

**REPORTING AND DISCLOSING THE POLLUTION
INFORMATION UNDER THE FACTORY
ACT B.E. 2535**

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Abstract

The objective of this thesis is to study the issue of the reporting and disclosing of pollution information and related problems. In particular, this thesis will focus on comparing Thailand's existing laws with the concepts and legal controls of reporting and disclosing pollution information under United States law and Japanese law. An investigation is also conducted into the problems and hindrances relating to the enforcement of these laws. This includes looking at ways to improve the requirements of the law for reporting and disclosing pollution information so that better prevention and problem-solving can be effectively implemented.

The study found that the industrial factory sector is governed by the Factory Act B.E. 2535 (1992) which is the relevant law to enforce the reporting of pollution information. However, this law does not effectively allow for prevention and problem solving. This could be a result of the restrictions of the scope of the law and the lack of sanctions found in it. Another issue is that the existing laws only enforce the reporting of pollutants that are released into the air and water. The reporting of pollutants released into the soil is done according to the Ministerial Regulation of Controlling on Soil and Groundwater Contamination Criteria within Factory Act B.E. 2559 (2016). This was recently been enacted on April 29, 2016 by the virtue of the provisions in Section 6 Paragraph 1 and Section 8 (4) - (8) of Factory Act B.E. 2535 (1992). However, this regulation stipulates only that industrial factories must report information of soil and groundwater contamination criteria within the factory area, not outside the factory area. Additionally, on disclosing pollution information, there are no laws under Factory Act B.E. 2535 (1992) to disclose pollution information to the public. There is only the Official

Information Act B.E. 2540 (1997) which requires that the government agencies disclose information to the public. However, disclosing or accessing such information is limited to information that is in the possession of the government agency or state enterprises. This does not include the information that is in the possession of factories in the private sector. This is a big problem because people need to access this information in order to protect themselves from the dangers of pollutants.

Therefore, this thesis will amend Ministerial Regulation of Controlling on Soil and Groundwater Contamination Criteria within Factory B.E. 2559 (2016) which is the subordinate legislation of Factory Act B.E. 2535 (1992) to enforce that industrial factory reports the pollution information which is contaminated into the soil and groundwater within factory area, and covering outside factory area. Moreover, it should enact a new subsection of Section 8 of Factory Act B.E. 2535 (1992) to directly force industrial factories in the private sector to disclose their pollution information to the public or give the public the right to access the environmental information and pollution information of the industrial factory.

Keywords: Report, Disclosure, Pollution, Pollutant, Information, Environment

บทคัดย่อ

วิทยานิพนธ์นี้มุ่งศึกษากฎหมายที่เกี่ยวข้องกับการรายงานและเปิดเผยข้อมูลพิษ รวมถึงปัญหาอื่นๆ โดยมุ่งเน้นที่ขั้นตอนการรายงานและเปิดเผยข้อมูลพิษของประเทศไทยที่มีอยู่ในปัจจุบัน กับกฎหมายการรายงานและเปิดเผยข้อมูลพิษของประเทศไทยรัฐอเมริกาและประเทศไทย โดยจะศึกษาถึงปัญหาและอุปสรรคที่เกี่ยวกับการบังคับใช้กฎหมาย รวมถึงมุ่งหาแนวทางในการปรับปรุงและพัฒนากฎหมายที่เกี่ยวข้องกับการรายงานและเปิดเผยข้อมูลพิษของประเทศไทย ทั้งนี้ เพื่อเป็นการป้องกันและแก้ไขปัญหาที่เกิดขึ้น ได้อย่างมีประสิทธิภาพ

จากการศึกษาพบว่า พระราชบัญญัติโรงงาน พ.ศ. 2535 ซึ่งเป็นกฎหมายที่เกี่ยวข้องกับการรายงานข้อมูลพิษของ โรงงานอุตสาหกรรม ยังไม่มีประสิทธิภาพในการบังคับใช้อย่างเพียงพอ จึงทำให้ไม่สามารถป้องกันและแก้ไขปัญหาที่มีอยู่ได้ในปัจจุบัน ดังเช่น ในปัจจุบันกฎหมายไทยครอบคลุมถึงการรายงานข้อมูลพิษที่ถูกปล่อยจากโรงงานอุตสาหกรรมในกรณีของน้ำและอากาศเท่านั้น ส่วนในกรณีของการรายงานข้อมูลพิษที่ปะปนในดินและน้ำได้ดินน้ำ กฎกระทรวงควบคุมการปะปนในดินและน้ำได้ดินภายในบริเวณโรงงาน พ.ศ. 2559 ซึ่งประกาศเมื่อวันที่ 29 เมษายน พ.ศ. 2559 โดยอาศัยอำนาจตามความในมาตรา 6 วรรคหนึ่ง และมาตรา 8 (4) – (8) แห่งพระราชบัญญัติโรงงาน พ.ศ. 2535 เพิ่งกำหนดให้ผู้ประกอบกิจการโรงงานมีหน้าที่ตรวจสอบและรายงานผลการปะปนในดินและน้ำได้ดินภายในบริเวณโรงงานเท่านั้น ซึ่งการรายงานดังกล่าวซึ่งไม่ครอบคลุมถึงตรวจสอบและรายงานผลการปะปนในดินและน้ำได้ดินภายนอกบริเวณโรงงานด้วย นอกจากนี้ ในปัจจุบันภายใต้พระราชบัญญัติโรงงาน พ.ศ. 2535 ยังไม่มีการบังคับให้มีการเปิดเผยข้อมูลพิษต่อสาธารณะ มีเพียงพระราชบัญญัติข้อมูลข่าวสารของราชการ พ.ศ. 2540 ที่กำหนดให้หน่วยงานของรัฐมีหน้าที่ในการเปิดเผยข้อมูลสิ่งแวดล้อมเฉพาะที่อยู่ในความครอบครองของหน่วยงานรัฐต่อสาธารณะเท่านั้น โดยไม่ครอบคลุมถึงข้อมูลที่อยู่ในความครอบครองของเอกชนด้วย ซึ่งสิ่งเหล่านี้ถือได้ว่าเป็นปัญหาที่สำคัญอันเป็นการขัดขวางสิทธิการรับรู้และเข้าถึงข้อมูลข่าวสารของประชาชนในการที่จะป้องกันตนออกจากภัยอันตรายของสารพิษที่อยู่รอบตัว

ดังนั้น วิทยานิพนธ์นี้จึงมุ่งเสนอให้มีการแก้ไขกฎหมายตรวจความคุ้มการปนเปื้อนในดินและน้ำ ให้ดินภายในบริเวณโรงงาน พ.ศ. 2559 ซึ่งเป็นกฎหมายที่อ้าศัยอำนาจแห่งพระราชบัญญัติโรงงาน พ.ศ. 2535 โดยมีวัตถุประสงค์ให้ผู้ประกอบกิจการ โรงงานมีหน้าที่ต้องตรวจสอบและรายงานผลการ ปนเปื้อนในดินและน้ำให้ดินภายในบริเวณ โรงงาน และให้ครอบคลุมถึงบริเวณนอกโรงงานด้วย นอกจากนี้ ยังเสนอให้มีการเพิ่มอนุมาตรานามาตรา 8 แห่งพระราชบัญญัติโรงงาน พ.ศ. 2535 โดย บังคับให้ผู้ประกอบกิจการ โรงงานมีหน้าที่ในการเปิดเผยหรือให้สิทธิประชาชนสามารถเข้าถึงข้อมูล สิ่งแวดล้อมและข้อมูลพิยของโรงงานได้โดยตรงอีกด้วย

คำสำคัญ: การรายงาน, การเปิดเผย, มวลพิษ, สารพิษ, ข้อมูล, สิ่งแวดล้อม

Introduction

Nowadays, many industrial factories are established around the world and tons of their pollutants are released. This affects the health of our water, land and air every year. These pollutants have severe impacts upon people who live near the source of the pollution and may cause serious health problems. Moreover, it can also have an adverse effect on wildlife and the environment.

Therefore, reporting and disclosing the amount of pollution released from the industry factory is particularly important if there is an accident or emergency, such as an explosion or a factory leak of hazardous chemicals. If the public is aware of the aforementioned information, it will benefit because this information will protect their own health from pollution as well as make them aware of the dangers of pollutants that can affect animals and the environment around us. At the same time, the government is able to use the information as a tool in managing and controlling the release of pollution at source. This will help enforce the appropriate policies to manage and control the release of pollutants that is appropriate in cooperation with every sector that contributes to sustainable development activities in the future.¹

Advantages of Reporting and Disclosing Pollution Information

1. Government Sector

The state agency can use the pollution information in estimating the rate of risks that will occur and the effect on people, animals and the surrounding environment in case of an accident or emergency, such as an explosion or a factory leaking hazardous chemicals which cause contamination in the environment.² Apart

¹ Journal of Environmental Management, “*PRTR: Measures of Management and Control Pollution Problems*”, file:///C:/Users/sony/Downloads/26420-58327-1-SM.pdf (last visited Apr 17, 2016).

² Developing Team of Manual of PRTR Assessment for Chemical and Petrochemical Industrial in Thailand, “*Manual of PRTR Assessment for Chemical and Petrochemical Industrial in Thailand*”,

from this, reporting and disclosing pollution information has benefits for state agencies when monitoring the situation and progress in the release of substances or contaminants that exceed the standard. This will lead to reducing the amount of pollutants to within a safe threshold.³

2. Industrial Sector

Reporting and disclosing pollution information provides an opportunity for the factory operator to demonstrate his sincerity, responsible nature and to reassure the public and society.⁴ This is a way for the factory operator to acquire good standing in society. It also makes it possible for industry to coexist with the community peacefully. It also allows the factory operator to become aware of the chemicals used in their business operations. They will be able to ensure they are used according to required standards and not negatively affecting the environment through the contamination with pollutants in quantities that exceed the threshold. It is also a way of enhancing the standard of care and good business operation.⁵

3. Private Sector

Reporting and disclosing pollution information makes the public aware of the significance of released pollution around them and allows it to easily access information on pollutants and harmful chemicals that have been released into the environment.⁶ As a result, people who live close to the industrial factory areas will be able to carefully and adequately take control of protecting

<http://www2.diw.go.th/env/admin/Chem-Petrochem.pdf> (last visited Apr 14, 2016)).

³ Project Development in the legal of reporting and disclosing the pollution information to the public, “*Advantages of reporting PRTR*”, <http://www.learnprtr.net/index.php?lay=show&ac=article&Id=539649252&Ntype=9> (last visited Apr 14, 2016).

⁴ Developing Team of Manual of PRTR Assessment for Chemical and Petrochemical Industrial in Thailand, *supra* note 2.

⁵ Journal of Environmental Management, *supra* note 1.

⁶ *Id.*

themselves in their daily lives.⁷ In the event of an incident or an emergency situation, these people will also be able to effectively and appropriately deal with the problem.

Reporting and Disclosing the Pollution Information under United States law

In 1986, the US Congress approved the U.S. Emergency Planning and Community Right-to-know Act (EPCRA). EPCRA is part of the Superfund Amendments and Reauthorization Act of 1986 (SARA), also known as SARA Title III. EPCRA has established requirements for the industrial sector to plan for emergencies, as well as ordering compliance with the Community Right-to-Know reporting and disclosing on pollutant emissions as required by the government. The Community Right-to-Know provision is aimed at protecting the public in the event of a release of dangerous substances. It is also aimed at encouraging and supporting increased public awareness and access to information such as information on the presence of chemicals in the communities, releases of chemicals and waste management activities involving chemicals. This provision provides the public with the fundamental "right-to-know" of information pertaining to hazardous substances that have been released into the environment by industrial factories.⁸

This Act is divided into 2 parts:⁹ emergency planning and notification, and community right to know.

1. Emergency planning and notification (Sections 301-304)

⁷ PRTR, “*Advantages of PRTR*”, http://prtr.pcd.go.th/inner_3.html (last visited Dec 13, 2015).

⁸ Sidney M. Wolf, **Pollution Law Handbook : A Guide to Federal Environmental Laws** (The United States of America, Quorum Books, 1988).

⁹ อัชชา สงเมือง, ลักษณะการเข้าถึงข้อมูลสิ่งแวดล้อมในความครอบครองของเอกชน, (วิทยานิพนธ์นิคิศาสตร์ มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2557) (Atcha Songjaroen, **Right of Access to Environmental Information Held by Private Sector**, Master of Laws Thesis, Faculty of Laws Thammasat University, 2014).

This law requires that the government and community who live around industrial factories prepare for emergency situations which may result from the release of chemical substances.

2. Community right to know (Sections 311-313)

Under this law, the public is given the right to access information about chemicals used and emissions that are released by factories with no intervention from the government.¹⁰

The industrial factories which release, use or produce chemical substances, known as pollution, into the natural environment during their business operations have a duty to report their annual emissions of chemicals according to type, presence and quantity of hazardous chemicals to the U.S. Environmental Protection Agency (U.S. EPA)¹¹ and the appropriate state or tribe by July 1st of each year.¹² When a report is created, the U.S. EPA will publish preliminary information in Toxics Release Inventory (TRI) form¹³ in late July. The TRI data will be analyzed and national reports will be prepared and published by December of each year. The TRI data at the state level is a function of that state, the state publishes data to the public through specific, already established sites. All states have individual systems for publishing TRI data which are only used in that state.¹⁴

However, there are the sanctions in case that the industrial factory does not comply with reporting requirements, as follows:¹⁵

I. Where an industrial factory does not comply with reporting requirements, civil and administrative penalties of \$10,000 to \$75,000 per violation or per day per violation will be applied.

¹⁰ *Id.*

¹¹ The Emergency Planning and Community Right-to-Know Act, Section 311 and 312.

¹² Project Development in the legal of reporting and disclosing the pollution information to the public, “*Toxic Release Inventory : PRTR system in U.S.A*”, http://www.learnptr.net/index.php?_lay=show&ac=article&Id=539650144&Ntype=11 (last visited Jan 5, 2016).

¹³ The Emergency Planning and Community Right-to-Know Act, Section 313.

¹⁴ Project Development in the legal of reporting and disclosing the pollution information to the public, *supra* note 12.

¹⁵ *Id.*

II. Where an emergency release notification is knowingly and willfully not provided, there are criminal penalties up to \$50,000 or 5 years in prison.

III. If any person knowingly and willfully discloses information that is entitled to protection as a trade secret, there are penalties not more than \$20,000 and/or up to one year in prison.

Reporting and Disclosing the Pollution Information under Japanese law

The Environment Agency of Japan (presently the Ministry of the Environment) currently concerned about protecting against future environmental risk and emissions from chemical substances. This concern has caused the Environment Agency of Japan to enact the Act on Confirmation, etc. of Release Amounts of Specific Chemical Substances in the Environment and Promotion of Improvements to the Management Thereof or “PRTR System”.¹⁶

The Pollutant Release and Transfer Register (PRTR) aims to support reducing pollution from the release of chemical substances and preventing any obstacles to the preservation of the environment by taking measures to ensure that releases and transfers of pollution and chemical substances into the environment are reported and disclosed.¹⁷ PRTR is a scheme that requires the factory operator¹⁸ who release, use or produce chemical substances, known as pollution, into the natural environment during their business operations to have a duty to manage and report the amounts of the hazardous chemical substances which are released into the air, water or soil¹⁹ and

¹⁶ Ministry of the Environment Government of Japan, “*Background to Japanese PRTR*”, <https://www.env.go.jp/en/chemi/prtr/about/index.html> (last visited Dec 7, 2015).

¹⁷ Ministry of the Environment Government of Japan, “*Overview of the PRTR system*”, <https://www.env.go.jp/en/chemi/prtr/about/overview.html> (last visited Dec 1, 2015).

¹⁸ Ministry of Economic, Trade, and Industry, “*Outline of the PRTR system*”, http://www.meti.go.jp/policy/chemical_management/english/files/PRTRsystem.pdf (last visited Dec 1, 2015).

¹⁹ “**Release**” means the emission into the environment (e.g. air, water, soil, and landfill).

transfer²⁰ to their regional or municipal governmental authorities.²¹ The factory operator shall submit a PRTR notification from April 1st to June 30th every fiscal year.²²

When the factory operator reports in a PRTR notification, the Ministry of the Environment and the Ministry of Economy, Trade and Industry will work together in collecting and sorting the reported information. This information will then be released as a public announcement. The PRTR notification, which is information regarding pollution, is also disclosed on the PRTR website which is looked after by the National Institute of Technology and Evaluation (NITE),²³ the Ministry of the Environment website (<http://www2.env.go.jp/chemi/prtr/prtrinfo/e-index.html>), and the Ministry of Economy, Trade and Industry website (http://www.meti.go.jp/policy/chemical_management_law/prtr/6.html).²⁴

However, in case that the industrial factories fail to give a notification, have given a false notification, have failed to make a report, or have made a false report, they will be liable for the payment of a fine not more than 200,000 yen.²⁵

²⁰ “**Transfer**” means the disposal as sewage or waste.

²¹ Environment Economic and Policy Studies, “*First inventory of pollutant release and transfer register in Japan*”, <http://link.springer.com/article/10.1007%2FBF03353931#page-2> (last visited May 21, 2016).

²² *Id.*

²³ ChemSafetyPro, “*PRTR Law in Japan*”, http://www.chemsafetypro.com/Topics/Japan/Japan_PRTR_Law.html (last visited Dec 6, 2015).

²⁴ Project Development in the legal of reporting and disclosing the pollution information to the public, “*PRTR system in Japan*”, <http://www.learnprtr.net/index.php?lay=show&ac=article&Id=539650355&Ntype=18> (last visited May 21, 2016).

²⁵ Act on Confirmation, etc. of Release Amounts of Specific Chemical Substances in the Environment and Promotion of Improvements to the Management Thereof, Article 24.

Reporting and Disclosing the Pollution Information under Thai law

The Factory Act B.E. 2535 (1992) is to control the industrial operations regarding pollution emissions, contamination and disposal of waste by industrial factories. The main objective is to minimize the environmental impacts of factory waste and emissions.²⁶

According to the Factory Act Section 8 (7) of Factory Act B.E. 2535 (1992)²⁷ and Ministerial Regulation No. 3 B.E. 2535 (1992) issued pursuant to the Factory Act B.E. 2535 (1992), the industrial factory that adversely impacts the environment shall keep a record on inspection of efficiency of pollution control system, analysis of pollutants in pollution control system, and environmental quality examination and report such information in accordance with the form and method prescribed²⁸ by the Notification of Ministry of Industry regarding preparation of type and quantity of pollutants discharged from a factory B.E. 2558 (2015). This notification provides that the industrial factories²⁹ have a duty to report on the type and amount of pollutants emissions into the water and air.³⁰ The report does not specify the reporting of emissions into the ground or other channels that emissions can take at all. The industrial factories are required to submit the report according to the specifications made by the Department of Industrial Works as follows:³¹

²⁶ วรารณ์ จันโธ, ปัญหามาตรการทางกฎหมายเกี่ยวกับมลพิษทางดินจากภาคอุตสาหกรรม (วิทยานิพนธ์มินิสเตอร์ มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2554) (Waraporn Janoh, **Problems on Legal Measure relating to Soil Pollution arising from Industrial Sector**, Master of Laws Thesis, Faculty of Laws Thammasat University, 2011).

²⁷ Factory Act B.E. 2535 (1992), Section 8.

²⁸ Ministerial Regulation No. 3 B.E. 2535 (1992) issued pursuant to the Factory Act B.E. 2535 (1992), Clause 1 and Clause 4.

²⁹ Notification of Ministry of Industry regarding preparation of type and quantity of pollutants discharged from a factory B.E. 2558 (2015), Article 5.

³⁰ Notification of Ministry of Industry regarding preparation of type and quantity of pollutants discharged from a factory B.E. 2558 (2015), Article 4.

³¹ Notification of Department of Industrial Works Subject: Type or category of factory required to prepare a report of type and quantity of pollutants discharged from a factory B.E. 2559 (2016), Article 4.

I. RoWo 1 Form (when reporting information on water pollution and air pollution)³²

II. RoWo 2 Form (when reporting information on water pollution)³³

II. RoWo 3 Form (when reporting information on air pollution)³⁴

Industrial factories are required to submit a report to the Department of Industrial Works via an electronic system, as per the following:

- I. First round: The report covering pollution information from January to June must be submitted by 1st September of the year that the report is made.
- II. Second round: The report covering pollution information from July to December must be submitted by 1st March of the next year.³⁵

About the sanction, if any person violates or fails to comply with the measures stated under the ministerial regulations to inform the government from time to time or within a specific period of information relating to the operations in the industrial factory sector, the punishment shall be subject to a fine not exceeding 20,000 Baht.³⁶

However, in case of the soil pollution, the Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016) requires the factory operator³⁷ to monitor and report only the soil and groundwater contaminated within the

³² Department of Industrial Works, “*Manual of using type and quality of pollutants discharged from the industrial factory (RoWo.1, RoWo.2, RoWo.3, RoWo.3/I for the factory operator)*”, <http://hawk.diw.go.th/eis/manual-user.pdf> (last visited May 6, 2016)).

³³ *Id.*

³⁴ *Id.*

³⁵ Notification of Ministry of Industry regarding preparation of type and quantity of pollutants discharged from a factory B.E. 2558 (2015), Article 13.2

³⁶ Factory Act B.E. 2535 (1992), Section 46.

³⁷ Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 2.

industrial factory's area.³⁸ to the Department of Industrial Works within the timeline, as follows:.

1. If the industrial factory was established after the date that the Ministerial Regulation came into force³⁹

The factory operator must monitor the quality of soil and groundwater as well as writing a report about the condition of the soil and groundwater. The report shall be kept in the factory and shall be ready to be checked by the Department of Industry Works before starting operation.

The factory operator must monitor the quality of soil and groundwater for a second time after 180 days after the operation date has passed. Also, the factory operator must report on the results of this check to the Department of Industry Works or the Office of Local Industry where the factory is located within 120 days since the 180 days has passed. Also, the factory operator must submit the report in accordance with paragraph 1 to the Department of Industry Works or the Office of Local Industry where the factory is located as well.

2. If the factory was established before the date that the Ministerial Regulation came into force⁴⁰

The factory operator must monitor the quality of soil and groundwater within 180 days after the Ministerial Regulation has come into force and the factory operator must publish the results of his checks and submit it to the Department of Industry Works or the Office of Local Industry where the factory is located within 180 days from the first 180 days that passed.

The factory operator must monitor quality of soil and groundwater for the second time 180 days after the factory operator

³⁸ Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 2.

³⁹ Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 4.

⁴⁰ Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 5.

monitors them in accordance with paragraph 1. The report shall be submitted to the Department of Industry Works or the Office of Local Industry where the factory is located within 120 days from 180 days since the second monitoring passed.

3. If the period of time under I. and II has passed⁴¹

The factory operator must monitor the quality of the soil every 3 years and must monitor the groundwater every year. Also, the factory operator must write and submit the report to the Department of Industry Works or the Office of Local Industry where the factory is located within 120 days since the date that the factory operator monitored the soil or groundwater.

Monitoring to determine whether the soil and groundwater qualifies has to be done by private laboratories that are registered with the Department of Industry Works or private laboratories that it approves.⁴²

However, if the contamination of the soil or groundwater exceeds the standard, the industrial factory must publish a report that shows the solution and the measures to control and decrease the contamination so that it does not exceed the standard. The report shall be submitted to the Department of Industrial Works or the Office of Local Industry where the factory is located within 180 days from when it found the contamination to be above the standard. Moreover, the industrial factory must state in the report about the timeframe that the industrial factory can control the level of contamination.⁴³ Moreover, if any person violates or fails to comply with the measures stated under the ministerial regulations to inform the government from time to time or within a specific period of information relating to the operations in the industrial factory sector,

⁴¹ Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 6.

⁴² Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 7.

⁴³ Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016), Article 10.

the punishment shall be subject to a fine not exceeding 20,000 Baht according to Section 46 of Factory Act B.E. 2535 (1992).⁴⁴

In case the disclosure the pollution information to the public, there is only the Official Information Act B.E. 2540 (1997) assigned public authorities the responsibility to disclose information to the public with details. However, the information which is disclosed must be in the possession or control of a state agency, whether it is information on the operations of the state or information regarding the private sector.⁴⁵ It does not include the information in the possession or control of the industrial factory which is the private sector.

Conclusion and Recommendations

Relating to the duty to report pollution information come under the Factory Act B.E. 2535 (1992), this study found that the existing law does not sufficiently allow for prevention and resolution of problems due to the release and transfer of pollution. Factory Act B.E. 2535 (1992) only enforces the reporting of pollutants that are released into the air and water. In the case of the reporting of pollutants that are released into the soil, the Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016) stipulates only that industrial factories must report information of soil and groundwater contamination within the factory area, not covering outside factory area. Moreover, at present, the Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016) does not require a specific format and forms for the verified reporting on the quality of soil and groundwater contamination, and neither does it have a specific method of monitoring the quality of soil and groundwater nor a standard of the quantity needed to verify the quality of soil and groundwater contamination. Moreover, this regulation only lists 12 types of industrial factory which have a duty to provide a quality monitoring process and report on the soil and groundwater

⁴⁴ Factory Act B.E. 2535 (1992), Section 46.

⁴⁵ Official Information Act B.E. 2540 (1997), Section 4.

contamination to the Department of Industrial Works. However, in the present, many types of the industrial factory are causes or risk factors to be the soil pollution or the soil or groundwater contamination. Thus, there are more types of industrial factory which should have a duty to do this.

Furthermore, existing Thai laws do not hand out heavy enough punishments to force industrial factories to report their pollution information to the government or related authorities. These inadequate punishments may result in the factory operator neglecting or avoiding to report pollution information because they may feel that the reporting does not benefit their own operation activities and may even lead to extra unnecessary costs.

Additionally, there are no laws under the Factory Act B.E. 2535 (1992) which force the government or related authorities to disclose pollution information to the public. There is only the Official Information Act B.E. 2540 (1997) requiring that the government agencies disclose information to the public for acknowledgement. However, disclosing or accessing such information is limited to information that is in the possession of the government agencies or state enterprises. It does not include information that is in the possession of the factories which is the private sector. This means that the public may not have the opportunity to find out about or access this valuable information which is necessary for the many people who live near industrial factories to know, especially when an accident occurs. This is a big problem because they will therefore not be able to protect the community, manage the pollution risks or find methods to solve to problem.

Therefore, the author shall suggest some recommendations to solve these problems, as follows:

1. To amend the Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016) which is the subordinate legislation of Factory Act B.E. 2535 (1992) to force the industrial factory to report pollution information that occurs within the factory area, and covering outside factory area. Moreover, a new Notification under the Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559

(2016) should be enacted to limit the distance outside the factory area to report the soil and groundwater contamination because, if it does not have the limitation, it will be the exceeding cost for the industrial factory to do the report and the industrial factory may be avoid reporting such information.

2. To enact a new Notification under the Ministerial Regulation on Soil and Groundwater Contamination within Factory B.E. 2559 (2016) that specifies the format and forms for the verified report on the quality of soil and groundwater contamination, define the method of monitoring the quality of soil and groundwater, and define the standard of the quantity to verify the quality of the soil and groundwater contamination.

3. To amend Section 46 of Factory Act B.E. 2535 (1992) to enforce heavier punishments for the industrial factories who fail to accurately report their pollution information to the Department of Industry Works. A fine not exceeding 20,000 Baht may be inadequate punishment to force the factory operator to report his pollution information because the factory operator may feel that the reporting does not benefit his own operating activities and may even led to extra unnecessary costs. The factory operator may neglect or avoid to report the pollution information. A heavier punishment may include imprisonment (criminal penalty), a temporary suspension of operations or even revoking the license to operate the plants that have repeatedly ignored warnings to report and disclose the required information.

4. To enact a new subsection of Section 8 of Factory Act B.E. 2535 (1992) to directly force industrial factories in the private sector to disclose their pollution information to the public or give the public the right to access the environmental information and pollution information of the industrial factory without intervention from the government. This is necessary because the existing laws under the Factory Act B.E. 2535 (1992) only force industrial factories to report pollution information to the Department of Industry Works, and the

Official Information Act B.E. 2540 (1997) requires that the government agencies disclose information in the possession of the government agency or state enterprises for public knowledge. The problem to be overcome is that this does not include information that is in the possession of factories in the private sector. However, it should enact a new Ministerial Regulation under the Factory Act B.E. 2535 (1992) to determine the disclosure method to the public.

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