in this Notification only means the ground along either side of a river not including areas near a river. In this case, a fresh market and OTOP shopping center was not located by the riverside. Therefore, the project was not subjected to submit the EIA report. The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance holding that the Defendants did not have to submit such report and they did not neglect their duties.

**Legal Principles:** *Negligence of Official Duty*

**Administrative Court Procedure:** *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) : Section 9 paragraph one (2) and Section 42 paragraph one*

**Legal Provisions:** *Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 67 Paragraph two*  
*Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992), Section 46*  
*Notification of the Ministry of Natural Resources and Environment on Projects, Undertakings, or Operations Required to Provide an Environmental Impact Assessment Report and Rules, Procedure, and*

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<sup>\*</sup> Summarized by Thirat Porntawesub, Bachelor of Laws (LL.B., 2nd Class Honour), Chulalongkorn University, Master of Laws (LL.M.), George Washington University, United States of America, Administrative Case Official, Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

*Conditions in Providing an Environmental Impact Assessment Report,  
dated 16<sup>th</sup> June B.E. 2552*

### **Judgment (Summary)**

The Plaintiffs claimed that they were inhabitants and members of the municipality of Ubon Ratchathani, the Defendant No. 2. In B.E. 2549 (2006), the Defendant No. 2 by the Defendant No. 1, the Mayor of Ubon Ratchathani, constructed a fresh market and OTOP shopping center located near Moon River. The Plaintiffs explained that the building was a large 4-story with a total area of more than 20,000 square meters and more than 23 meters in height; therefore, the Defendants had to submit the Environmental Impact Assessment (EIA) report and build a wastewater treatment system before starting the project. In the Mid of B.E. 2552 (2009), the Defendant No. 1 appointed the Defendant No. 2 to consult Ubon Ratchathani Provincial Offices for Natural Resources and Environment about such issues. After consulting, the Office suggested that the Defendant No. 1 should submit the report and build a wastewater treatment system. Nevertheless, the Defendant No.1 denied such suggestion by arguing that the undertaking did not fall within the scope of the EIA conducting requirement. The Plaintiffs claimed that the Defendants neglected their duties to submit the report which would cause serious damage to Moon River. Thus, the Plaintiffs brought this case to the Administrative Court seeking the construction suspension and ordering the Defendants to submit the EIA report.

The Supreme Administrative Court held that the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) has authorized the Office of Natural Resources and Environmental Policy and Planning to decide whether a project should submit the EIA report. According to the fact, the Office had already confirmed by a letter stating that the building of the Defendants did not fall within the scope of Section 42 of the Act because the location of the market and the shopping center was not near Moon River. The Court found that there was a road between Moon River and the plan so the Court agreed with the Office's opinion. In addition, the building had a wastewater treatment system and there was no complaint from inhabitants about a serious impact on natural resources, quality environmental, and health of this community since the beginning of the project. Therefore, it could not conclude that the construction of the fresh market and OTOP shopping center may directly or indirectly impact natural resources, environmental quality, and health subjected to submit the EIA report under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 67 Paragraph two.

The Plaintiffs appealed that a definition of riverside in the Notification of the Ministry of Natural Resources and Environment on Projects, Undertakings, or Operations

Required to Provide an Environmental Impact Assessment Report and Rules, Procedure, and Conditions in Providing an Environmental Impact Assessment Report, includes areas near a river. The Court held that such meaning could be interpreted as the Plaintiffs claimed unless this Notification provides the definition. Thus, the riverside in this Notification only means the ground along either side of a river. In this case, the market and the shopping center were located at least 18 meters away from the river. Besides, there were the 18-meter wide road, a dam, and a walkway between the plan and the river. Accordingly, this project was not located by the riverside and was not subjected to submit the EIA report pursuant to such Notification. As a result, the Court concluded that even though the Defendants did not submit the report before starting the construction, they did not neglect their duties. The Supreme Administrative Court affirmed the Administrative Court of First Instance decision holding that although the Defendants did not submit such report, they did not neglect their duties.