

The Recommendation of the President of Supreme Court Regarding Environmental Procedure

As it appears that issues concerning natural resources and the environment are of importance to public and affect the interest and peacefulness in society, in order to streamline and consolidate the procedure regarding the environmental civil suits, by the virtue of Section 5 of the Law for the Organization of Courts of Justice amended by the Act on Amending the Law for the Organization of Courts of Justice, B.E. 2551 (no. 3), the President of the Supreme Court is to make the following recommendation.

1. In this recommendation;

“Environmental suit” means;

- (1) A civil suit arising from a tort claim when damages have been inflicted on the plaintiff as a result of the destruction or the transformation of the natural resources and the environment in the community or in the ecology.
- (2) A civil suit in which the plaintiff asks the defendant to act or to refrain from certain actions in order to protect natural resources and the environment in the community.
- (3) A civil suit in which the plaintiff asks the defendant to provide for damages or compensation to cover expenses incurred from the eradication of pollution or the restoration of the environment or the replenishment of the wasted natural resources.
- (4) A civil suit in which the defendant is asked to provide compensation for any damages inflicted on the life, body and health, or for violation of any other rights, as a result of the pollution caused by the defendant or for which the defendant can be held accountable.

“Natural resource” means anything that occurs naturally including forests, plants, fauna, water, air, soil, minerals, and natural energy.

“The Environment” means the environment as provided for in the law concerning the Enhancement and Conservation of National Environmental Quality Act

“Pollution” means pollution as provided for in the law concerning the Enhancement and Conservation of National Environmental Quality Act

2. An environmental suit as per 1. may stem from violation or non-compliance with the provisions of the Civil and Commercial Code, an Act, or a Notification made by the **coup-makers** which contain provisions regarding natural resources, the environment or pollution.

Matthew Baird 16/8/13 9:01 AM

Comment: Is this the National Executive Council? Or some other body?

3. The right of standing in an environmental suit shall be determined with consideration of the right of a person to benefit from the natural resources and biodiversity as well as the right to live a normal life in a sustainable manner in an environment free of any harm to health, wellbeing or quality of life as prescribed for in the Constitution of the Kingdom of Thailand.

If the Court has found that the rights and duties of a person living in the community or in the area where destruction or deterioration of the natural resources and the environment is taking place against the law are being challenged, the Court may be asked to order or issue an injunction to instruct the person who commits the act to suspend his act or to carry out any act in order to restore the natural resources or the environment.

4. In an environmental suit as per 1(3) which requires time to prove the damages and if according to an expert, it is believed that damages could occur but in the future, the plaintiff may ask the defendant to suspend any act in order to prevent any possible destruction of the natural resources or to prevent pollution.

5. In an environmental suit as per 1(4) for which the damages may happen but in the far future even though the plaintiff has absorbed the toxic into his body, but has not shown any abnormal symptom, the Court may allow the plaintiff to demand compensation and expenses incurred from the treatment and the monitoring of health conditions and may issue an injunction to suspend any act that may cause further damages to the health of the plaintiff.

6. The Court should give an emphasis to dispute settlement in the environmental procedure and an expert can be called to participate in the mediation.

7. For the sake of the protection and restoration of the natural resources and the environment or the ecology, in environmental hearings, the Court may request for more witnesses or summons more witnesses and evidence as deemed fit in order to acquire the complete facts.

8. In order to acquire clear information related to the suit, the Court is encouraged to apply the Civil Procedure Code including the appointment of experts, viewing the scene, or witness examination in advance or other temporary measures prior to the delivery of verdict.

9. During the trial, the Court may ask for opinions or cooperation from an expert or a concerned agency including the collection of sampling of the natural resources and the environment, the examination of the impact, etc. The data can be used for the adjudication and the making of discretion on following issues;

(1) Causes of the emergence of the problem and the impacts on the natural resources and the environment or health

(2) The existing and potential damages, the expenses for the eradication of pollution or restoration of the environment and the value of the wasted natural resources or the ecology

(3) The measures for the prevention, protection, preservation or restoration of the natural resources, the environment or the ecology.

10. In weighing input from expert witness, the Court may consider how plausible the principles and theories expounded by the expert, any possible scientific deviation, knowledge and background of the witness, his profile in the issues which are the substance of the case or his conflict of interest with the case.

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11. Prior to issuing an order or a verdict to lay out measures for the prevention, protection, preservation or restoration of the natural resources, the environment or the ecology, the Court may consider possible and future impact on the natural resources and the environment, on public interest and any impact on a person's life or health, the right to the environment of the next generation and the principle of sustainable development.

12. In order to determine if any suit is an environmental suit or not, the Chief Justice of the Court of Lower Instance or the Chief Judge, wherever applicable, may carry out the determination.

13. To facilitate the execution of the recommendation, the Office of the Court of Justice has created a list of registered experts on the natural resources, the environment or the ecology and issued a notification regarding the case administration that may aid the environmental procedure.

14. As for any existing environmental suit that has been pending in the Court prior to the issuance of this recommendation, if deemed fit, the Court may consider applying the recommendation as well.

Made on the Ninth of March, 2011

Justice Sobchok Sukarom

President of the Supreme Court