

(ROYAL COMMAND)

HAZARDOUS SUBSTANCE ACT (No. 3)

B.E. 2551 (2008)

BHUMIBHOL ADULYADEJ, REX.

Given on the 17th day of February B.E. 2551

Being the 63th year of the Present Reign.

His Majesty King Bhumibhol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to revise the law on hazardous substance.

Hazardous Substance Act contains some provisions relating to the restriction of the people's rights and liberties, authorized by the provisions of section 29, along with section 41 and section 43 of the Constitution of the Kingdom of Thailand.

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly as follows:

Section 1 This Act shall be called the "Hazardous Substance Act (No. 3), B.E. 2551".

Section 2 This Act shall enter into force after the period of 180 days as from the date of its publication in the Government Gazette has elapsed.

Section 3 Provisions on paragraph one in Section 5 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

"Section 5. The Minister of Defence, the Minister of Agriculture and Cooperatives, the Minister of Transport, the Minister of National Resources and Environment, the Minister of Energy, the Minister of Interior, the Minister of Science and Technology, the Minister of Public Health and the Minister of Industry shall control, promote and supervise the secretary and the assistant secretaries of the Hazardous Substance Committee in the execution of this Act".

Section 4 Provisions in Section 6 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

"Section 6 There shall be established a Hazardous Substance Committee consisting of the Permanent Secretary of the Ministry of Industry as Chairperson, the Commissioner General of the Royal Thai Police, the Director-General of the Department of Land Transport, the Director-General of the Department of Internal Trade, the Director-General of the Department of Medical Services, the Director-

General of Pollution Control Department, the Director-General of the Department of Energy Business, the Director-General of the Department of Fisheries, the Director-General of the Department of Livestock Development, the Director-General of the Department of Agriculture, the Director-General of the Department of Medical Sciences, the Director-General of the Department of Agricultural Extension, the Secretary-General of the Food and Drug Administration, the Secretary-General of the Office of Atomic Energy for Peace, the Secretary-General of the Thai Industrial Standards Institute, a representative of the Ministry of Defense, a representative of the Ministry of Transport, a representative of the National Bureau of Agricultural and Food Standards and not more than ten qualified persons appointed by the Council of Ministers, as members. The Director-General of the Department of Industrial Works shall be member and secretary, and a representative of the Department of Energy Business, a representative of the Department of Industrial Works, a representative of the Department of Agriculture, a representative of the Food and Drug Administration, and a representative of the Office of Atomic Energy for Peace shall be assistant secretaries.

The qualified members as appointed by the Council of Ministers shall be the persons having knowledge, expertise, contributions and experience in the related fields of chemistry, science, engineering, agriculture or law, and at least five of them shall be appointed from the qualified persons who are representatives of public benefit organizations with experience in providing protection to health and hygiene, consumers, sustainable agriculture, hazardous substance management in the locality, or environment”.

Section 5 Provisions on (1) and (2) in Section 7 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“(1) To formulate policies, prescribe measures and prepare plans on hazardous substance control to be complied with by all agencies concerned upon approval of the Council of Ministers;

(1/1) To give recommendations to the Minister of Industry in relation to the issuance of the Notifications under Sections 18 paragraph two and 36 paragraph one;

(2) To give recommendations to the Responsible Minister in relation to the issuance of Notifications under Sections 20, 20/1, 36 paragraph three, 37 paragraph two, 43, 44, and 47 (5)”

Section 6 Provisions in Section 8 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“Section 8 A qualified member shall hold office for a term of three years. A qualified member who vacates office may be reappointed, but not more than two consecutive terms”.

Section 7 Provisions on (1) and (2) in Section 20 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“(1) Prescription of quantity, composition, properties and adulterants, container, examining and testing method for container, label, production, import, export, sale, transportation, storage, disposal and destruction of hazardous substance, treatment of hazardous substance container, fact reporting, specimen delivery, or any other matters in relation to hazardous substance in order to control, prevent, alleviate or extinguish any danger which may happen to people, animals, plants, property or environment with due regard to international conventions and obligations;

(1/1) Requirements for technology transfer in relation to hazardous substance and to put down guarantee for damage which may be inflicted on environment, life, or property caused by business operation;

(2) Requirements for experts or specialists specifically responsible for any undertaking under (1) and (1/1);”

Section 8 Following provisions shall be added as Section 20/1 of the Hazardous Substance Act B.E. 2535 (1992);

“Section 20/1 The expert or specialist specifically responsible for any undertaking in relation to hazardous substance shall perform in compliance with the criteria, procedure and conditions as prescribed by the Responsible Minister with the recommendation of the Committee as published in the Government Gazette”.

Section 9 Provisions in Section 21 and Section 22 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“Section 21 A producer, importer or exporter of, or any person having in possession of Category 1 hazardous substance, shall comply with the Notifications of the Responsible Minister issued under Section 20 (1), (1/1), (2) and (3).

Section 22 Subject to the provisions of Section 36, no person shall produce, import, export, or have in possession of Category 2 hazardous substance, except that the competent official has been notified in advance of his or her intent to do so.

Whenever any hazardous substance is specified as Category 2 hazardous substance, a producer, importer, exporter, or a person having in possession of that hazardous substance shall notify the competent official of his or her operation in relation to that hazardous substance within the period as specified in that notification.

Upon receiving the notification under paragraphs one or two, the competent official shall issue a receipt as evidence to the person who makes such notification. The receipt shall be valid through the period as specified therein, but not more than three years as from the date of its issuance.

The notification, the issuance of a receipt, the application for renewal of a receipt, and the renewal of a receipt, shall be in accordance with the criteria and procedure as prescribed by the responsible agency by publication in the Government Gazette.

A producer, importer, exporter, or a person having in possession of Category 2 hazardous substance shall comply with the Notification of the Responsible Minister issued under Section 20 (1), (1/1), (2) and (3)".

Section 10 Provisions on paragraph two and three in Section 23 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

"A producer, importer, exporter, or a person having in possession of Category 3 hazardous substance shall also comply with the Notification of the Responsible Minister issued under Section 20 (1), (1/1), (2) and (3)17".

Section 11 Provisions on paragraph two and three in Section 36 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

"The production or import of any Category 2 or 3 of hazardous substances other than those specified in the list referred to in paragraph one shall be registered with the competent official prior to production or import. Upon receiving certificate of registration, it may be produced or imported under Section 22 or the production or import license thereof may be granted under Section 23, except in a case where there is a Notification of the Responsible Minister exempting the registration on the ground that that hazardous substance has been registered by another person or on any other reasonable grounds. The certificate of registration of hazardous substance shall be valid for not more than six years as from the date of issuance of the certificate of registration.

The application for the registration of hazardous substance, the issuance of the certificate of registration of hazardous substance and the renewal of the certificate of registration of hazardous substance shall be in accordance with the criteria and procedure as prescribed by the Responsible Minister with the recommendation of the Committee by publication in the Government Gazette".

Section 12 Provisions in Section 42 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed.

Section 13 Provisions in Section 43 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

"Section 43 No person shall produce, import or have in possession of Category 4 hazardous substance, except with written permission from the responsible agency for use as standard analytical substance in laboratory. The application for and the granting of permission shall be in accordance with the criteria, procedure and conditions as prescribed by the Responsible Minister, with recommendation of the Committee, as published in the Government Gazette.

When the Minister of Industry has issued a notification specifying any substance to be Category 4 hazardous substance, the producer, importer or the person having in possession of that hazardous substance shall comply with the order of the competent official. Such being the case, Section 41 shall apply *mutatis mutandis*”.

Section 14 Provisions on paragraph one in Section 52 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“Section 52. When it appears to the competent official that any producer, importer, exporter or person having in possession of hazardous substance violates or fails to comply with this Act, the competent official shall have the power to order such person to stop, rectify, or improve such act of violation, or comply. If there is a reasonable ground, the competent official may order that person to return such hazardous substance, by exporting, to the producer or the person sending it, or do otherwise as appropriate in accordance with the criteria, procedure and conditions as prescribed by the competent official”.

Section 15 Following provisions shall be added as Section 52/1 of the Hazardous Substance Act B.E. 2535 (1992);

“Section 52/1 If it appears that any producer, importer, exporter or person having in possession of hazardous substance carries out a business operation which could cause harm, damage, or nuisance to people or property in the business establishment or its vicinity, the competent official shall have the power to order such person to rectify such activity by complying with the criteria, procedure, and conditions prescribed by the competent official”.

Section 16 Provisions in Section 53 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed.

Section 17 Following provisions shall be added as Section 70/1 of the Hazardous Substance Act B.E. 2535 (1992);

“Section 70/1 Any person who fails to comply with Section 20/1 shall be punished by imprisonment for a term of not exceeding six months or a fine of not exceeding fifty thousand baht or both”.

Section 18 Provisions in Section 71 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“Section 71 Any person who fails to comply with Sections 21, 22 paragraph five, 41 or 43 paragraph two, shall be punished by imprisonment for a term of not exceeding six months or a fine of not exceeding fifty thousand baht or both”.

Section 19 Following provisions shall be added as Section 85/1 of the Hazardous Substance Act B.E. 2535 (1992);

“Section 85/1 Any person who fails to comply with the order of the competent official under Section 52/1 shall be punished by imprisonment for a term of not exceeding three months or a fine of not exceeding thirty thousand baht or both”.

Section 20 Following provisions shall be added as Section 87/1 and Section 87/2 of the Hazardous Substance Act B.E. 2535 (1992);

“Section 87/1 In a case where a person who has once been punished on account of the offence under this Act repeats the same offence, the Court may impose additional punishment on such person for another one-half time of the punishment as prescribed for that offence.

Section 87/2 In a case where a juristic person has committed an offence under this Act, its directors, managers or experts, specialists, or any persons responsible for the commission of such offence shall also be liable to punishment as provided for such offence except where it can be proven that such offence was committed without their knowledge or consent”.

Section 21 Provisions in Section 89 of the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced with followings:

“Section 89 All of the offences under this Act punishable by imprisonment for a term of not exceeding one year or only by a fine, the Committee shall have the power to compound the matter and if the offender pays the fine for settlement within thirty days as from the date the offender has been informed, the case shall be deemed settled in accordance with the Criminal Procedure Code.

If the Committee thinks fit, it may entrust the power to settle the case to the sub-committee or the competent official. In this regard, the settlement shall be in accordance with the criteria and procedure as prescribed by the Committee.

In a case where evidentiary property in connection with the commission of an offence under this Act has been seized or attached, the person having the power to settle the case under paragraph one or paragraph two shall settle the case in accordance with the following conditions:

(1) If rectification is possible, when the offender has given his or her consent and has rectified the seized or attached property.

(2) If rectification is not possible, when the offender has given his or her consent to pass on the ownership of the evidentiary property to the government agency responsible for the control of that hazardous substance.

In the case where the person agreeing to settle the case has rectified the evidentiary property, the competent official shall withdraw the attachment of such evidentiary property.

All the properties the ownership of which has been passed on to the government agency responsible for the control of such hazardous substance shall be managed in accordance with the regulation as prescribed by the Responsible Minister”.

Section 22 the Rate of Fees annexed to the Hazardous Substance Act B.E. 2535 (1992) shall be repealed and replaced by the Rate of Fees annexed to this Act.

Section 23 The qualified members who have held office before the effective date of this Act shall be the qualified members under the Hazardous Substance Act B.E. 2535, amended by this Act until there is an appointment of qualified members under the Hazardous Substance Act B.E. 2535 as amended by this Act but not exceeding one hundred and eighty days from the date this Act comes into force.

Section 24 Request cases submitted and pending for consideration before the effective date of this Act shall also be under the power of the Hazardous Substance Committee under the Hazardous Substance Act B.E. 2535 amended by this Act.

Section 25 Import, production, export, and possession license of 3rd Category of hazardous substance issued under the Hazardous Substance Act B.E. 2535 before the effective date of this Act shall be valid until its expiration.

Section 26 Certificate of registration of 2nd and 3rd Category of hazardous substance or Receipt of notification for import, production, export, and possession of 2nd Category of hazardous substance issued under the Hazardous Substance Act B.E. 2535 before the effective date of this Act shall remain valid for three years from the date this Act comes into force.

Countersigned by
Gen. Surayud Chulanont
Prime Minister

(Published in the Government Gazette, Volume 125, Part 38Ko, dated 25th February B.E. 2551 (2008))

Rate of Fees

(1) Certificate of Registration for Hazardous Substance, each	15,000 baht
(2) Hazardous Substance Production License, each	20,000 baht
(3) Hazardous Substance Import License, each	20,000 baht
(4) Hazardous Substance Export License, each	20,000 baht
(5) License to Possess Hazardous Substance, each	20,000 baht
(6) Hazardous Substance Specimen Production License, each	2,000 baht
(7) Hazardous Substance Specimen Import License, each	2,000 baht
(8) Substitute for Certificate of Registration for Hazardous Substance, each	1,000 baht
(9) Substitute for License, each	1,000 baht
(10) The Fee for each Renewal of Certificate of Registration for Hazardous Substance is the same as that for the Certificate of Registration for Hazardous Substance	
(11) The Fee for each Renewal of License is the same as that for each type of License	