



PERMANENT MISSION OF THAILAND
5 Rue Gustave-Moynier
1202 GENEVA

No. 52101/302

The Permanent Mission of Thailand to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honour to refer to the latter's Note dated 4 February 2015 requesting information on the realization of the right of access to information in the field of hazardous substances and wastes in Thailand, for inclusion in the report of the Special Rapporteur on human rights and hazardous substances and wastes to the Human Rights Council at its 30th session.

In this connection, the Permanent Mission has further the honour to forward herewith the requested information as prepared by the Ministry of Foreign Affairs of Thailand, in coordination with the Thai authorities concerned. The same information in electronic format has also been sent to srtoxicwaste@ohchr.org.

The Permanent Mission of Thailand to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Permanent Mission of Thailand,
Geneva.
7 May B.E. 2558 (2015)



OHCHR REGISTRY

08 MAY 2015

Recipients : S.P.S.
.....
.....
.....

Office of the United Nations High Commissioner for Human Rights,
GENEVA.

**Responses to the questionnaire on the right of access to information
in the field of hazardous substances and wastes**

1. What obligations does your Government have to ensure the right of access to information under international, regional and national laws? Please provide, in detail, the relevant legislation that guarantees the right of access to information on hazardous substances and wastes, as well as the mechanisms, including grievance mechanisms, which may be used by individuals and groups.

- The right of access to information has been enshrined in the **Thai constitution** since 1997. The constitution allows people to have the right of access to public information in the possession of government agencies, state enterprises, or local governments. It also grants people the right to receive information, explanation, and reason from those agencies before the approval or implementation of any project or activity which might have a serious impact on the environment, health, sanitary conditions, quality of life, or other important interests of the community.
- **The Official Information Act, B.E. 2540 (1997)**, which was passed in subsequent to the 1997 Constitution, affirms the people's right to information. The law obliges all government agencies to disclose public information demanded by people. Nevertheless, the law also asks all government agencies to provide protection for personal information and privacy in all public sector information. [Details of the Official Information Act, B.E. 2540 (1997) can be found at www.oic.go.th/act/Tatalact2540_170853.pdf]
- According to the Official Information Act, B.E. 2540 (1997), the information that government agencies are obliged to make available for public inspection are such as a result of consideration or a decision which has a direct effect on private individuals, policies, work-plan, projects, annual expenditure, orders that affect private individuals, concession contracts, and Cabinet's decisions.
- With regards to information on the environment-related issues, the Official Information Commission issued a notification in 2010 pursuant to Section 9(8) of the Official Information Act, B.E. 2540 (1997) as recommended by the Thailand Environment Institute and its NGO coalition. The notification aims at improving public health and environmental quality by instructing government agencies to disclose environment and health information to the public.
- It is important to note that some laws that were passed before 1997 are also in line with the said Official Information Act. These are, for example;
 - Section 17 of the Hazardous Substance Act, B.E. 2535 (1992) established the Chemical Data Bank which provides information on chemical substances that are imported, produced, transported, used, or destroyed to the public.
 - Section 6 of the Enhancement and Conservation of the National Environment Quality Act, B.E. 2535 (1992) accords people the rights and duties to be informed and obtain information from government agencies on matters concerning the enhancement and conservation of environmental quality.
- Thailand also aligns domestic legislations and practices relating to hazardous substances and wastes to many international frameworks such as the Rio Declaration on Environment and Development 1992, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on

Persistent Organic Pollutants, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Minamata Convention, among others.

Grievance mechanisms

- In the case where a government agency denies information requested, a person may lodge a complaint with the Official Information Board.
- In addition, people who believe their rights are violated or restricted may also file complaints to the Ombudsman, the National Human Rights Commission, the Administrative Court as well as the government hotline.
- Apart from the aforementioned mechanisms, strong civil society also plays an important role in keeping government agencies in check.

2. Please provide, in detail, the scope and characteristics of hazardous substances and wastes-related information that is or may be accessible to the public? More specifically, please explain what type(s) of information is produced, by whom, based on what criteria, and the time frame/ frequency of data production including whether data collected is disaggregated by gender, age, disability status, etc.

(1) General information

- The Notification of the Official Information Commission (issued on 7 June 2010) has listed out the information on environment and health that government agencies must disclose to the public. These information include reports and information relating to the Environment and Health Impact Assessments; the implementation of preventive measures and solutions of environment, health and social related problems; toxic emissions; pollutants, hazardous substances, and environmental quality monitoring; toxins and contamination in food and the environment; and environment and health impacts from industries, town planning, concessions, policies, and international agreements.
- In addition, the Department of Industrial Works also established the Chemical Data Bank, as stipulated in the Hazardous Substance Act, B.E. 2535 (1992), which serves as a national database on hazardous substances. The Chemical Data Bank is accessible online at <http://msds.pcd.go.th/> .
- The National Environment Board is also mandated to publicise the State of Pollution Report annually. This report updates various environmental situations including air quality and noise level, water quality, as well as waste and hazardous substances. The report is disseminated nationwide and available online at www.pcd.go.th .

(2) Related legislations

- The Notification of the Official Information Commission also instructs government agencies to publicize environment and health related laws and international frameworks that are related to their works for public inspection. These are, for example,
 - Domestic laws: the Constitution; the Enhancement and Conservation of the National Environment Quality Act, B.E. 2535 (1992); the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979); the Factory Act, B.E. 2535 (1992); the Town Plan Act, B.E. 2518 (1975); the Hazardous Substance Act, B.E. 2535 (1992); the National Health Act, B.E. 2550 (2007), etc.
 - International frameworks: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), the Basel Convention on

the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the United Nations Framework Convention on Climate Change, the Kyoto Protocol, etc.

3. Please explain, in detail, how the information on hazardous substances and wastes is made available to the general public. In addition, what actions does the Government take to disseminate this information and to raise public awareness about the adverse impacts of hazardous substances and wastes on human rights? How is this information tailored to the different constituencies?

- The Official Information Act, B.E. 2540 (1997) indicates means that government agencies, including those involving in the works on hazardous substances and wastes such as the Pollution Control Department, the Ministry of Natural Resources and Environment and the Ministry of Industry, may adopt to disseminate their information to the public. These are as the followings:
 - Section 7 stipulates that official information including the organisation's structures, mandates, policies, orders, and regulations shall be published in the Government Gazette. Government agencies cannot enforce those orders and regulations that have not yet been published in the Government Gazette, particularly in an unfavourable manner to people.
 - For information that does not fall under Section 7, Section 9 instructs government agencies to make them available for public inspection. Such information usually come in many forms both printed materials (such as periodic reports, publications, journals, newsletters, etc.) and online materials. Some deem useful for foreign investors are also made available in English.
 - Section 11 allows people to request for any official information other than those already published in the Royal Gazette or made available to the public. In such case, the responsible agency should provide the information to a person within a reasonable period of time.
 - Section 26 also demands government agencies to submit official information, which they do not wish to keep or which are kept beyond the required period, to the National Archives Division for public studies.

4. Please provide examples of how information on hazardous substances and wastes has been used to.

- The implementation of the Official Information Act, B.E. 2540 (1997) and the Notification of the Official Information Commission (issued on 7 June 2010) has granted a better access to environment and health related information for people and brought about awareness on the issues.
- In terms of human rights protection, it enables relevant agencies as well as the public to effectively monitor human rights affected by hazardous substances and wastes; protect the human rights of individuals and groups from the adverse impacts of hazardous substances and wastes; promote other human rights (e.g. rights to health, safe and healthy working conditions, water and sanitation, healthy environment, etc.); prevent potential human rights violations caused by the improper management of hazardous substances and wastes; and hold perpetrators accountable and seek remedy for victims.
- The right of access to information will help strengthen public participation and reinforce the democratic system in the country which will ultimately result in the people having the opportunities to realize their rights to the fullest extent.

5. Which businesses are required to provide information on hazardous substances and wastes (e.g. size, sector, operational context, ownership and structure, etc.)? Please explain, in detail, the obligations of these businesses have with regard to the type of information they are obliged to provide, to whom the information is made available, and what measures may be taken if businesses fail to meet these obligations.

- According to the Hazardous Substance Act, B.E. 2535 (1992), persons or businesses who produce, import or export, or have in possession of, hazardous substances are required to comply with the said law, including declaring hazardous substances that are in possession, and reporting the performance in relation to those hazardous substance to responsible officials within the required period.
- Failures to comply with the said law will result in penalties, such as fine or imprisonment, as stipulated in Chapter 4 (Section 70 – 89).
- Other laws, such as the Factory Act, B.E. 2535 (1992), the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979), and the Occupational Safety, Health and Environment Act, B.E. 2554 (2011), also require factories, industries, or workplaces to meet safety and environmental standards in order to obtain the permit.

6. When does the Government limit the right of access to information on hazardous substances and wastes? Are these criteria on limitation provided by law? Who has the authority to make decisions on the disclosure/ non-disclosure of such information?

- The types of information that are not subject to disclosure are clearly stated in Chapter 2 of the Official Information Act, B.E. 2540 (1997). These are particularly when the disclosure may jeopardise the national security, international relations or national economic or financial security; endanger the life or safety of any person; or infringe the right of privacy. The Act also provides exceptions for official information protected by law against disclosure.

7. How does the Government ensure that the right of access to this information is fulfilled while also respecting the confidentiality of business information? If available, please indicate relevant cases and attach copies of relevant judgements.

- According to the Official Information Act, B.E. 2540 (1997), people are allowed to access to all official information in possession of government agencies.
- Nevertheless, the practice should not violate Chapter 2 of the said Act which lists out the types of information that are not subject to disclosure. These include official information protected by law against disclosure such as the Trade Secrets Act, B.E. 2545 (2002) which provides protection against misappropriation of confidential information such as formulas, programs, practices, processes, designs, instruments, patterns, or compilations of information of businesses.
- Where disagreement occurs, people can lodge complaints with the Official Information Board who will inspect and make a judgement whether the information is permitted to be disclosed.

* * * * *