

**The Recommendation of the President of Supreme Administrative Court
Regarding Administrative Procedure in Environmental Suit**

As it appears that issues concerning the environment affects public interest and the overall state administration, it is deemed fit that the administrative procedure in environmental suit should provide for prompt proceedings to prevent any impact on the ecology, society and economy as well as to ensure that damaged or affected party be effectively provided with remedies, by the virtue of Section 28 of the Act on the Establishment of the Administrative Court and Administrative Court Procedure B.E. 2542 coupled with 6(5) and (6) of the Administrative Court Regulation regarding the mandate of the President of the Supreme Administrative Court and Chief Justice of the Lower Administrative Court of Lower Instance and the Administration of the Administrative Court B.E. 2544, the President of the Supreme Administrative Court is to issue the following recommendations;

1. In this recommendation;

An “environmental administrative case” includes a legal dispute between a government agency, a state agency, a state enterprise, a local administration organization or an organization established by the virtue of the Constitution, or between a state official and a private party, or between government agencies, state enterprises, local administration organizations, or organizations established by the virtue of the Constitution or between state officials. The dispute must stem from the execution of administrative power or an administrative undertaking related to the legal provisions regarding the environment, protection or preservation of natural conditions of plants, fauna, or other living beings, the management of natural resources, protection of human health, management of human environment, climate, landscape, arts and culture or related laws as well as other cases as per the Notifications made by the President of the Supreme Administrative Court.

The power to determine if any case is an environmental administrative case or not, at the Lower Administrative Court, shall rest with the Chief Justice of the Lower

Administrative Court, whereas at the Supreme Administrative Court, the power is vested in the President of the Supreme Administrative Court .

2. In order to determine the eligibility of a plaint, according to Section 45 of the Act on the Establishment of the Administrative Court and Administrative Court Procedure B.E. 2542, the Court may consider as follows;

(1) To review the act which is the cause of the submission of the plaint and other facts or circumstances related to the act in order to determine that the plaintiff has been or will have been inevitably affected by such an act in one way or another and that suffices it for the Court to accept and proceed.

(2) In reviewing a request for a writ of execution, since an environmental administrative case is uniquely involved with remedies and compensation for the plaintiff and is different from other administrative cases, the request and the writ of execution should be made to encompass the following compensation;

(a) Compensation regarding health include treatment cost, legal support expense, funeral expense, the loss of earning as a result of the disability to work, compensation for grievance, medical expense, or examination and surveillance expense after the day the case is filed, etc.

(b) Compensation regarding natural resources and the environment including the restoration of the natural resources and the environment expense, non-commercial compensation including the loss of ecology, or natural resources among others.

(c) Compensation for the livelihood of community in society includes the loss of community identity, the loss of arts and culture, etc.

If the request or the writ of execution is not complete, the Court shall instruct the plaintiff to correct it or to supply more information. The Court may conduct a hearing with the plaintiff or concerned agencies as deemed fit in order to rectify the shortcoming.

3. In an environmental administrative case that affects public interest whereby the Court has to determine if the person suffers, or gets injured or may be affected or may get inevitably injured and if the person has the standing right to file the case, the determination should be carried out based on broad meaning that encompasses community rights, local community, traditional community, private agencies, legal entities or a stakeholder group that may gain or lose as far as the environment is concerned. The Court will have to consider constitutional provisions concerning the right to freedom of association, union, federation, cooperative, peasant group, private agency, nongovernmental organization, or other groups in this regard, too.

As for the statute of limitation, the importance should be placed on regulations regarding the statute of limitation as per Section 52 of the 45 of the Act on the Establishment of the Administrative Court and Administrative Court Procedure B.E. 2542.

As for a request to waive the court fee, an emphasis should be placed on the impact or benefit that befalls public and the status of the plaintiff who wants to restore the environment to determine if a waiver of the court fee should be granted. If they are required to pay the court fee, it shall inflict too much suffering on the plaintiff as per Section 45/1 of the Act on the Establishment of the Administrative Court and Administrative Court Procedure B.E. 2542

4. As for the environmental administrative case that affects public interest and/or may affect public interest in future, the Court may consider determining measures of interim relief without having to wait for a request from the plaintiff.

5. In case the Court issues a measure of interim relief to be executed by either an administrative agency, or state official to act in compliance with the criteria and methods determined by the Court, the Court may instruct the court officers to ensure the execution of the court order and to keep the Court informed regularly. Should there be any incompliance of the court order, the Court may proceed as deemed fit to impose a provisional measure or an injunction prior to the delivery of the verdict.

6. The Court shall lay out methods to promptly acquire relevant facts and to determine the points the accused have to respond and to submit to the Court any relevant evidence which is beneficial to the trial. While the accused prepare the answers, the Court may proceed with the acquisition of facts and other evidence in parallel to that. The Court may also consider appointing expert witnesses to provide technical input. If deemed fit, the appointment of expert witnesses should be carried out at the same time. The recruitment of expert witnesses must be done based on their impartiality, knowledge, experience and background as well as the credibility of their principles and theories and any conflict of interest of the expert witnesses.

7. In order to ensure prompt proceedings and to prevent any unnecessary delay of the proceedings, if a request to extend the submission of answers, the Court may allow it to take place as necessary. As for when it involves complicated facts, the Court may consider extending the period for the submission of the answers as deemed fit.

8. After the accused have submitted their defence to the Court, and if the facts acquired from the parties and the facts acquired from own investigation of the Court are sufficient for the Court to proceed with the ruling, the Court shall furnish the plaintiffs a copy of the answers and all evidence and to prepare a individual briefing of the facts and opinions in order to submit to the panel of the judges.

9. During the investigation in order to determine the relationship between the commission of the act and the resulting damages and to determine the compensation which involves technical and complicated issues, the Court may consider the following recommendations;

(1) For damages claim, apart from listening to facts and evidence presented by the plaintiff, the Court may initiate its own investigation in order to acquire facts and evidence to shed more light on the damages done and to aid the determination of the amount of compensation. If no evidence could be found to determine the exact extent of the damage, and if the Court believes the damage has really taken place, the Court may at its discretion propose a lump sum compensation as deemed fit in view of the circumstance and gravity of the wrongful act.

(2) Should there be any damage that may occur in future and the Court may determine the compensation for that, the Court should proceed to acquire facts pertaining to the determination of the amount of compensation in the verdict. For example, if the damaged party suffers from radiation or other harmful toxics and sustains chronic illnesses, the Court may determine the amount of fair compensation to cover the actual damage. If no expert witnesses have been appointed, the Court may consider appointing them to provide input to the Court including occupational health and environmental doctors, etc.

(3) When damage is inflicted on natural resources, the Court may consider specifically appointing expert witnesses to compile evidence and to determine the causes of the damages, value of damage on the affected ecology, expenses that will incur from the restoration of the environment and the eradication of pollution in the natural resources as well as to propose measures for the protection, preservation, conservation or restoration of the natural resources and the environment, the information of which can be useful in delivering the verdict.

(4) When damage is incurred from pollution and the determination of compensation is needed, the Court may consider appointing expert witnesses with first hand knowledge in the subject including experts on noise pollution or other harmful waste. They can be experts from state agencies who can testify to the Court and to help determine the compensation for the pollution.

(5) If during the trial, the Court finds that the damage incurred with the plaintiff is actually more extensive than what is described in the plaint, the Court may keep the plaintiff informed of the information.

10. During the visit to the site in dispute, the Court may consider proceeding with the following;

(1) Prior to site visit, the Court should set out a careful plan for site assessment. And if the situation changes, the Court should prepare a contingency plan to

appropriately and reasonably address the immediate change. It is important for the Court to avoid giving an impression to either of the parties that it takes side or has favor over one party to another or lacks impartiality.

(2) Should the site assessment may elicit confrontation of the two parties or any third party and that it may have led to violence or obstacles to the site assessment, the Court may instruct the office of the Administrative Court to seek cooperation from local administrative officials or police officials in advance to ensure orderliness of the situation.

(3) Prior to onsite investigation, the Court should inform the parties and people who live there that the site assessment is part of an ongoing trial of the Court. And the parties and local people should be asked for cooperation to facilitate the proceedings of the Court. Any person who act to impede the investigation may be found guilty by law

(4) At the completion of the site assessment, the Court should prepare a note detailing the Court's operation and relevant events as part of the report to be used during the trial.

11. In its adjudication, the Court shall hear all reasons related to all charges and all issues raised or argued by the party. In addition, the adjudication should help to set out precedent for best practice of the execution of administrative power, set out a social norm for protecting public interest with a view as to how the norm may affect the economy, society, the state administration, the protection, preservation, maintenance or restoration of the natural resources or the environment based on sustainable development principle and with a view on the potential impact on the natural resources, the environment, life or health and sanitation and the rights of the future generation.

12. To determine the amount of compensation, the Court shall ensure that it covers all damages proven by facts in each case, i.e., medical expense, or expense incurred from monitoring the condition and treating any emerging conditions after the day the case has been filed, health damages, any loss of benefit, any loss in future, mental damage or non-financial damage, damage inflicted on the natural resources, expense incurred from the eradication of pollution and the restoration of the natural resources, damage on community rights and livelihood. A reservation can be made in the verdict to determine compensation in the future if the perpetrator is to be ordered by the Court to restore the damaged environment. The terms should be included in the verdict for the perpetrators to carry out as deemed fit in each case.

13. In issuing any writ on a particular issue, the Court should make it clear if the writ shall be effective retrospectively or prospectively or not. It should be made essentially considering its effectiveness on addressing the damage of the plaintiff and the environment, and its implications. As for any writ for any administrative agency or state official to perform a particular act, the Court shall specify clearly the duration for the act to be carried out by the administrative agency or state official with a view on the gravity of the impact on the environment and the routine working hours the administrative agency or state official may use in order to accomplish the act.

14. Should the Court impose a reservation on any particular matter in the verdict, and should there be any change that occurs during the time the reservation is made

for, the Court shall proceed with the investigation of the emerging facts to shed light on the matter and may issue a verdict on the matter which has been included in the reservation.

15. Apart from the recommendations made herein, the Court shall endeavor to explore ways to reduce redundancy and accelerate the proceedings regarding the trial and the case administration in order to prompt complete the adjudication of the case.

Made on the Twenty-Ninth of June, 2011

Justice Hassavut Vitisviriyakul

President of the Supreme Administrative Court