

Unveiling Thailand's Draft Clean Air Act

Nuanporn Wechsuwanarux, Partner
Jongkotchakorn Phantophas, Associate
Punika Dasom, Associate
Supawin Pongthananikorn, Associate
Chandler MHM Limited

Air pollution is recognized by the World Health Organization (WHO) as a severe environmental and health threat caused by various factors, including household and industrial emissions of greenhouse gases, vehicular exhaust, agricultural activities and inefficient environmental management. In response to the pressing concern of air quality, notably the significant impact of PM2.5, the Thai government has been working in collaboration with, among others, academics and civil society organizations to address the air pollution crisis. On 28 November 2023, the Thai cabinet approved a draft Clean Air Act (“Act”) in a bid to reduce pollution systematically.

Fundamental Rights – The Rights to Clean Air

The Act is developed from the people’s right to access unpolluted air, commonly referred to as the right to clean air. The Act not only mentions the right to clean air, it also further provides that the people are entitled to receive vital information regarding pollution and air quality that could impact their well-being, the right to monitor, protect themselves and others from the threat of air pollution, including the right to participate in the government’s decision-making process related to air quality.

Committees to Be Established

To implement the Clean Air Act, committees and subcommittees shall be established, with notable responsibilities and authorities of each committee as follows:

(a) **Clean Air Policy Committee:** Comprising the Prime Minister as the chairman, the committee shall be

responsible for: (i) determining and overseeing the implementation of policies and a clean air management master plan as reported by the Clean Air Management Committee; (ii) suggesting any revisions to the laws on clean air and, among others, economic, financial, tax or investment promotion measures.

(b) **Clean Air Management Committee:** To facilitate collaboration among the committees, the Clean Air Management Committee, with the Minister of the Ministry of Natural Resources and Environment as chairman, shall be established with key responsibilities and authority including: (i) determining the standards for clean air and air quality index and the standards for pollution release and emissions from air pollution sources (“**Emission Standards**”); (ii) prescribing criteria and conditions for matters specified in the Act, including the controlling standards for air pollution release and emissions from permanent locations and vehicles sources, determining precautionary zones and air polluted zones, assessing costs, damage and impacts resulting from air pollution; (iii) suggesting any economic measures to the Clean Air Policy Committee; and (iv) annually reporting to the Clean Air Policy Committee on the air quality situation and the implementation of the clean air management system, including proposing issues, impediments and solutions. Furthermore, the Clean Air Management Committee shall set up the clean air management system in accordance with the provisions outlined in the Act, e.g. the standards for clean air quality, monitoring system and national data system of air quality.

- (c) **Clean Air Provincial Committee:** As a local working committee, the Clean Air Provincial Committee chaired by the provincial governor shall be established. The Area-Specific Committee shall be appointed by the Clean Air Management Committee and be responsible for monitoring and addressing air pollution in specific affected areas. The Clean Air Provincial Committee or Area-Specific Committee shall be responsible for: (i) preparing and implementing a plan to prevent and solve air pollution issues in their respective responsible areas; (ii) determining air pollution precautionary zones (see the *Control Mechanisms* section on the right for more details); (iii) preparing an action plan for air polluted zones; (iv) setting guidelines to manage the activities that cause or may cause air pollution affecting public health or burning in agricultural areas; and (v) prescribing the standards for release and emissions of air pollution within their respective responsible areas. For Bangkok area, the Bangkok Clean Air Committee shall be established and shall be granted the same authority as that of the Clean Air Provincial Committee and Area-Specific Committee.

Supremacy of the Clean Air Act

The Act will apply across Thailand, including its exclusive economic zones, the continental shelf, and high seas where Thailand has rights and duties regarding the management of clean air quality standards so long as it does not contradict or conflict with international laws or international agreements with other nations.

Prior to the introduction of the Act, measures to address air pollution were scattered across various pieces of legislation, with specific measures applying to certain types of activities, e.g. the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) (as amended) ("**Environment Act**") which applies in general and sets the environmental quality and emission standards for a range of pollution sources, including air, noise, water pollution and hazardous waste; the Factory Act B.E. 2535 (1992) which applies to factories' emission; the ERC Notification Re: Safety, Environmental and Waste Management Standards B.E. 2564 (2021) which applies to the energy business licensees; and the Ministry of Natural Resources and Environment Notification Re: Standards for Controlling the Release of Polluted Air from a Petroleum Refinery B.E. 2554 (2011) which applies to petroleum refineries' emissions.

To address potential overlaps with other existing pieces of legislation, the Act establishes its supremacy, i.e. when

the existing laws or regulations provide air pollution standards or measures which fall below the standards prescribed by the Act, the Act shall prevail.

Control Mechanisms

The Act outlines specific measures and management methods for four types of air pollution sources as follows:

- (a) **Permanent source:** Owners or possessors of permanent pollution sources shall be prohibited from emitting air unless they comply with the Emission Standards set by the Clean Air Management Committee, which includes having in place an air purification system and pollution emission control devices. Furthermore, the Pollution Control Department has the authority to demand data concerning the release of air pollution from various sources, including data possessed by government agencies or data required by law to be maintained or recorded by owners or possessors of pollution sources.
- (b) **Open burning:** Open burning refers to any fire, combustion or ignition that occurs in an open-air setting. The Act prohibits open burning during specific periods, unless authorized by the provincial governor and in compliance with the applicable measures, criteria or guidelines set out by the provincial governor (including timeframes, types of activities, areas and conditions for open burning, as well as reporting duty on the outcomes of such activities).
- (c) **Vehicle pollution:** Any vehicles in use must not emit air pollution exceeding the Emission Standards. Competent officers are authorized to halt any vehicles in order to inspect air pollution. In cases where the Emission Standards are violated, the competent officers shall order the cessation of the use of such vehicles, either absolutely or until the Emission Standards are complied with. If an area exceeds clean air standards due to vehicle pollution that poses threat to public health, the provincial governor must establish measures to reduce air pollution in collaboration with other relevant authorities, including temporary ban of using specific types of vehicles for a certain period as deemed appropriate in that specific area if the pollution persists and is threatening to public health.
- (d) **Cross-border pollution:** Air pollution often originates outside Thailand and subsequently enters the country. The Act addresses this issue by stipulating responsibilities

for the Ministry of Natural Resources and Environment and the Ministry of Foreign Affairs to coordinate with domestic state agencies, private organizations, foreign governments or international organizations to prevent cross-border pollution. The owners or possessors of pollution sources outside Thailand that contribute to or cause the spread of pollution into Thailand, thereby consequently damaging the environment or public health in Thailand, shall be liable for compensation. Under strict liability, it is presumed that the owner or possessor of the area where a forest fire, buildings, industrial factories or agricultural areas are located outside Thailand, at the time when air pollution occurs within the country and as indicated by scientific data is the owner or possessor of the source of air pollution, unless proven otherwise.

In addition, the Clean Air Provincial Committee is authorized to designate 'precautionary zones' which shall be subject to further criteria and conditions, monitored by the Pollution Control Department and allocated with necessary budgets. The provincial governor in charge also has the authority to issue an order to control or suspend any activities by owners, possessors or persons responsible for overseeing any pollution sources. In cases where an area becomes an 'air polluted zone', the Clean Air Provincial Committee must implement an intensive action plan.

Economic Instruments and Measures

In order to incentivize public efforts towards achieving clean air, the Act has provided economic instruments and measures, including: (i) tax and fee incentives (including extra tax and fee to be imposed on the owners or possessors of air pollution sources); (ii) cap-and-trade system to be implemented nationwide or locally; (iii) subsidization for the reduction or prevention of air pollution; and (iv) placement of security for any environmental damage (unless required otherwise by other applicable laws) required from businesses prescribed as sources of pollution that are significantly harmful to air quality or public health. The security must be placed before business commencement has been approved and can be reclaimed upon cessation of business activities.

Penalties

Similar to the Environment Act, the Clean Air Act incorporates the environmental law principle of "polluter-pays", imposing civil penalty mechanisms for any non-compliance, and mandates compensation to rectify the consequences

arising from the non-compliance. Fines (including daily fines in some cases) and imprisonment are imposed on owners or possessors of pollution sources. In cases where the non-compliant party is a juristic person, the directors, managers or persons in charge may be held liable for such non-compliance or violations.

For cross-border pollution, as discussed above, the Act introduces a strict liability principle for cross-border pollution, presuming owners or possessors of pollution sources outside the country, subjecting them to substantial fines. The liability also extends to users, supporters, employers, hirers and any persons directly or indirectly involved, regardless of their location, unless proven otherwise. Legal proceedings in these cases are subject to a 10-year prescription from the day the polluted air enters Thailand.

Takeaways for Petroleum, Petrochemical and Energy Sectors

The Act marks a significant milestone for environment and public health policy in Thailand. However, its intricate and detailed mechanisms might pose challenges in implementation, potentially leading to legislative overlaps and practical challenges in enforcing the measures for cross-border pollution. Given that the Clean Air Act, if enacted as drafted, will be applicable to all persons and government authorities with stringent penalties, all stakeholders should closely monitor and adhere to the applicable standards and measures prescribed by the Clean Air Act. As the standards and measures to be set out under the Clean Air Act are likely to be more stringent than those in other related air pollution laws, including those currently applicable to petroleum, petrochemical and energy sectors, there may be increasing operational costs resulting from the administration and increased technology enhancements in business operations. Not only that the business operators are responsible for administering the air pollution resulting from its operation but also for monitoring the air quality in the operational zone, as specific measures may be imposed if the area is air polluted. Additionally, given the sensitivity of the petroleum, petrochemical and energy sectors to air pollution, business operators should also monitor and consider the possibility that the higher applicable tax and fee or the placement of security may be required. Once effective, the Clean Air Act may stimulate a transition from combustion-based energy to cleaner energy sources and reduce dependence on energy generated through combustion processes in both residential and industrial sectors. ©