

Regulation of Ministry of Industry

Re: Public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012)

As the provision in the first paragraph of Article 57 of the Thai Constitution prescribes that “a person shall have the right to receive information, explanation, and reason from a State agency, State enterprise or local government organization before permission is given for operation of any project or activity which may affect the quality of environment, health, and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinion on such matters to agencies concerned for consideration in that matters” and the first paragraph of Section 30 of the Administrative Procedure Act B.E. 2539 (1996) that “in case where the administrative order may affect the right of the litigant, the official shall allow the litigant to know the fact sufficiently and to have the opportunity to show the evidence as to support his/her contention”, and to ensure that the government procedure on approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit will be proceeding for the public interest according to the principle of the Royal Decree on the criteria and method of good governance B.E. 2546, the Ministry of Industry, hereby, issues the Regulation of Ministry of Industry regarding public hearing on the approval of a factory operation notification receipt, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012) as follows:

1. This regulation is named “Regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012)”.
2. This regulation shall come into force from the date of signature of this regulation.
3. This regulation shall apply to the approval of a receipt of notification on factory operation commencement, a factory operation permit and a factory expansion permit for all kinds and types of factory according to the factor law.

4. In this regulation;

“Notification” means a notification of the commencement of type-2 factory operation.

“Receipt of notification” means a receipt of the notification of type-2 factory operation commencement.

“Application form” means an application form for a permit or an application form for a factory expansion permit.

“Permit” means a permit for factory operation.

“Government office” means Department of Industrial Works, Department of Primary Industry and Mining, Provincial Industrial Office, Local Administrative Organization to where the missions are transferred according to the factory law.

“Public” means a person who may directly get effect, danger, damage or trouble from the approval of a receipt of notification on factory operation commencement, a factory operation permit, or a factory expansion permit.

5. After the official have checked the notification or the application form and have inspected the location and environmental condition of the factory, the government office that received such notification and application form shall arrange a public hearing before approving or not approving to issue the receipt of notification, or before giving permit or not giving permit, as the case maybe, without delay.

6. A factory that has already organized a public hearing pursuant to the regulation of the Prime Minister’s Office on public hearing shall be regarded that the public hearing required by this regulation is already arranged.

7. A factory of which its EIA report, according to the Enhancement of National Environmental Quality Promotion law, has been approved, or a factory that may cause serious impact on environmental quality, natural resources and health to the communities which has already completed the requirement prescribed in the second paragraph of Article 67 of the Thai Constitution shall be regarded that the public hearing required by this regulation is already arranged.

8. Public hearing arranged by the government office as mentioned in clause 5 shall emphasize on providing the right information to the public regarding the factory that applied for the receipt of notification, a permit, or a factory expansion permit, as the case maybe, and all comments must be collected for consideration.

9. The government office in charge of receiving the notification or the application form shall post a notice announcing about the public hearing event in accordance with Form 1 annexed with this regulation and allow the public to receive the following information, as the least, for making their further comments:

9.1 In case of notification on the commencement of type-2 factory operation:

9.1.1 Brief of the key information of the factory, as Form 2 annexed with this regulation

9.1.2 A copy of the notification

9.1.3 Information of raw materials, products, production process, wastes or pollutants or anything that may affect the environment, including dangers that may occur, as prescribed in Form 3 annexed with this regulation.

9.1.4 Explanation of method to prevent the impacts that may affect to the people living in the neighborhood of the factory and to the general public, prevention of nuisance, damages, dangers, control of pollutants, wastes or anything to be discharged as referred in Form 4 annexed with this regulation.

9.2 In case of application for a permit or a factory expansion permit:

9.2.1 Information mentioned in 9.1.1, 9.1.3, and 9.1.4

9.2.2 A copy of the application form

10. The notice on the public hearing as mentioned in clause 9 shall be posted at the public areas as follows:

10.1 The Provincial Industrial Office of the province where the factory is located at, or at the Department of Industrial Works for the factory in Bangkok.

10.2 The district office of the area where the factory is located at.

10.3 The office of the local administration of the area where the factory is located at. For a factory in Bangkok, a notice shall be posted at the district office of the area where the factory is located.

10.4 The factory

11. Posting periods as mentioned in clause 10 are 7 days and 15 days since the posting date for a type-2 factory and a type-3 factory as the case maybe.

Posting of a notice shall be carried out by the government office which has received the notification or the application form within 3 days since the date specified in the public hearing notice.

When the public hearing period ends, the government office in charge shall make a report summarizing result of the public hearing pursuant to Form 5 annexed with this regulation and announce it to the public within 15 days since the end of such public hearing period. The provision in clause 10 shall be applied mutatis mutandis for the posting place.

12. When the consideration of the notification or the application form is to be made after the preliminary check and inspection as specified in clause 5, regardless of results of consideration whether it would be approved or not approved, comments received from the public hearing must be brought up and considered as the following criteria:

12.1 In case when there is no comment from the public, the official or the permit granter shall make a consideration with regard that the result of public hearing is already taken to consideration.

12.2 In case when there is a comment from the public, if a receipt of notification or a permit or a factory expansion permit is to be approved with some condition, due to such

comment, the official or the permit granter shall set the condition under the provision of the law.

12.3 In case when there is the opposition to the approval of a receipt of notification or a permit or a factory expansion permit, the official or the permit granter shall make a consideration rationally by the fact and the provisions of law. If a receipt of notification or a permit or a factory expansion permit is to be approved, the procedure mentioned in 12.2 may be taken.

12.4 In case when there are comments for and against the approval of a receipt of notification receipt, a permit or a factory expansion permit, the official or the permit granter shall consider in pursuant to 12.2 and 12.3.

13. In case when there is the opposition to the approval of a receipt of notification or a permit or a factory expansion permit and the official or the permit granter has already approved the receipt of notification or the permit or the factory expansion permit, as the case maybe, the official or the permit granter must make the public notification regarding such approval together with his/her justification concerned by using Form 6 annexed to this regulation, and post it in the public place as mentioned in clause 10 without any delay.

14. The government office which receives the notification or the application form shall keep the copies of the documents mentioned in clause 9, 10, 11 and 13 until the factory operator stops his/her factory operation business.

Keeping period and destroying of such copies shall comply with the regulation of the Prime Minister's Office regarding the correspondence work B.E. 2526.

15. In case when the interpretation or decision shall be made on any clauses of this regulation, the Permanent Secretary to Industry shall be the final-decision maker.

This regulation shall take effect immediately.

Announced on 20 September B.E. 2555 (2012)

Mr. Witoon Simachokedee

Permanent Secretary to Industry

Regulation of Ministry of Industry

Re: Public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law (No. 2) B.E. 2557 (2014)

As the regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012) prescribed that a public hearing shall be arranged before approving a receipt of notification on factory operation commencement, a factory operation permit or a factory expansion permit, to ensure that the public hearing has been carried out in response to the objectives of the law which allows the litigant who may be affected from the three cases of the administrative order to know the fact sufficiently and has the opportunity to show the evidence to support his/her contention extensively and for the benefit of the approval processes of a receipt of notification on factory operation commencement, a factory operation permit and a factory expansion permit, it is appropriate to amend the public hearing procedure prescribed in such aforementioned regulation; therefore, the Ministry of Industry issues the regulation of Ministry of Industry as follows:

1. This regulation is named "Regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law (No. 2) B.E. 2557 (2014)"

2. This regulation shall come into force from the date of signature of this regulation.

3. The texts in clause 5 of the regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012) shall be repealed and replaced with the following texts:

"5. Whoever wish to apply for a receipt of notification or a permit or a factory expansion, he/she shall submit the following documents to the government office in charge of the area where the factory is to be located or operated so that to arrange the public hearing according to this regulation.

5.1 In case when applying for a receipt of notification, one copy of the documents as prescribed in Article 1 of the Ministerial Regulation No. 4 (B.E. 2535) issued under the Factory Act B.E. 2535, attached with related document, shall be submitted.

5.2 In case when applying for a permit or a factory expansion, one copy of the documents as prescribed in Article 2 of the Ministerial Regulation prescribing criteria for applying for a permit and a permission of a type-3 factory B.E. 2549, attached with related documents, shall be submitted".

4. The texts in clause 9 of the regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012) shall be repealed and replaced with the following texts:

“9. The government office as specified in clause 5 shall post a notice announcing about the public hearing event in accordance with Form 1 annexed with this regulation and allow the public to receive the following information, as the least, for making their further comments:

9.1 In case of notification on the commencement of type-2 factory operation:

9.1.1 Brief of the key information of the factory, as Form 2 annexed with this regulation

9.1.2 A copy of the notification

9.1.3 Information of raw materials, products, production process, wastes or pollutants or anything that may affect the environment, including dangers that may occur, as prescribed in Form 3 annexed with this regulation.

9.1.4 Explanation of method to prevent the impacts that may affect to the people living in the neighborhood of the factory and to the general public, prevention of nuisance, damages, dangers, control of pollutants, wastes or anything to be discharged as referred in Form 4 annexed with this regulation.

9.2 In case of application for a permit or a factory expansion permit:

9.2.1 Information mentioned in 9.1.1, 9.1.3, and 9.1.4

9.2.2 A copy of the application form”

5. The texts in clause 11 of the regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012) shall be repealed and replaced with the following texts:

“11. Posting periods as mentioned in clause 10 are 7 days and 15 days since the posting date for a type-2 factory and a type-3 factory as the case maybe.

Posting of a notice shall be carried out by the government as prescribed in clause 5 within 3 days since the date specified in the public hearing notice.

When the public hearing period ends, the government office as mentioned in clause 5 shall make a report summarizing result of the public hearing pursuant to Form 5 annexed with this regulation and announce it to the public within 15 days since the end of such public hearing period. The provision in clause 10 shall be applied mutatis mutandis for the posting place.

Results of the public hearing pursuant to Form 5 including the documents mentioned in clause 5 and clause 9 shall be used for applying for a receipt of notification or a permit or a factory expansion as the case maybe within 45 days since the posting date of the public hearing result in compliance with Form 5”.

6. The public hearing in accordance with the regulation of Ministry of Industry regarding public hearing on the approval of a receipt of notification on factory operation commencement, a factory operation permit, a factory expansion permit in pursuant to the factory law B.E. 2555 (2012) that has been arranged in prior to the enforcement of this regulation but not yet finished shall be continued until completed in compliance with the former regulation.

This regulation shall take effect immediately.

Announced on 30 June B.E. 2557 (2014)

Mr. Witoon Simachokedee

Permanent Secretary to Industry