

(Garuda Emblem)

Notification of Ministry of Industry

**Re: Criteria to issue an order to cease operations when a factory discharges an effluent
B.E. 2546 (2003)**

Regarding the Cabinet's resolution from the meeting on 25th March B.E. 2546 (2003), one resolution indicates that "when a factory or industrial entrepreneur does not operate its wastewater treatment system and releases its wastewater directly to public reservoir resulting in seriously endangering the environment, causing water pollution, and adversely affecting raw water source for water supply system, Ministry of Industry, Ministry of Interior, Ministry of Natural Resources and Environment, and other related agencies shall cooperate to resolve such problem by promoting and campaigning to acknowledge a factory or industrial entrepreneur in each area to comply with the law in advance for a certain period, after such period has ended any violation shall incur absolute penalty by law ..."

To bring the resolution into implementation, a factory releasing its wastewater out of its premise due to the following cases where the wastewater may potentially cause danger, damages, or serious impact to the public or properties in the factory or the residence nearby, the responsible agency shall consider issuing an order requiring a factory to cease all or part of operations and make specified improvements or comply with the law within the given period as prescribed in section 39 paragraph 1 of the Factory Act B.E. 2535 (1992).

1. A factory that discharges its wastewater without any treatment due to lack of wastewater treatment system or a system is still being constructed.

2. A factory that bypasses all wastewater or part of wastewater out of its factory without any treatment.

3. A factory that has damaged wastewater treatment system, or does not operate wastewater treatment system, or has under-capacity wastewater treatment system for its wastewater.

4. A factory that violates the conditions related to wastewater specified in the factory permit such as no wastewater discharge allowed or must have and operate wastewater treatment system, etc.

5. A factory with allegation of causing damages to the public or the environment because of its wastewater discharge.

6. A factory with successive complaint about its wastewater discharge and enough evidence of such conduct.

7. A factory discharging effluent with characteristic that do not comply with the standard prescribed in the Ministerial Notification issued pursuant to the Factory Act B.E. 2535 (1992).

7.1 For a factory required to meet the standard of effluent BOD not greater than 20 milligrams per liters (mg/L), if the analysis of effluent shows a BOD of greater than 20 mg/L but less than 60 mg/L, according to section 37 a factory is ordered to undertake remedial measure within 60 days. If within such time the effluent BOD still violates the standard, the order of section 39 paragraph 1 shall be issued without lenience.

7.2 For all type of factory, if the analysis of effluent shows a BOD of greater than 60 mg/L, the order of section 39 paragraph 1 shall be issued.

To consider whether discharged effluent may cause danger, damage, or serious impact, discretion with proof of fact or with knowledge in environmental management shall be exercised, as the case may be.

Announced on the 23rd May B.E. 2546 (2003)

(signed)_____

(Mr.Manu Leoungpairoj)

Permanent Secretary of Ministry of Industry

Manual for issuing an order requiring a factory to cease operations
in accordance with the Notification of Ministry of Industry
Re: Criteria to issue an order to cease operations when a factory discharges an effluent
B.E. 2546 (2003)

With reference to the Notification of Ministry of Industry regarding criteria to issue an order to cease operations when a factory discharges an effluent B.E. 2546 (2003), dated 23rd May B.E. 2546 (2003), the last paragraph states “To consider whether discharged effluent may cause danger, damage, or serious impact, discretion with proof of fact or with knowledge in environmental management shall be exercised, as the case may be.”

To exercise the discretion properly to serve the purpose of this Ministerial Notification, it deems necessary to establish a manual for issuing an order requiring a factory to cease operations for a competent official to use as a guideline for all cases prescribed in the Ministerial Notification as follows:

No. 1 Criteria to issue an order to cease operations when a factory discharges an effluent according to this Ministerial Notification is based on the exercise of discretion under the provision of section 39 paragraph 1 of the Factory Act B.E. 2535 (1992). A competent official, who witnesses the conduct or is order issuer, shall exercise knowledge, capability, and experience in considering all the facts happening or together with knowledge in environmental management, as the case may be, to conclude that such wastewater discharge would potentially cause danger, damages, or serious impact to the public or properties in the factory or the residence nearby. Criteria in exercising the discretion to consider all seven cases of discharging wastewater from a factory shall be as follows:

1.1 A factory that discharges its wastewater without any treatment due to lack of wastewater treatment system or a system is still being constructed.

- Exercising of discretion

This can happen with a factory that is granted a factory permit but has not made notifying procedure of commencing its business according to section 13 paragraph 1, or has made notifying procedure of commencing its business but the construction of its wastewater treatment system is still incomplete. Or a factory that expands its business without permission

and discharge its wastewater, in this case it shall be considered as violation of the law and discharged wastewater may potentially cause danger, damages, or serious impact. A factory expanding its business without permission shall be ordered to cease operation only the expansion section.

1.2 A factory that bypasses all wastewater or part of wastewater out of its factory without any treatment.

- Exercising of discretion

This can happen with a factory that is granted a factory permit and has made notifying procedure of commencing its business. A factory has its wastewater treatment system, but choose to bypasses all wastewater or part of wastewater out of its factory without going through the system, and there is a proof of such by-pass. This conduct shall be considered as a factory intentionally violates the law and discharged wastewater may potentially cause danger, damages, or serious impact.

1.3 A factory that has damaged wastewater treatment system, or does not operate wastewater treatment system, or has under-capacity wastewater treatment system for its wastewater.

- Exercising of discretion

This can happen with a factory that is granted a factory permit and has made notifying procedure of commencing its business. A factory has damaged wastewater treatment system, or does not operate wastewater treatment system, or has under-capacity wastewater treatment system for its wastewater.

A wastewater treatment system shall be considered as damaged when any unit operation of wastewater treatment system is damaged and no longer in a condition to treat wastewater efficiently.

A factory that does not operate its wastewater treatment system and discharges wastewater out of its premise shall be subject to discretion in 1.2.

A factory with under-capacity wastewater treatment system for its wastewater shall be subject to discretion in 1.7.

Nonetheless, the discretion shall be exercised on the basis that such discharged wastewater may potentially cause danger, damages, or serious impact.

1.4 A factory that violates the conditions related to wastewater specified in the factory permit such as no wastewater discharge allowed or must have and operate wastewater treatment system, etc.

- Exercising of discretion

This can happen with a factory that is granted a factory permit and has made notifying procedure of commencing its business. In a factory permit, there are conditions related to wastewater specified in the factory permit such as no wastewater discharge allowed or must have and operate wastewater treatment system or other similar conditions. The discretion shall be exercised on the basis that such violation may potentially cause danger, damages, or serious impact.

For a factory with conditions of no wastewater discharge allowed or must have and operate wastewater treatment system, a violation to such conditions shall be considered as a violation of law and discharged wastewater may potentially cause danger, damages, or serious impact.

1.5 A factory with allegation of causing damages to the public or the environment because of its wastewater discharge.

- Exercising of discretion

This can happen with a factory that is granted a factory permit and has made notifying procedure of commencing its business, but has allegation related to wastewater discharge that resulting in obvious damages to the public and the environment. History of factory related to wastewater discharge need to be investigated such as the orders issued by the competent official in the past but there still is a complaint of its wastewater discharge. The discretion shall be exercised on the basis that such violation may potentially cause danger, damages, or serious impact.

1.6 A factory with successive complaint about its wastewater discharge and enough evidence of such conduct.

- Exercising of discretion

This can happen with a factory that is granted a factory permit and has made notifying procedure of commencing its business, but has successive complaint about its wastewater discharge and enough evidence of such conduct. History check is very critical in this case. History of factory, such as history of complaint, orders issued to undertake remedial

measure and implementation of such measure, is required to be checked. If within the past year, there are evidence of complaints or orders to undertake remedial measure at least 3 times, the discretion shall be exercised on the basis that such violation may potentially cause danger, damages, or serious impact.

1.7 A factory discharging effluent with characteristic that do not comply with the standard prescribed in the Ministerial Notification issued pursuant to the Factory Act B.E. 2535 (1992).

1.7.1 For a factory required to meet the standard of effluent BOD not greater than 20 milligrams per liters (mg/L), if the analysis of effluent shows a BOD of greater than 20 mg/L but less than 60 mg/L, according to section 37 a factory is ordered to undertake remedial measure within 60 days. If within such time the effluent BOD still violates the standard, the order of section 39 paragraph 1 shall be issued without lenience.

1.7.2 For all type of factory, if the analysis of effluent shows a BOD of greater than 60 mg/L, the order of section 39 paragraph 1 shall be issued.

- Exercising of discretion

This can happen with a factory that is granted a factory permit and has made notifying procedure of commencing its business, but discharging effluent with characteristic that do not comply with the standard prescribed in the Notification of Ministry of Industry No.2 (B.E. 2539 (1996)), issued pursuant to the Factory Act B.E. 2535 (1992), regarding characteristic of effluent discharging from a factory and the Notification of Department of Industrial Works, regarding characteristic of effluent discharging from a factory allowable to be different from the value prescribed in the Notification of Ministry of Industry No.2 (B.E. 2539 (1996)), regarding characteristic of effluent discharging from a factory.

To exercise the discretion on the above-mentioned 1.7.1 and 1.7.2, the facts required to be considered on case-by-case basis, because there is a difference in history of factory. Some factory has good history in environmental management, some does not give priority and intends to violate the law on purpose, or some has an accident. Such evidence shall be taken into account when exercising the discretion and be on the basis that such violation may potentially cause danger, damages, or serious impact.

No. 2 Once an competent official exercise his discretion to issue an order requiring a factory to cease operations according to section 39 paragraph 1 of the Factory Act B.E. 2535

(1992) for any of 7 cases previously mentioned in No.1, the most important think to be considered is that description of fact supporting the provision of the law must be clear and evident to a factory owner without any disagreement. A description should clearly show evidence found by the official, the impact of such conduct to the environment, human or property, and how it falls under the provision of section 39 paragraph 1. All related competent officials are trained of the circumstances and procedure in issuing order in accordance with section 39 paragraph 1.

No. 3 Exercising of discretion without the component of evident fact and not in accordance with section 39 paragraph 1, may be disputable and subject to a lawsuit.

Department of Industrial Works