

The Criteria of EIA Process and Principle of Proportionality *

Supreme Administrative Court Judgment No. A. 244/2553, dated 15th September B.E. 2553 (2010)

Mr. P. (P1) et al. v. Subdistrict Administrative Organization of Kham Muang (D1) the Subdistrict Municipality of Nam Phong (D2), and Subdistrict Municipality of Khao Suan Kwang (D3)

The projects or activities which may cause serious effect on the quality of environment shall not be operated, unless there was the study and evaluation of environment, equipped with the advisory opinions of independent organization, as provided by law, according to Section 56 of Constitution of the Kingdom of Thailand, B. E. 2540 (1997). The project of waste disposal plant under the cooperation of the three Defendants without conducting the Environmental Impact Assessment (EIA) was not against the law since there was no specific law to apply therewith. The public participation was already conducted in the Initial Environmental Evaluation (IEE) process managed by the Defendants, according to Section 59 of Constitution, B. E. 2540 (1997). The waste disposal project was also more beneficial to the public interest than that of the Plaintiffs. Therefore, the waste disposal project operated by the Defendants was not unlawful.

Legal Principles : *The Criteria of EIA, Principle of Proportionality*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure, B. E. 2542 (1999) : Section 9 paragraph one (1)*

Legal Provisions : *Constitution of the Kingdom of Thailand, B. E. 2540 (1997) : Section 56 paragraph 2, and Section 59*

The Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (NEQA 1992) : Section 46 paragraph 1, Section 48, and Section 49

Notifications of the Ministry of Science Technology and Environment Re: Specifying Conditions, Procedures and Guidelines for Preparing Reports on Environmental Impact Assessment for Government, State Enterprise, and Private Projects or Activities

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Judgment (Summary)

As a group of people living in Kham Muang Subdistrict, Khao Suan Kwang District, Khon Kean Province, the Plaintiffs claimed that they might be inevitably aggrieved or injured from the project of waste disposal plant under the cooperation of the Defendant No.1, the Defendant No. 2, and the Defendant No.3. The location of waste disposal plant was in Kham Muang Subdistrict under the jurisdiction of the Defendant No.1. The Plaintiffs objected the construction of the waste disposal plant because the plant could obstruct the watercourse which was natural source for people consumption and cause air pollution. Even though there was the Initial Environmental Evaluation (IEE) in order to assess environmental impact and seek preventive measure in mitigating impact caused by the project, the IEE report managed by the Defendants was in brief, without the approval from the authorized agency - Policy and Planning Bureau. Moreover, the Defendants decided to approve the waste disposal project without conducting EIA report together with advisory opinions of independent organization, and the public hearing against Section 56 paragraph 2 and Section 59 of Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The project of waste disposal plant of the Defendants was unlawful.

The Supreme Administrative Court held that according to Section 56 paragraph 2 of Constitution of the Kingdom of Thailand, B.E. 2540 (1997), any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, as provided by law. At the time of the case filing, however, there was no such specific law to specify the standard of EIA process and identify the independent organization to provide opinions over such project or activity. Moreover, the Notifications of the Ministry of Science Technology and Environment issued under Section 46 of the Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (NEQA 1992) specifies projects or activities required to conduct EIA report; the project of waste disposal plant did not fall within the criteria of the Notifications. The location of the plant was not situated within the area where the cabinet resolution requires EIA report to be conducted. Also, the public survey conducted during the IEE process was deemed as the public hearing process according to Section 59 of the Constitution, B.E. 2540 (1997). The waste disposal project has an objective to improve the waste disposal management for better sanitary standards and environmentally friendly conditions; then, the public interest outweighed the damage to the Plaintiffs. The waste disposal project under the cooperation of the Defendants was lawful and shall not be revoked.