

Thesis Title	Settlement of Environmental Disputes in the Administrative Court
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## Summary

### Chapter 1: Introduction

At present, the environmental problems in Thailand are more severe and cause the injury to life, body, health, sanitation of people. Consequently, the injured persons shall have to exercise their rights to file the cases which are civil, criminal, and administrative against the State agencies that neglect and do not settle the cause of pollution and polluter by virtue of the laws in relation to the natural resources and environment as principles to consider.

However, in the case proceedings of the injured persons according to the laws relating to the natural resources and environment, such injured persons may claim for damage. The injured persons may file a case to the Courts of Justice or the Administrative Court. It depends on the types of the certain cases. Consequently, there are the problems relating to the different court procedure systems. That's to say, the injured person who are entitled to file a case to the Courts of Justice shall be the persons whose rights are violated according to Section 55 of the Civil Procedure Code, which is narrower than the person who is entitled to file an administrative case according to Section 72 under the Act on the Establishment of the Administrative Court and the Administrative Court Procedure, B.E. 2542 (1999) prescribing to entitle the persons who have been aggrieved or injured or who may inevitably be aggrieved or injured to file a case. Moreover, in the Courts of Justice, the acquisition of the facts

applies the Accusations System in which the injured persons have the burden of proof in the offence of the polluter and damages, but in the Administrative Court, the Inquisition System is applied. The Court shall inquire into facts. Consequently, the injured persons shall receive the convenience and justice.

Therefore, it is necessary to study the means to settle the environmental disputes in the Administrative Court, which shall be guideline to develop the plaint and proceedings of environmental administrative cases in Thailand.

## Chapter 2: Basic Concepts and Means to Settle the Administrative Disputes

The right in the environment is the natural right which is consistent with Section 25 (1) of the Universal Declaration of Human Right stipulating that everyone has the right to a standard of living adequate for the health and well-being of himself. The Section 67 under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) prescribes to recognize the personal right of the persons who participate in the State and community in the management of the natural resources and environment. In this regard, the State shall also be prescribed to provide the policy relating to the management of the natural resources and environment.

The environmental right is involved with all types of environmental right; either the right in the air, water, land and other natural resources including the cultural environment of human whenever the environment is mixed with polluted or dangerous things or there is any unexpected event.

Therefore, in event where there is an environmental dispute, the injured persons shall be protected under the law. The principle on the strict liability is applied under Section 96 of the Enhancement and Conservation of National Quality of Environment Act, B.E. 2535 (1993). In this regard, the owner or possessor of the original sources of pollution which creates or is the original source of the leaking or spreading the pollution causing other persons to encounter the danger on life, body, health, and sanitation is prescribed to have duty to prove the offence and to make compensation.

The polluter shall be responsible for any expenses in order to protect or amend all types of damage consistent with the "Polluter Pays Principle: PPP".

### Chapter 3: The Jurisdiction of the Administrative Court in Environmental Cases

The environmental administrative case involves all disputes between the administrative agencies or the State officials or other agencies that are entrusted to exercise the administrative power or to carry out the administrative acts and private persons or among the administrative agencies or State officials or other agencies that are entrusted to exercise the administrative power or to carry out the administrative acts. It is a dispute in relation to an unlawful act or the neglect of official duties as per the Enhancement and Conservation of National Quality of Environment Act to be performed or the performance of such duties with unreasonable delay or to be liable for the performance of official duties according to such law. This brings about the problems of polluted environment in consequence of impacts to the personal life, body, health, sanitation or property including the problems of natural resources and environment being mixed with the chemical substance as well as being destructive.

The laws which give powers to the administrative agencies to carry out the management of natural resources and environment can be divided into two types viz.: the laws which are directly related to the environment, such as the Enhancement and Conservation of National Quality of Environment Act, B.E. 2535 (1993), the Forest Act, B.E. 2484 (1941), the National Park Act, B.E. 2504 (1961) and the laws which are not directly related to the environment, but these laws entrust the administrative agencies to carry out the management of natural resources and environment such as the Bangkok Metropolitan Administration Act, B.E. 2528 (1985), the Sub-district Council and Sub-district Administration Act, B.E. 2537 (1994).

Therefore, the administrative cases can be classified according to Section 9 paragraph one of the Act on the Establishment of the Administrative Court and the

Administrative Court Procedure, B.E. 2542 (1999), for instance, a dispute involving the unlawful acts of the administrative agencies or the State officials.

#### Chapter 4: Conditions to File the Environmental Administration Cases

The Plaintiff of the environmental case shall be subject to the five (5) elements in the consideration of the conditions to file the cases viz.:

1. The plaintiff shall be the persons who are entitled to file the cases such as the Ombudsman, the National Human Right Commission, the community or the person who has been aggrieved or injured or who may inevitably be aggrieved or injured in consequence of either acts or omission of act of the administrative agencies or the State officials as per the law;

2. The plaintiff has already complied with the procedures or methods which are conditions to alleviate the grievance or injury as per the procedures as provided by law e.g. the appeal or the dissent of orders against the authorities has already done;

3. The plaintiff shall file a case within the duration of time prescribed by law such as to file the case due to the unlawful act or the neglect of official performance by the administrative agencies or the State officials, such case shall be filed within 90 days. The case of administrative wrongful act shall be filed within one year as from the day the cause of action is known or should have been known but the filing shall not be later than 10 years as from the date of such cause of action.

4. The plaintiff should provide the request for the decree determination e.g. the request to revoke the orders to close the factory of the officials of the Department of Industrial Work;

5. For the environmental administrative cases, the court fee shall not be paid except it is the plaintiff to request to make the payment and the delivery of property in connection with the dispute involving the administrative wrongful act or the administrative contracts.

### Chapter 5: Acquisition of Facts by the Inquisition

The Administrative Court employs the acquisition of facts in the form of inquisition in which the judge-rapporteur shall play a crucial role to inquire into facts from the plaint, counterclaim, objection of the pleading, additional pleading or the inquisition into facts from the parties or the inquisition into facts by the Administrative Court itself. This may be done through the inquisition of the persons in order to acquire the related persons to explain the factual and legal issues and then make a summary of facts from all evidential witness existing in the case file and to provide the opinion to consider the cases to propose to the judges in the chamber to prepare the further judgments.

### Chapter 6: Provisional Measures before Judgments in Environmental Administrative Case

The provisional measures before judgments in the environmental administrative case in accordance with the Act on the Establishment of the Administrative Court and the Administrative Court Procedure, B.E. 2542 (1999) and the Rule of General Assembly of Judges in the Supreme Administrative Court on the Administrative Court Procedure, B.E. 2543 (2000) are divided into two types viz.: the suspension of execution as per the regulations or administrative orders and the provisional remedial measures.

### Chapter 7: Judgments, Administrative Orders and Execution of Environmental Administrative Cases

When the judge-rapporteur has considered the facts and is of opinion that the case has adequate facts to consider and judge. The judge-rapporteur shall send the record

together with case file to the chamber in order to proceed on the further adjudication. In this regard, the President of the chamber shall determine the date to end the inquisition into facts and notify both parties not less than 10 days and send the case file to the President of an Administrative Court of First Instance or the President of the Supreme Administrative Court to consider together with the case file to the judge-commissioner of justice in order to promptly prepare the statement and then to fix the date to firstly adjudicate and proceed on the consideration of the judgment and execution of the environmental administrative cases.

### Chapter 8: Summary and Suggestions

Thai environmental laws do not prescribe the power to file an administrative case the burden of proof of actions and consequence including the damages. Consequently, the legal enforcement fails to achieve the intention to protect the natural resources and environment. Therefore, the laws on the power to file a case, the burden of proof, payment of compensation, damages should be amended for the certainty such as Section 96 of the Enhancement and Conservation of National Quality of Environment Act, B.E. 2535 (1993) should be amended to entitle injured persons to claim for the expenses in the retrieval of quality of environment.