

Fuel Oils Control Act, B.E. 2542 (1999)

Translation

Bhumibol Adulyadej REX,
Given on November 19th, 1999 (B.E. 2542)
Being the 54th year of the Present Reign

His Majesty King Bhumibol Adulyadej, Rex, is graciously pleased to command that:

Whereas it is deemed expedient to revise laws governing storage of fuel oils, and as this Act will contain some provisions concerning limitation of individual rights and freedom permissible by virtue of the law pursuant with Section 29 in conjunction with Section 35, Section 48 and Section 50 of the Constitution of the Royal Kingdom of Thailand,

By his Royal Command, therefore, this Act is hereby enacted on the advice and with the consent of the House of Parliament, as follows:

Section 1

This Act shall be called the "Fuel Oils Control Act, B.E. 2542 (1999)".

Section 2

This Act shall be enforceable as from the day following its publication in the Royal Government Gazette.

Section 3

The following shall be forthwith rescinded:

- (1) Fuel Oils Storage Act, B.E. 2474.
- (2) Fuel Oils Storage Act, (No. 2), B.E. 2496.
- (3) Fuel Oils Storage Act, (No. 3), B.E. 2508.
- (4) Fuel Oils Storage Act, (No. 4), B.E. 2520
- (5) Fuel Oils Storage Act, (No. 5), B.E. 2530

Section 4

In this Act:

"Fuel Oil" means unrefined petroleum oil, benzene oil, aircraft fuel oil, gasoline, diesel oil, furnace oil, lubricant oil and includes other liquefied petroleum products used as fuel or lubricants as determined by the Minister for classification as fuel oil by its publication in the Royal Government Gazette.

"Possession of fuel oil" means possession, either for own use or that of another party, and notwithstanding if such is for the purpose of distribution, transportation, usage or any other purpose and also includes the disposal or traces thereof which appear in premises under one's possession.

"Fuel Oil Service Station" means premise used for the storage of fuel oil in order to provide fuelling services to vehicles and includes premises defined in the License as the premise/area of a fuel oil service station as well as any structure, tank, pipes and equipment or various appliances in such an area.

"Transportation of fuel oil" means the moving of fuel oil from one location to another either by land, water, pipeline or other means.

"Oil Depot" means a premise used for storage of fuel oils in the quantity prescribed by Ministerial Regulations and includes premises defined in the License as an area of

Fuel Oil Depot as well as pertinent structures, tanks, pipelines and equipment or various appliances but excluding premises used to store fuel oils to be used as raw materials in the production process in an oil refinery or fuel oil production facility.

"Local Rules" mean rules issued by the Municipality or Sub-District Office, Rules of the City of Pattaya, Rules of the Provincial Administrative Body, Rules of Bangkok Metropolis Authority and other rules of the same/similar nature issued by local administrative bodies.

"The Commission" means the Fuel Oil Control Commission.

"The Official" means, the Engineer of the Fuel Business Department or a person appointed by the Minister to oversee the performance of this Act.

"The Licensor" means Director-General of the Fuel Business Department or a person duly assigned by him/her.

"The Minister" means the Minister in charge of the performance of this Act.

Section 5

The Minister of Energy shall take oversee the performance of this Act and is duly empowered to appoint the Official and to issue Ministerial Regulations and set up fees not exceeding rates prescribed in the Annexure attached hereto, grant fee waiver, determine any other action and to issue notifications for the purpose of this Act's implementation.

Such Ministerial Regulations and Notifications shall be enforceable and effective on their publication in the Royal Government Gazette

Chapter 1

GENERAL

Section 6

This Act will not be enforceable on fuel oils used specifically in military services although criteria and procedure prescribed herein shall be used as their operating guidelines.

Section 7

For the sake of protecting or preventing any cause of nuisance, damage or danger which may have an impact on people, animals, plants, properties or the Environment, or setting up guidelines or operating directives concerning fuel oils control in line with economic and social conditions, the Minister shall be empowered to issue Ministerial Regulations, as follows:

- (1) Set out rules governing storage, transportation, usage, distribution, fuel oils sub-packaging and any other measures of control concerning fuel oils
- (2) Determine site(s), plan drawings, format and characteristics of fuel oil storage premises, fuel oil service stations and fuel oil depots and the maintenance thereof.
- (3) Set out rules concerning features of tanks or containers used for storage or transportation and their maintenance.
- (4) Determine the qualifications and training for people involved with fuel oil control activities.
- (5) Set out methods of operations and provision and maintenance of equipment or any other appliances for the implementation of activities under (1), (2), (3) or (4).
- (6) Set out guidelines for the purpose of listening to the public opinion appropriately in line with operations to be undertaken or permitting operations, which will have an impact on the public to be carried out pursuant with this Act.
- (7) Define any other activities which are necessary for the successful implementation of this Act's objectives.

If any Ministerial Regulations, local bye-laws or any other notifications issued by virtue of laws governing building control are in conflict with or contradictory to the Ministerial Regulations issued pursuant with paragraph one, they shall be forthwith ineffective or unenforceable, where applicable, unless they have been issued with the Commission's approval as the result of expediency or specific rationalization pertaining to that particular locality.

Chapter 2

The Fuel Oils Control Commission

Section 8

A Commission shall be set up called the .Fuel Oils Control Commission. comprised of the Permanent Secretary of the Ministry of Energy who will act as its Chairman, Director-General of the Department of Land Transport, Director-General of the Marine Department, Commissioner General of the Royal Thai Police, Director-General of the of Department of Business Development, Director-General of the Pollution Control Department, Director-General of the Department of Industrial Works, Director-General of the Energy Policy and Planning Office, Governor of the Petroleum Authority of Thailand, Director-General of the Department of Disaster Prevention and Mitigation, a representative of the Federation of Thai Industries, a representative of the Board of Trade of Thailand and 6 other qualified individuals to be appointed by the Cabinet.

The Director-General of the Fuel Business Development Department will serve as a member and Secretary-General of the Commission and will appoint not more than two of the Fuel Business Development Department's personnel as Assistant Secretary-General(s).

Qualified directors appointed by the Cabinet pursuant with paragraph one must not be advisors of any political party or hold any political position, while one each must be equipped with knowledge, expertise, past performance records and experiences involving one branch of Science, Engineering, the Environment, Fuel Oil Control laws or fuel oil business and, at least two must be appointed from qualified individuals working in organizations dealing with public interest in matters concerning protection of Sanitation and Health, Safety or the Environment.

Section 9

The Commission shall be conferred with the following power to:

- (1) recommend policies and pertinent measures concerning fuel oils control to the Cabinet for the purpose of preventing or eliminating causes of nuisance, damage or hazards to people, animals, plants, properties or the Environment, or set up directives or operating measures concerning fuel oils control in line with economic and social conditions.
- (2) make pertinent recommendation to the Minister concerning issuance of Ministerial Regulations and Notifications pursuant with this Act.
- (3) proffer any opinion in support of the Cabinet's consideration to grant concessions pursuant with Section 44.
- (4) oversee and coordinating work between the Official and various work units involving fuel oils control for the sake of preventing or eliminating causes of nuisances, damages or hazards which will have an impact on people, animals, plants, properties or the Environment, or setting up guidelines of performance procedures concerning fuel oils control in keeping with economic and social conditions.
- (5) making recommendation and proffer its opinion to various authorities concerning storage, transportation, usage, distribution, partitioned storage and other measures of control involving fuel oils.
- (6) Other activities as prescribed by the law which come under the Commission's jurisdiction.

Section 10

Qualified individuals shall hold a term of two years and those who retire at the end of their term may be re-elected for not more than two consecutive terms.

Section 11

Other than termination at the end of their term pursuant with Section 10, qualified directors will vacate office on:

- (1) death
- (2) resignation
- (3) dismissal by the Cabinet on the ground of dishonest discharge of duties or malfeasance.
- (4) becoming bankrupt
- (5) becoming an incapacitated or quasi-incapacitated person
- (6) being subjected to a court's final judgment of imprisonment unless for an offence committed through negligence or misdemeanor.

Where a qualified director is appointed to fill a seat which has become vacant by virtue of paragraph one, his/her replacement shall remain in that post only for the remaining term of the person s/he is replacing.

Section 12

Where a qualified director has completed his/her term without any person being appointed as his/her replacement, that retiring director shall continue to perform his/her duties in the interim until a new director is appointed as a replacement.

Section 13

A meeting of the Commission shall consist of not less than half of its entire number to form a quorum. If the Commission Chairman is not present or unable to discharge his/her duties, a director shall be selected by directors present at the meeting to preside in lieu.

The meeting's deliberation shall be based on majority votes with each director entitling to one vote. In the case of tie-votes, however, the meeting's chairman shall cast another vote as the decisive vote. A director with any personal vested interest on any matter being voted on shall not be entitled to stay in the meeting room.

Section 14

The Commission shall be authorized to appoint a sub-committee to study or carry out any action as assigned by the Commission in which respect the provision of Section 13 shall be applicable, *mutatis mutandis*, on the sub-committee's meeting.

The Commission and the sub-committee shall be regarded as the Official under the Criminal Code.

Section 15

In discharging its duties under this Act, the Commission shall be authorized to issue written orders to call any individual to make a statement or to supply it with any documents or materials to support its consideration. The Commission may, however, assign any sub-committee to exercise such authority as well.

Section 16

The Department of Business Energy shall take charge of work involving academic and administrative activities for the Commission as well as coordinating work and rendering assistance to various work units in activities relating to fuel oils control as well as any other works assigned by the Commission.

Chapter 3

Conduct of Controlled Activities/Operations

Section 17

To ensure that operations are controlled efficiently and that safety is maintained for protection of the public, the Minister shall be empowered to issue Ministerial Regulations to determine categories of controlled activities pertaining to possession of fuel oils, fuel oil service stations, fuel oil depots and transportation of fuel oils for any type of fuel oil or for all combined types in line with the levels of hazards which may arise. They shall be classified into 3 categories as follows:

- (1) Category 1: this will consist of operations which may be carried out immediately as required by operators.
- (2) Category 2: this will consist of operations for which the Official must be given prior notice before activities can be carried out.
- (3) Category 3: this will consist of operations for which a license must be first granted by the Licensor before they can be carried out.

Possession of fuel oils for the purpose of using them as raw materials in a production process in any manufacturing facility needs not be notified to the Official nor receives the Licensor's license, whatever the case may be. However, they must comply with criteria issued in Ministerial Regulations by virtue of Section 7.

Transportation of fuel oils by water shall be subjected to laws governing marine navigation in the seas of Thailand.

Section 18

Operators of controlled operations under Category 1 must comply with rules issued in the Ministerial Regulations by virtue of Section 7.

Section 19

Operators of controlled operations under Category 2 must comply with rules issued in the Ministerial Regulations by virtue of Section 7 and must give the Official prior notice before commencing on their operations.

The form and particulars to be notified, method of notification and notification receipt acknowledgement will be in the form as prescribed by the Ministerial Regulations.

On receipt of such notification as set out in paragraph one, the Official shall issue a Notification Receipt Acknowledgement Form as evidence to the notifier on the date of receipt. In this respect, the notifier may forthwith commence the operations under control in Category 2 as from the date of such notification.

If it is subsequently discovered by the Official that notification under paragraph one is neither correct nor complete, the Official will be authorized to issue an order to have the notifier make proper rectification to ensure proper and complete notification within seven days from his/her receipt of the said order.

To cease Category 2 controlled operations, its operator must give a written notice to the Official within thirty days from the date of such action.

Section 20

When Ministerial Regulations have been issued to define Category 3 controlled activities, no one may conduct such operations without receiving a license from the Licensor.

Where Category 3 controlled operations are carried out, construction, renovation, demolition, removal, usage or change of usage of building(s) relating to that purpose must also be carried out. If an application is filed by the applicant for the License, the Licensor under this Act shall be authorized to issue the License or Notification Receipt

Acknowledgement or Certification on Building Usage to control its usage for that purpose, whatever the case may be, pursuant with laws governing building control. Once such action has been completed, various documents and evidences shall be sent to the person duly authorized by laws governing building control to proceed with further action in this respect.

Section 21

The procedure governing application and issuance of the License and term of the License for the conduct of controlled operations under Category 3 shall be in accordance with the criteria, method and terms set out by Ministerial Regulations.

Section 22

Operators of Category 3 controlled businesses must comply with criteria prescribed by Ministerial Regulations issued by virtue of Section 7.

In issuing the License to conduct controlled operations under Category 3, the Licensor may set out any condition as appropriate to the case and may set up the maximum volume of fuel oils to be kept under the Licensee's possession as well.

With respect to the License already issued, if some major events should arise subsequently in the interest of safety or if there should be any change in the law or behavioral patterns, the Licensor will be empowered to order any revisions governing the issuance of license, as deemed expedient.

If a License is issued for the conduct of fuel oil transportation by pipelines, notification must be made by the Minister to delineate the zone for pipeline oil transportation and marks set up to show their boundaries in the Government Royal Gazette in which respect, the Licensee shall be required to implement action as required by Section 34, *mutatis mutandis*, and to have the provisions of Sections 37 and 39 applicable, *mutatis mutandis*, as well.

Section 23

As far as application for license renewal is concerned, an application must be filed by the Licensee before the current license expires. Once such application is filed, it shall be deemed that the applicant holds the status of a licensee until such times that an order is issued to give notification of non-renewal of the license.

Application for renewal of the license and the renewal thereof shall be carried out in accordance with the criteria, procedure and terms prescribed by Ministerial Regulations.

Section 24

As far as the order not to issue or renew the License is concerned, the applicant for the license or its renewal may file an appeal to the Minister within thirty days from the date of his/her receipt of the order.

The Minister must complete his/her deliberation on the appeal under the preceding paragraph within sixty days from receipt of the appeal.

The Minister's deliberation shall be deemed as final.

Section 25

The Licensee may not transfer the operations for which the License is granted to another party unless so authorized by the Licensor.

The filing of the application to transfer the License and issuance of the License shall be made in accordance with the criteria, procedure and conditions prescribed by Ministerial Regulations.

Section 26

When the Licensee dies or loses the status of a legal entity, or becomes bankrupt, his/her heir, liquidator or the Legal Execution Official shall file an application to the Licensor to have the License transferred within ninety days from the date of such occurrence, as applicable, or within the period extended by the Licensor, as necessary.

If no such application is filed within this deadline, it shall be deemed that the License has expired and a new license will have to be applied for if he/she wishes to continue with the operations under that License.

During the period under the preceding paragraph, the heir, liquidator or Legal Execution Official who engages in the operations under that License shall be construed as the Licensee.

Where the Licensee is declared by the Court to be an incapacitated person, the provision of paragraph two shall be applicable *mutatis mutandis* on the guardian.

Section 27

The Licensee must display the License in a clearly visible location at the premises of operations under that license.

Section 28

If the License is lost or substantially damaged, the Licensee shall notify the Licensor accordingly and applies for a replacement license within fifteen days from the date s/he has come into knowledge of such loss or destruction.

The application for a replacement license and its issuance shall be made in accordance with the criteria, procedure and conditions prescribed by Ministerial Regulations.

Section 29

The Minister is empowered to issue Ministerial Regulations to define any locality as a prohibited zone for the conduct of any or all controlled operations under Section 17.

Section 30

Where Ministerial Regulations have been issued pursuant with Section 29, no controlled operations may be conducted which have been listed in the said Ministerial Regulations.

The provision of the preceding paragraph will not be enforceable on parties which have already conducted controlled operations within the prohibited zone before these Ministerial Regulations were issued and came into force pursuant with Section 29 and who wish to continue with such controlled operations once these Ministerial Regulations come into existence. However, if it is the opinion of the Director-General of the Energy Business Department that such conduct of controlled operations would contradict the *raison d'être* of such Ministerial Regulations or may affect the prevention of any cause of nuisance, damages or hazards which may impact on people, animals, plants, properties or the Environment, or on the laying down of guidelines or manner of action concerning control of fuel oils which would not be in keeping with economic and social conditions, orders may be issued by the said Director-General to set out criteria, procedure and conditions governing the operations of such controlled operations and s/he will send a written order to these operators to make pertinent changes or to cease from any action within a reasonable timeframe. However, if compliance with such order will cause an operator of the controlled operations to suffer damages or to lose benefits s/he is accustomed to receive beyond reasonable limits, that party will be entitled to receive justifiable compensation.

Where an operator of such controlled businesses who receives the Director-General of the Energy Business Department's order under paragraph two is not satisfied with that order, he/she may file an appeal to the Minister within thirty days from the date of his/her receipt of the order.

The Minister must complete his/her deliberation on the appeal under paragraph three within sixty days from his/her receipt of the appeal.

The Minister's deliberation shall be deemed final and conclusive.

Chapter 4

The State's Services with respect to Fuel Oils

Section 31

Authorization may be given by the Cabinet for the State's authority or any authority to take action in order to have fuel oil depot or oil pipeline transportation system available to provide services for storage or transportation of fuel oils.

State authorities to take action in this respect must comply with criteria prescribed by Ministerial Regulations issued by virtue of Section 7.

Section 32

When it becomes necessary for the State's authorities to acquire immovable properties for the purpose of building fuel oil depots or fuel oil pipeline transportation system, action shall be taken to sequester land pursuant with laws governing sequestration of immovable properties.

Section 33

For the purpose of building or maintaining fuel oil depots or oil pipeline transportation system, officials of the State Authority which is taking charge of the matter will be authorized to make entry either to use or possess, on a temporary basis, immovable properties which do not serve as accommodation/residences for anyone subjected to the following conditions:

- (1) Such usage or possession is necessary for the purpose of conducting survey(s) on oil depot(s) or oil pipeline transportation system or for the building or maintenance thereof, or which is necessary to prevent hazards or damages being incurred by such oil depot or oil pipeline transportation system.
- (2) An advance notice has already been given within a reasonable time by that State Authority to the owner or possessor of such immovable property which, however, must not be less than seven days except in the case where such owner or possessor cannot be contacted when an advance notice of not less than thirty days must be given by having the notice affixed at the site of that immovable property and at the District Office or the Office of the Village Chief (Kamnan) and Office of the Village Headman (Puyaiban) of the site of such immovable property. The date and time as well as action to be taken shall also be stated in that notice.

Where action pursuant with this Section is likely to cause damages to the owner, possessor of that immovable property or other right holders, that particular party may demand payment of indemnification from the State Authority.

Section 34

Publication defining the pipeline fuel oil transportation system zone and marks demarcating such area shall be announced by the State Authority in the Royal Government Gazette and also affixed at the District Office or Office of the Amphur which is the site of such fuel oil pipeline transportation system. Arrangements must also be made to show signs around the area of the fuel oil pipeline transportation system in accordance with criteria set by the Energy Business Department.

Section 35

In arranging to set up this fuel oil pipeline transportation system, the State Authority shall be empowered to carry out any of the following actions:

- (1) lay down oil pipelines to the south, north, alongside or over the land of any person;

- (2) demolish/remove any building or structure which is not a residence/accommodation of anyone, or destroy anything which is built or made, or destroy or cut down trees, branches or roots of trees or plants, in the fuel oil pipeline transportation zone.

Before taking action under (1) or (2), the owner or possessor of the relevant property must be duly notified by the State Authority in which respect the provision of Section 33 paragraph one (2) shall be applicable *mutatis mutandis*.

The property's owner or possessor under paragraph one may appeal against such action on ground of unjustifiable cause to the Minister within thirty days from the day of his/her receipt of the notice.

Deliberation of such appeal must be completed by the Minister within sixty days from the day of his/her receipt of the appeal.

The Minister's deliberation shall be considered as final and conclusive.

Section 36

Payment of compensation will be made by the State Authority to the owner or holder of rights over land, building, housing or structures for the following cases:

- (1) Usage of land defined in the announcement as fuel oil pipeline transportation zone pursuant with Section 34.
- (2) Usage of land in which the fuel oil pipeline transportation system will be laid pursuant with Section 35 (1).
- (3) Action pursuant with Section 35 (2).

Payment of compensation under paragraph one shall be computed out of damages which have been incurred in actuality including the loss of benefits from the use of such various things.

Section 37

No one may carry out any action which may be hazardous to the fuel oil pipeline transportation system as well as its accessories/equipment.

Section 38

No one shall, within the fuel oil pipeline transportation zone, be they on land, in or under the water or under the sea, set up any building, housing or any other item, install anything, drill or excavate land, fill up land, throw out things or carry out any other act which may cause hazards or obstruction to the fuel oil pipeline transportation system unless so authorized in writing by the Minister. In such a case, the said authorization may be granted by the Minister once s/he has listened to the opinion of the State Authority in charge to the effect that such action will not have any adverse impact on people, animals, plants, properties or the Environment. In granting such authorization, any condition may or may not be prescribed by the Minister as a condition to it and the Minister is empowered, in any case of violation, to order that the violator removes, demolishes, cuts down, destroys or carries out an action of any kind within a prescribed period. If the said party fails to comply with such instruction or if a violator cannot be found, the order shall be affixed in the locality and at the District Office or the Amphur Office, Office of the Kamnan and Office of the Puyaiban of that locality for at least seven days after which, if the order is still ignored, the State Authority may be ordered by the Minister to enter the scene to carry out any work of demolition, removal, cutting down, destruction or any other act as is reasonably expedient in which respect claims of damages may not be raised by anyone. Furthermore, the violator shall pay for damages in the sum of actual payment incurred together with an increment at the rate of thirty percent per annum of such expenses to be computed from the day the State Authority has entered the scene to take such action up to the day of full payment of expenses and increments.

Section 39

Where the oil pipeline transportation zone has been officially determined in the notification, be they in the river, canals, sea or any waterway, notwithstanding if such is within the Kingdom or not, no one may set anchor or drag anchor or draw fishing nets or fishing pontoons or set any trap for aquatic animals in that zone in any way.

If any boat/ship should run across a fuel oil pipeline transportation zone without pulling up its anchor above the water line so that it remains visible, that particular boat shall be deemed as producing the result of dragging its anchor.

Section 40

For the sake of safety, the State Authority is empowered to destroy or cut down trees, branches or roots of any tree or any other thing which is close to the oil depot or to the oil pipeline transportation system provided that a reasonable advance notice has already been given in writing to the owner or possessor of such trees or things. If no such owner or possessor may be contacted, the State Authority will be entitled to take whatever action it considers appropriate.

Where trees or other things are already in existence before the oil depot or fuel oil pipeline transportation system are built, fair payment of compensation as befitting the case shall be made by the State Authority to such owner or possessor.

Section 41

In any case of necessity or urgency, the State Authority will be empowered to enter the land or premises belonging to anyone at any time in order to make due inspection/repair or provide remedy to the fuel oil pipeline transportation system with this exception that the owner or possessor who are in the locality has already been given an advance notice for it.

Section 42

In carrying out action under Section 40 or Section 41, efforts must be made by the State Authority not to cause any damages and shall, in any case, be held liable for any damages eventually incurred.

Section 43

For operational interest, a concession may be granted by the Cabinet to any private party who will act as the concessionaire in the making of arrangements for an oil depot or oil pipeline transportation system pursuant with the provisions of this Chapter.

Application for the concession shall be made in accordance with criteria, procedure and terms prescribed by Ministerial Regulations.

The applicant's eligibility shall be as prescribed by Ministerial Regulations.

Section 45

A concession may be assigned by the concessionaire on materialization of reasonable grounds and it is the Cabinet's opinion, after due consideration, that the assignee is eligible pursuant with Section 43, paragraph three and its authorization has been given for the assignment to take place.

The assignee of a concession under paragraph one must take on all of the former concessionaire's rights, duties and liability.

Section 46

When a concessionaire dies or loses its status as a legal entity, or becomes bankrupt, his/her/its heir or liquidator or Legal Execution Official, as the case may be, shall be entitled to make the intention known concerning such concession assignment pursuant with Section 45.

The demonstration of intention pursuant with the preceding paragraph shall be made in the manner set out in the Ministerial Regulations.

Section 47

Concession assignment under Section 45 and Section 46 shall be in accordance with criteria and procedure set by the Ministerial Regulations.

Section 48

Where a concessionaire is not authorized to make a concession assignment, the Minister shall inform the concessionaire accordingly together with the reasons for such rejection within thirty days from the date of the Minister's Order.

Section 49

Any venture under the concession shall come into the State's ownership at the time set out in the concession.

Section 50

In any case of necessity in the public interest, the State will be empowered to take over and possess the concessionary venture and shall make payment of compensation to the concessionaire as prescribed by the concession. If there is no such stipulation of payment in the concession, payment will be made on the basis of fair benefits derivable by the concessionaire.

The Official shall send a notice to the concessionaire to come and collect payment of compensation within a set timeframe. If the concessionaire fails to turn up by that deadline, the Official shall proceed to deposit that sum of payment with the Bank of Savings in the concessionaire's name.

Section 51

Where a concessionaire finds it necessary to acquire immovable property in order to build an oil depot or fuel oil pipeline transportation system as prescribed by the concession but is otherwise unable to acquire such immovable property for that purpose by any other means, action shall be taken by the Energy Business Department to carry out the sequestration process pursuant with laws governing sequestration in which respect expenses and payment of compensation will be borne by the concessionaire.

Section 52

The provisions of this Chapter which are applicable to State Authorities' operations shall be applicable *mutatis mutandis* to the concessionaire.

Chapter 5 Control and Inspection

Section 53

To ensure compliance with this Act, the Official will be conferred with the authority and duties as follows:

- (1) enter into building(s), premises or vehicle(s) which are operating or suspected to be operating activities under control pursuant with Section 17, or to be operating Oil Depot(s) or oil pipeline transportation zone(s) pursuant with Chapter 4, during the course of sunlight to sunset, or during that location's operating hours in order to inspect the conditions of building(s), premises or vehicle(s), or any activity which may constitute an infringement of this Act or which may not conform with the requirements of the concession.
- (2) Take out a reasonable volume of fuel oil samples under suspicion for inspection as well as any other relevant documents.
- (3) Inspect, search, retain, seize or impound fuel oil, tanks or containers, oil pipelines, equipment or any other related items in any case of doubt that violation or non-compliance with the provisions of this Act or with the terms

of the concession has taken place or which may cause damages or hazards to people, animals, plants, properties or the Environment.

- (4) Send a notice to call any individual to make a statement or send documents or any item in support of his/her further consideration.
- (5) Inspect and compile facts for further reporting to the Licensor or the Minister, as applicable, where the operator of a controlled business under Section 17 or a concessionaire has committed an offence or has caused damages through non-compliance with this Act or the terms of the concession.

Section 54

Where the Official finds anyone violating or not complying with this Act or with the terms prescribed by the Licensor pursuant with Section 22, or finds any concessionaire violating or not complying with this Act or the terms of the concession, or finds any conduct or activities which would cause nuisance, damage or hazards to people, animals, plants, properties or the Environment, such duly authorized Official shall instruct that individual to cease from committing such act of infringement or to carry out remedial or corrective action or to perform correctly or appropriately within any prescribed period.

Section 55

Where an operator of any controlled business under Section 17 fails to carry out action to either correct or improve the situation or to perform correctly with the order pursuant with Section 54 within the deadline, the Official will be empowered to issue an order for such operations to be halted or to have the Licensor revoking the License, as applicable. And, if the volume of fuel oil exceeds that in which it is to have under its possession or for which it is licensed to hold or which may become hazardous, the Official shall be empowered to carry out any of the following action:

- (1) Orders the operator to remove either all or parts of the fuel oil to another safe location within a prescribed timeframe.
- (2) Where necessary, the Official may enter the scene to remove the fuel oil or assign other parties to do so in lieu and to have them taken for storage at a safe place. In such a case, the costs of transportation and storage will be borne by the operator in accordance with actual payment incurred while fines will be imposed at the rate of thirty percent per annum of that sum.

Section 56

Where a concessionaire fails to remedy or improve or perform correctly within the deadline pursuant with the order issued by virtue of Section 54, consideration will be given by the Minister without delay to revoke the concession.

Once a concession is revoked by the Minister, the said concessionary operation shall fall under the State's ownership. In this respect, compensation will be paid to the said concessionaire whose concession has been revoked on fair consideration of benefits to be derived by such concessionaire and the provision of Section 50, paragraph two shall then be applicable *mutatis mutandis*.

Section 57

Where the operator of a controlled operation or the concessionaire who has received the Official's order under Section 54 is not satisfied with the said order, s/he may appeal against that order to the Minister within thirty days from the date of his/her receipt of the order.

Deliberation of the appeal under the preceding paragraph must be completed by the Minister within sixty days from the date of his/her receipt of the appeal.

The Minister's deliberation shall be final and conclusive.

Section 58

In discharging his/her duties, the Official shall display his/her official ID card when so requested by pertinent parties.

The Official's ID card shall be in the form as announced by the Minister in the Government Royal Gazette.

Section 59

The Minister shall be empowered to set up appropriate directives and conditions governing the Official's discharge of his/her duties under this Act.

Section 60

An Appellate Sub-Committee shall be set up comprising the Permanent Secretary of the Ministry of Energy as its Chairman and Director-General of the Department of Public Works and Town & Country Planning, Director-General of the Pollution Control Department, Representative of the Office of the Council of State, Representative of the Office of the Attorney General and three other qualified individuals appointed by the Minister as members of this Sub-Committee.

The Director-General of the Energy Business Department shall act as Director and Secretary-General who shall then appoint not more than two officers from the Energy Business Department as Assistant Secretary(s).

Qualified directors appointed by the Cabinet pursuant with paragraph one shall be well versed in the fields of Science, Engineering and the Environment with track records as well as experienced in supervising activities related to fuel oils or fuel oil businesses.

It is the Appellate Committee's duties to present its opinion to the Minister concerning consideration of appeals pursuant with this Act.

Sections 10, 11, 12, 13, 14 and 15 shall, *mutatis mutandis*, be applicable on the Appellate Committee.

Chapter 6

Penalty

Section 61

Anyone failing to step forth and make the statement or send any documents or items as required by the Commission or the Sub-Committee pursuant with Section 15, or for which a written notice calling for them have been sent by the Official pursuant with Section 53 (4), shall be subjected to a term of imprisonment not exceeding one month or a fine not exceeding two thousand Baht, or to both.

Section 62

Anyone conducting the controlled business under Category 1 without complying with the terms prescribed by Ministerial Regulations issued by virtue of Section 7 shall be subjected to a term of imprisonment not exceeding three months or a fine not exceeding thirty thousand Baht, or to both.

Section 63

Anyone conducting the controlled business under Category 2 without giving the Official prior notice or without complying with the criteria set out in the Ministerial Regulations issued by virtue of Section 7 shall be subjected to a term of imprisonment not exceeding six months or a fine not exceeding fifty thousand Baht, or to both.

Section 64

Anyone conducting the controlled business under Category 2 by giving incorrect and incomplete notification of its operations as required by Ministerial Regulations issued by virtue of Section 19, paragraph two, shall be subjected to a fine not exceeding fifty thousand Baht.

Anyone conducting the controlled business under Category 2 and fails to give correct and complete notification of its operations pursuant with the Official's order issue by virtue of Section 19, paragraph four, shall be subjected to a fine not exceeding one hundred thousand Baht and the Court shall further order the closure of its operations.

Section 65

Anyone conducting the controlled business under Category 3 without a license shall be subjected to a term of imprisonment not exceeding two years or a fine not exceeding two hundred thousand Baht, or to both.

Section 66

Anyone conducting the controlled business under Category 3 without complying with the criteria prescribed by Ministerial Regulations issued by virtue of Section 7 shall be subjected to a term of imprisonment not exceeding one year, or a fine not exceeding one hundred thousand Baht, or to both.

Section 67

Any concessionaire who fails to comply with criteria prescribed by Ministerial Regulations issued by virtue of Section 7 shall be subjected to penalties set by Sections 62, 63 or 66, as the case may be.

Section 68

Anyone conducting the controlled business under Category 3 who does not comply with the provision of Section 27 or Section 28, paragraph one, shall be subjected to a fine not exceeding five thousand Baht.

Section 69

Anyone conducting controlled businesses in violation of Section 30, paragraph one shall be:

- (1) subjected to, in the case of Category 1 controlled business, a term of imprisonment not exceeding six months or a fine not exceeding fifty thousand Baht, or to both.
- (2) subjected to, in the case of Category 2 controlled business, a term of imprisonment not exceeding one year or a fine not exceeding one hundred thousand Baht, or to both.
- (3) subjected to, in the case of Category 3 controlled business, a term of imprisonment not exceeding four years or a fine not exceeding four hundred thousand Baht, or to both.

Section 70

Anyone operating controlled businesses under Section 17 who does not comply with the order given by the Director-General of the Energy Business Department, by virtue of Section 30, paragraph two, shall be subjected to a term of imprisonment not exceeding six months, or a fine not exceeding fifty thousand Baht, or to both, and the Court shall order that its operations be closed down.

Section 71

Anyone who fails to unjustifiably comply with the order given by the Official by virtue of Section 54 shall be subjected to a term of imprisonment not exceeding six months, or a fine not exceeding fifty thousand Baht, or to both and the Court shall order that its operations be closed down.

Section 72

Anyone who fails to facilitate the Official in discharging his/her duties pursuant with Section 33 or Section 35 or Section 40 or Section 41 or Section 53 (1), (2), or (3), or Section 55 shall be subjected to a term of imprisonment not exceeding one month or a fine not exceeding two thousand Baht, or to both.

Section 73

Anyone who violates Section 37 shall be subjected to a term of imprisonment not exceeding one year or a fine not exceeding twenty thousand Baht, or to both.

If such activities cause the oil pipeline transportation system or the system's equipment/accessories to be destroyed, damaged, depreciated or rendered useless, the committer of the offence shall be subjected to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred thousand Baht, or to both.

Section 74

Anyone who violates Section 38 or fails to comply with the conditions in the License pursuant with Section 38 shall be subjected to a term of imprisonment not exceeding six months or a fine not exceeding ten thousand Baht, or to both.

Section 75

Anyone who violates Section 39 shall be subjected to a term of imprisonment not exceeding six months or a fine not exceeding ten thousand Baht, or to both.

If such activities cause the oil pipeline transportation system or the system's equipment/appliances to be destroyed, damaged, depreciated or rendered useless, the committer of the offence shall be subjected to a term of imprisonment not exceeding two years or a fine not exceeding forty thousand Baht, or to both.

During the process of the trial conducted in prosecution of the offence against this Section, the Court shall be empowered to order that the pertinent ship be detained until the fine is paid pursuant with the Court's judgment.

Section 76

Anyone who causes signs demarcating the zone of fuel oil pipeline transportation system to be moved or damaged in any way shall be subjected to a term of imprisonment not exceeding three years or a fine not exceeding sixty thousand Baht or to both.

Section 77

If offences under Sections 73, 74, 75 or 75 result in causing inconveniences to the public or are likely to create dangers for people, animals, plants, properties or the Environment, the offender shall be subjected to a term of imprisonment not exceeding five years or a fine not exceeding one hundred thousand Baht, or to both.

If they should result in serious injuries to other people, the offender shall be subjected to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred thousand Baht, or to both.

If they should result in the death of another person, the offender shall be subjected to a term of imprisonment not exceeding twenty years or a fine not exceeding four hundred thousand Baht, or to both.

Section 78

Where an offender subjected to the penalty of this Act is a legal entity, its managing director, manager or any one charged with the responsibility of that legal entity's operations shall be subjected to the penalties laid down for that offence unless it can be proven that such an act has been committed without his/her knowledge or consent.

Section 79

For all various offences under this Act which are subjected to fines only or to a term of imprisonment not exceeding one year or fines, the Commission shall be authorized to impose a fine and may assign the authority to a Sub-Committee or the Official to exercise such power as well.

Where it is found by the Official after due investigation that someone has committed an offence under the preceding paragraph and is willing to be fined, the Official shall send this matter to the Committee or its attorney-in- fact within seven days from the date of that individual's acceptance to be fined.

Once the fine is paid within thirty days from the date of its imposition, it shall be deemed that the case is terminated pursuant with the Criminal Procedural Code.

If the accused refuses to be fined, or has agreed to be fined but refuses to make pertinent payment within the deadline, the case shall be taken up in further proceedings.

Section 80

In the consideration/judgment of offences under this Act or any other laws involving multiple offences related to the offences of this Act, if it is the Court's opinion that a conditional suspension of judgment or deferred execution of judgment would be more beneficial than making the offender culpable for his/her offences, or for the sake of preventing recurrences of a similar offence, the court with jurisdiction over the case may suspend making an adjudication or may pass a sentence which, however, will be deferred, by prescribing any condition to be performed by the offender or the party subjected to the punishment as the principal or promoter of the offence, within any prescribed timeframe. Such condition may be either (for the adjudged party) to carry out or refrain from carrying out an act to ensure remedy of damages already incurred or to prevent a recurrence of such offence, or to carry out any act for public benefits. In this respect, the court may appoint anyone to supervise/advise/monitor activities to ensure that action is taken in accordance with the court's judgment and may require the offender to pay for the allowances for that particular individual's work as well.

If the court decides to use or not to use measures in the preceding paragraph, its rationale for such a decision shall also be given in the judgment.

The Court may revise or revoke conditions set in paragraph one or set out new conditions as it deems fit notwithstanding if a motion has been filed by the relevant party or not.

If facts should appear to the court on their own, or gleaned out of statements given by relevant parties that the offender has failed to comply with conditions set by the Court, warnings may be sent by the Court to the offender or punishment set for the offence for which the sentence is impending or under suspension.

Section 81

Where a judgment is passed by a court to fine anyone for an offence under this Act, the Court may, at its discretion, stipulate in the sentence that such an individual pays the fines in installment in accordance with the duration and sums payable in each installment.

Section 82

The provisions of Sections 80 and 81 shall be applicable, *mutatis mutandis*, on imposition of fines by the Commission or its attorney-in-fact.

Chapter 7

Interim Provisions

Section 83

Any application for, and the grant of any license given under the Act Governing Storage of Fuel Oils, B.E. 2474 shall be construed, *mutatis mutandis*, as the application and grant of License under this Act and subjected to its application.

Section 84

Subjected to the provision of Section 83, all various licenses issued to anyone under the Act Governing Storage of Fuel Oils, B.E. 2474 prior to the enforcement of this Act shall continue in force until expiry of its term.

Section 85

If any operator of fuel pipeline transportation businesses falling under the scope of a Category 3 controlled business pursuant with Section 17 of this Act who already

operates such business prior to the enforcement of this Act files an application for the license within one hundred and eighty days from the date of enforcement of the Ministerial Regulations issued by virtue of the said Section, a license under this Act shall be issued forthwith by the Licensor to that particular operator.

In granting a license under the preceding paragraph, the Licensor shall be empowered to set any condition considered suitable for the Licensee to comply with by taking into consideration matters such as fire-prevention, stability, safety, public health, town planning, traffic facilitation, prevention or suppression of any cause of nuisance, damages of hazards which will adversely impact on people, animals, plants, properties or the Environment or any other activities necessary for the implementation of this Act's objectives.

Section 86

All various provisions of the Act Governing Fuel Oil Storage, B.E. 2474 in respect of criteria and methods governing fuel oil storages shall continue to be in force insofar as they are non-contradictory to or in conflict with the provisions of this Act until such times that they are rescinded by any Ministerial Regulations, Announcements, Orders, Rules or Regulations issued by virtue of this Act which, however, must not be beyond a period of one year from the date of this Act's enforcement.

Section 87

All various Ministerial Regulations, Notifications, Orders, Regulations and Rules issued by virtue of the Act Governing Fuel Oil Storage, B.E. 2474 already in force prior to the enforcement of this Act shall continue in force insofar as they are not contradictory to or conflicting with the provisions of this Act up until such times that they are rescinded by any Ministerial Regulations, Notifications, Orders, Rules or Regulations issued by virtue of this Act.

Countersigned by
Mr. Chuan Leekpai
Prime Minister

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REMARKS: This Act's Rationalization is as follows: Whereas the Act Governing Fuel Oil Storage, B.E. 2474 has been in force for a long time and is neither suitable to the current circumstances nor in keeping with rapid developments of Technology, it is deemed expedient, therefore, that control of fuel oil-related businesses be adjusted to ensure appropriate maneuverability in keeping with current conditions of today's operations. Moreover, new provisions are incorporated which will give the State the authority to arrange to have fuel oil depot(s) and fuel oil pipeline transportation system in place with provisions governing concessions as well as various other details concerning supervision/control of operations pertaining to storage and transportation of fuel oil beside improving other provisions concerning offences and criminal penalties so that they are more appropriate. It is, necessary, therefore, that this Act be enacted.

REMARKS: The term "Minister of Interior" is changed to .Minister, Ministry of Energy, Permanent Secretary for Interior changed to Permanents Secretary, Ministry of Energy, Department of Public Works and Town & Country Planning. changed to "Department of Energy Business"., "Director- General, Harbor Department" changed to "Director-General, Marine Department", "Director-General, Department of Public Works and Town & Country" to "Director-General, Department of Energy Business", "secretary-General of the National Energy Policy Office" to "Director-General, Energy Policy and Planning Office" and "Director-General, The Bureau of the National Safety Council of Thailand" to "Director-General, Department of Disaster Prevention and Mitigation". In this Act by Section 46 of the Bill to Revise the B.E. 2545 Act in keeping with the assignment of official duties in pursuant with the Ministries, Authorities, Departments Improvement Act, B.E. 2545.

Rates of Fees

- | | |
|---|-----------------|
| (1) Application | Baht 200 each |
| (2) License to Conduct Category 3
Controlled Business | Baht 3,000 each |
| (3) Permission to use tanks or containers
to pack or transport fuel oils | |
| (a) not exceeding 100,000 liters volume | Baht 4,000 each |
| (b) volume in excess of 100,000 liters will be charged
a fee of Baht 400 per 10,000 liters volume. Fraction
of 10,000 liters will be computed as 10,000 liters. | |
| (4) permission to use pipelines for transportation of fuel oil
shall be computed in volumes at the rates of (3) | |
| (5) License replacement | Baht 200 each |
| (6) License renewal shall be at the rates of (2), (3),
or (4), as the case may be. | |

In issuing Ministerial Regulations to set these fees, they may be set at different rates by taking into account such things as that particular operation's characteristics, type or volume of fuel oil under the license being applied for.

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