

Hazardous Substance Act (No.2), B.E. 2544 (2001)

Translation

Bhumibhol Adulyadej, Rex.

Given on the 9th day of November B.E. 2544;

Being the 56th year of the Present Reign

His Majesty King Bhumibhol Adulyadej commands that it be proclaimed that:

Whereas it is expedient to amend the Hazardous Substance Law.

This Act contains some provisions about the limitation of the rights and freedom of a person, which Section 29 combined with Section 31 and Section 50 of the Constitution of the Kingdom of Thailand, prescribes to be permissible by virtue of legislation.

His Majesty therefore graciously grants that the Act be given by advice and consent of the Parliament as follows:

Section 1

This Act shall be called "Hazardous Substance Act (No.2), B.E. 2544 (2001)"

Section 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

To add the definition

"Chemical Weapons Ban Convention" between the "Label" and the "Committee" definitions in Section 4 of the Hazardous Substance Act, B.E. 2535 as follows:

"Chemical Weapons Ban Convention" means the convention on banning the development, production, amassing or use of chemical weapons and the destruction of these weapons entered on 13 January B.E. 2536."

Section 4

To add following statement as Section 15/1 of the Hazardous Substance Act, B.E. 2535

"Section 15/1

regarding the resolution given or opinion expressed by the Committee, approval granted by the in-charge-Minister pursuant to other law and announcement issued by the Minister of Industry or responsible minister, in order that it be in accordance with this Act, the Chemical Weapons Ban Convention and Treaty and Obligations among other countries shall be taken into consideration."

Section 5

To add following statement as Section 74/1 and Section 74/2 of Hazardous Substance Act, B.E. 2535

"Section 74/1

person who uses or supports the offence which is subject to a punishment pursuant to Section 73 or Section 74 regarding Kind 3 or Kind 4 of hazardous substance, which is a toxic chemical substance or a substance used for producing the toxic chemical substance specified in the Chemical Weapons Ban Convention pursuant to the announcement of the Minister of Industry in compliance with Section 18, shall be subject to the same punishment as the principal for such offence.

Section 74/2

In committing the offence pursuant to Section 73 or Section 74 regarding Kind 3 or Kind 4 of hazardous substance, which is a toxic chemical substance or a substance used for producing the toxic chemical substance specified in the Chemical Weapons Ban Convention pursuant to the announcement of the Minister of Industry in compliance with Section 18, if the offender is a Thai citizen and despite the offence is committed outside the kingdom, the offender must serve the punishment in the kingdom.

Such offender is barred from being again punished in the kingdom if:

- 1) the Court in foreign country has given a final verdict to release such person;
- 2) the Court in foreign country has given a verdict to punish and such person has served the sentence.

In case the convicted person has served the sentence for such offence pursuant to the verdict of the Court in foreign country and has not yet been freed from the punishment, the Court may give a sentence at any degree lesser than the one specified by law for such offence, or not give a sentence at all, considering from the sentence such person has served."

Countersigned by

Police Lieutenant Colonel Thaksin Shinawatra

Prime Minister

Published in the Government Gazette, Volume 118, Part 106A, dated 16 November, B.E. 2544

Note: The reason for the enactment of this act is:

Whereas Thailand is going to become a member of the Convention on the Ban of Chemical Weapons Development, Production, Amassing and Use and on the Destruction of These Weapons, which was made on January 13, A.D. 1993, which prescribes control measures on the production, obtainment, storage, use and transfer of toxic chemical substances and substances used to produce the toxic chemical substances specified in the Chemical Weapons Ban Convention in the territories of the member states and non-member state, including the requirement for the Parliaments to issue law with criminal punishment to apply to natural and juristic persons being in the territories or jurisdictions of the member states who commit acts of violation against the said measure and that the scope of law application be extended to cover the forbidden acts under the Chemical Weapons Ban Convention of natural persons having the nationality of the territories of the member states; it is expedient to amend the Hazardous Substance Act B.E. 2535 in the matter of the measure for the control of any act concerning the hazardous substances or toxic chemical substances used to produce the toxic chemical substances specified in the Chemical Weapons Ban Convention, and to prescribe penalty provisions in consistence with the commitment under the Chemical Weapons Ban Convention. Therefore, it is necessary to give this act.

The Ministerial Regulation (B.E. 2537)
Issued Pursuant to the Hazardous Substance Act B.E. 2535

By virtue of the provisions in Section 5, paragraph two; Section 23, paragraph two, and Section 27, paragraph two, of the Hazardous Substance Act B.E. 2535, the Minister of Industry issue a ministerial regulation as follows:

Section 1
The Application

Article 1

Any person intending to apply for permission to produce, import, export or have in possession a hazardous substance of the 3rd Kind shall submit an application together with 2 sets documents specified in the application form attached hereto;

The submission of the application under paragraph one shall be done to the agency in-charge of controlling that hazardous substance or another agency that the Minister in-charge prescribes by publishing in the government gazette.

If any application corroborating item is the same as the one that has been delivered to the competent official in the last application for permission to produce, import, export or have in possession a hazardous substance, the applicant may not deliver that item, unless the competent official issues an order to the contrary.

Article 2

The applications for permission shall be as follows:

- (1) The application for permission to produce a hazardous substance, use Form Wor Or 1;
- (2) The application for permission to import a hazardous substance, use Form Wor Or 3;
- (3) The application for permission to export a hazardous substance, use Form Wor Or 5;
- (4) The application for permission to have in possession a hazardous substance, use Form Wor Or 7;
- (5) The application for a renewal of the license, use Form Wor Or. 9.

Section 2
The Application Consideration Criteria

Article 3

When having received the application together with the documents and evidences, the competent official shall examine the same and issue the license according to the following procedure and period:

- (1) In case of the application for permission to produce a hazardous substance:
 - (a) When having received the application, he must inspect the location of the place of production, the place of storage, the machine, the correctness of the documents and prepare the inspection report within thirty days;

- (b) When having taken action according to (a), he must complete consideration within twenty days;
 - (c) He shall notify the applicant of the consideration result within ten days. In case of non-permission, he shall also give the applicant notice of the non-permission order together with the reason.
- (2) In case of the application for permission to import, export or have in possession a hazardous substance:
- (a) When having received the application, he must inspect the location of the place of storage, the correctness of the documents and prepare the inspection report within ten days;
 - (b) When having taken action according to (a), he must complete consideration within ten days;
 - (c) He shall give the applicant notice of the consideration result within ten days. In case of non-permission, he shall also give the applicant notice of the non-permission order together with the reason.

The periods under (1) and (2) shall be counted from the day in which the applicant has submitted the application together with the evidences for consideration in full, but the period in which the application considering agency orders the applicant to go to take final action or the period in which concurrence or permission or approval must be received from another agency prescribed by law or a procedure.

Article 4

If in any province there has already been designated an industrial zone under the town planning law, an industrial estate zone under the industrial estate law or an industrial park under the factory law, places of production of a hazardous substance using machines of fifty horsepower or more or having fifty workers or more or having a rate of use of a hazardous substance of five hundred kilogram or more per day must be located in the said zone or park; but if the zone or park concerned has an inadequate size or has condition unfit to use for the production of a hazardous substance or any province does not yet have the said zone or park designated, then places of production of a hazardous substance may be considered for locating outside the said zone or park.

In this regard, account shall be taken of the nature of business operation and the properties of the hazardous substance as a supplement.

Article 5

A hazardous substance production place must be located in a location that is suitable and safe for the transport of the hazardous substance, not cause any trouble, pollution or impact on the river, canal, public water source or natural and environmental conservation source, and must not be located in the following areas:

- (1) Within the distance of five hundred meters from the boundary of a royal place;
- (2) In the boundary of an allotted house or allotted land for residential purposes, row building or row house for residential purposes or residential apartment house;
- (3) In the boundary of a shopping center;
- (4) Within the distance of one hundred meters from the boundary of a public place, e.g. a school or educational institution, a temple or religious place, a nursing home, a historic site or a workplace of an agency of the state.

Article 6

A hazardous substance production place must have a vacant space around the buildings for the control and prevention of the occurrence of accidents by also taking account of the size

and the nature of business operation and the properties of the hazardous substance as a supplement.

Article 7

A hazardous substance production building that is a factory under the factory law must have additional characteristics as follows:

- (1) A building having a number of floors more than two floors must have at least one fire escape per floor and its installation must be permanent, firm and strong;
- (2) The building floor must be strong, not holding water or slippery, which might easily cause accidents and must not have the property of absorbing a hazardous substance. In case the production of a liquid hazardous substance, draining gutters and manholes of a suitable size must be made for the purpose of draining and storing up the hazardous substance;
- (3) The material used in its construction must be fitting to business operation according to the size and property of the hazardous substance, including not giving rise to a spread of fire.

Article 8

A hazardous substance production building not falling in with being a factory under the factory law must have the following characteristics:

- (1) The building must be strong, suitable and have a compound sufficient to carry on businesses related to the hazardous substance concerned;
- (2) It must have a suitable capacity of ventilation by having an aggregate space of doors, windows and vents without being successively counted between rooms not less than one tenth of the room space or having or ventilation capacity not less than 0.5 cubic meters per minute per worker;
- (3) It must have staircases that are strong and fitting in character, size and number to the building and business operation. The steps must not be slippery and have equal distances throughout the staircase, and for a passageway floor being 1.50 meters or more high from the ground level there must be a secure, strong and suitable railing. If the said building has a number of floor more than two floors, there must be at least one fire-escape per floor, which must be permanently installed and strong;
- (4) The building floor must be strong, not holding water or slippery, which may easily cause accidents, and must not have the property of absorbing a hazardous substance. In case of the production of a liquid hazardous substance, draining gutters and manholes of a suitable size must be made for the purpose of draining and storing up the hazardous substance that may spill or leak;
- (5) The material used in its construction must be suitable for business operation according to the size and property of the hazardous substance, including not giving rise to a spread of fire;
- (6) There is a hazardous substance storing place that is suitable, safe and proportionate.

Article 9

A hazardous substance storing place must be located in a location that is suitable and safe for the transport of the hazardous substance, does not cause any trouble, pollution or impact the on rivers, canals, public water sources or natural and environmental conservation sources. In this regard, account shall be taken of, the quantity, the characteristics and the condition of the hazardous substance, including the safety of the container of that hazardous substance as a supplement.

Article 10

A hazardous substance storage building, besides having to have the same characteristics as the hazardous substance production building under Article 7 or Article 8 as the case maybe, must have the following additional characteristics:

- (1) It must not cause any trouble, danger or damage to occur to people, animals, plants, property or environment;
- (2) It must have a specific hazardous substance storing place according to the property of the hazardous substance suitable in size and character for the kind and the quantity for which permission is applied for, including the availability of a compound sufficient to facilitate transport of the incoming/outgoing hazardous substance;
- (3) A building having each of its length and width running thirty meters or more must have excerpting or dividing walls made of a refractory material, which have a distance from wall to wall of at least every thirty meters for the purpose of preventing fire from spreading.

The statement in (3) shall not apply to having in possession a hazardous substance for use in working for wages, retail in a hazardous substance that is a finished product for direct distribution to the consumer or private utilization of a hazardous substance.

Article 11

To store a hazardous substance in an open place, the hazardous substance must be prevented from spilling or leaking in such a way that is suitable for the property of the hazardous substance and the size of business operation and capable of controlling the hazardous substance from spilling or leaking to the outside in case of the occurrence of an accident.

Article 12

The container storing a quantity of thirty thousand liters or more of a liquid hazardous substance must be strong and meet an accepted standard by bearing the certification of a controlled engineering profession practitioner or another person announced prescribed in the government gazette by the Minister in-charge.

In the case where the container under paragraph one is installed stationary or in the case where more than one such hazardous substance container are installed by being installed stationary in a group having a total of fifty thousand liters or more, the owner of the said containers must construct a concrete dam on all sides with a size capable of storing up all the quantity of hazardous substance according to the criteria and the process that the Minister in-charge prescribes by publishing in the government gazette in order to prevent the spilling or leakage of the hazardous substance efficiently in case of the occurrence of an accident.

Article 13

A container of a gaseous hazardous substance that is a pressure vessel must meet an accepted standard and be equipped with the necessary accessories and components according to the technical principle by bearing the certification of a controlled engineering profession practitioner or another person whom the Minister in-charge prescribes by publishing in the government gazette.

Article 14

To import, export or convey in transit a hazardous substance or do otherwise to a hazardous substance, account must be taken of international treaties and obligations.

Section 3 Permission

Article 15

For the licenses, use the following forms:

- (1) The hazardous substance production license, use Form Wor Or 2;
- (2) The hazardous substance import license, use Form Wor Or 4;
- (3) The hazardous substance export license, use Form Wor Or 6;
- (4) The hazardous substance possession license, use Form Wor Or 8.

Article 16

The hazardous substance production, import, export and possession licenses shall be issued for each product or each of the names of the hazardous substances under the Ministry of Industry Notice, Subject: The List of Names of Hazardous Substance, Issued Pursuant to Section 18, Paragraph Two, of the Hazardous Substance Act B.E. 2535.

The person who has already received the hazardous substance production, import or export license shall be exempted from being required to have the hazardous substance possession license.

Article 17

In the case where there is a reasonable ground, the competent official may at his discretion permit or prescribe any condition for the purpose of controlling hazardous substances and preventing hazards which may occur to human beings, animals, plants, possessions or environment.

Section 4

The Licensee's Duties

Article 18

The hazardous substance production, import, export and possession licensee must make available:

- (1) Emergency bathing places, emergency eye washing places according to necessity and appropriateness to the property of the hazardous substance and the size of business operation for the purpose of preliminary cleaning of the body when touching the hazardous substance;
- (2) Personal safety gears according to necessity and appropriateness to business operation, and there must be measures for maintaining such safety gears in orderly condition, ready to work efficiently all the time;
- (3) First-aid tools together with instructions on first-aids methods fit for the type of the hazardous substance and the size of business operation;
- (4) Various tools, materials and accessories for preventing, controlling, repressing or relieving accidents that may happen according to necessity and appropriateness to the type of the hazardous substance and the size of business operation, and there must be measures for maintaining such tools, materials and accessories in orderly condition, ready to work efficiently all the time.

The hazardous substance production licensee, in addition to having to take action according to Paragraph One, must also make available rooms for changing working uniforms and bathrooms for cleaning the body together with materials and accessories for workers according to necessity and appropriateness.

Article 19

The hazardous substance production, import, export or possession licensee who transports a hazardous substance must make available:

- (1) Conveyances suitable and safe for the transport of the hazardous substance;
 In the case where the hazardous substance is to be transported together with other things, the hazardous substance must be separated as a different part, which shall have a covering to prevent the spilling or leaking in case the container breaks or gets damaged;
 In the case where the hazardous substance container is affixed to the conveyance body, if the conveyance is a vehicle under the land transport law, it is subject to an inspection by the Department of Land Transport; if the conveyance is a ship under the Thai waters maritime law, it is subject to an inspection by the Harbor Department.
- (2) A symbol or sign showing the property of the hazardous substance being transported, including the word "hazardous substance" in clearly visible red letters stuck on both sides of the conveyance.
- (3) Personal safety gears suitable for the conveyance driver and devices for preventing potential accidents from spilling or leakage of the hazardous substance;
- (4) The document showing data on the safety of the hazardous substance being transported to show to the officer or competent official while transporting in case of the transport of the hazardous substance exceeding one thousand kilograms or one thousand liters;
- (5) A driver who is knowledgeable about the hazardous substance being transported by having passed training in how to prevent and repress hazards from hazardous substances;
- (6) The area for parking conveyances for transport must be large enough not to cause trouble for or pose an obstacle to the travel of the public. In this regard, account shall be taken of the size of the business, the characteristic of the container, the quantity and the type of the hazardous substance being transported. In the case where the hazardous substance is transfer-pumped or repacked in portions in the conveyance parking area, there must be devices for transfer-pumping, a preventive system against hazards from spilling or leakage and a suitable fire protection system.

The provision in Paragraph One does not apply to the transport of a hazardous substance that is a finished product for direct distribution to the consumer.

Article 20

In the case where refuse, pollution or anything is emitted from a hazardous substance production or storage place that has an environmental impact, the hazardous substance licensee must take action as follows:

- (1) Provide a well or tank for storing up waste water from business operation pending treatment or construct an efficient wastewater treatment system which can treat waste-water to have the quality according to the Ministry of Industry Notice on the discharge-of-waste water, which must not be the method of dilution;
- (2) Provide an efficient system of disposing of polluted air from business operation that can make the emitted air have a quality of contaminants not exceeding the prescribed value under the Ministry of Industry Notice on the quantity of contaminants in emitted air, which must not be the method of dilution;
- (3) For the destruction of hazardous substance containers, including remainder of a hazardous substance, a process suitable for the hazardous substance must be used, and those things shall not be destroyed in an area that may cause a hazard to occur to human beings, animals, plants, possessions or environment.

Article 21

For the purpose of preventing potential hazards to human beings, animals, plants, property and environment, the hazardous substance production or import licensee has the duty to conduct a study, a test or give information about potential hazards that may arise from hazardous.

When there is a reasonable ground, the competent official is empowered to order the hazardous substance production or import licensee to take action according to Paragraph One as an addition according to the circumstance.

Section 5

License Amendment and Renewal

Article 22

The hazardous substance production, import or export licensee who needs to amend or change the trade name of the hazardous substance, the manufacturer country, the specific expert or personnel responsible for production and storage shall submit a letter together with the old license granted and the relevant necessary document to the agency in charge of controlling that hazardous substance for the purpose of applying for the amendment or change.

In the case where the competent official deems it fit to allow the particular under Paragraph One to be amended or changed, he shall record the amendment or change in the license or issue a written permission to amend or change or issue a new license free of charge.

Article 23

The hazardous substance possession licensee who needs to amend or change the specific expert or personnel responsible for storage, the name of the hazardous substance possessed or the quantity of or space for possession of the hazardous substance shall submit a letter together with the old license granted and the relevant necessary document to the agency in charge of controlling that hazardous substance for the purpose of applying for the amendment or change.

In the case where the competent official deems it fit to allow the particular under Paragraph One to be amended or changed, he shall record the amendment or change in the license or issue a written permission to amend or change or issue a new license free of charge.

Article 24

Regarding the consideration of the license renewal, the criteria of the consideration of the license issuance shall mutatis mutandis apply to the consideration of the renewal of the license.

The granting of permission to renew the license may be done by showing in the list annexed to the license or by issuing a new license.

Temporary Provision

Article 25

Grantees of the license to engage in business related to a hazardous substance before the effective date hereof, whose hazardous substance production place or storage place is not in accordance with the criteria prescribed in Article 4, Article 5, Article 6 or Article 9 hereof or the notice under Section 20 of the Hazardous Substance Act B.E. 2535 shall adjust the

hazardous substance production place or storage place, as the case may be, to be in consistence with the criteria hereunder within the period of 5 years from the effective date hereof.

Given on the 27th day of October B.E.2537 (1994)

Countersigned by

Major General Sanan Kajornprasart

Minister of Industry

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