

NEW REGULATIONS IN THE DRAFT DECREE PROVIDING DETAILS FOR SOME ARTICLES OF THE LAW ON ENVIRONMENTAL PROTECTION

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In order to concretize some provisions of the Law on Environmental Protection 2020 (**LEP 2020**) approved by the National Assembly on November 17, 2020, the Government is drafting a Draft Decree providing details for some articles of this law (**Draft Decree**). So far, the collection of comments from concerned experts and agencies to complete the contents of these regulations has finished. In this Legal Newsletter, NHQuang&Associates will analyze some regulations that affect businesses based on the spirit of the LEP 2020.

Regulations on procedures for environmental impact assessment (EIA)

EIA procedures are always one of the concerns of many businesses. The Draft Decree focuses on the regulations on consultation procedures during EIA, especially the addition of new forms of consultation to make the process transparent and accessible to specific consultees. Accordingly, investors must conduct consultations through 3 forms (i) posting information about the project and EIA report on the website of the standing agency appraising EIA reports for at least 30 days before submitting to competent authorities for appraisal of the project's EIA report; (ii) presiding and coordinating with the communal People's Committee of the locality where the project is implemented to hold a meeting to collect opinions from the



residential community directly affected by implementation after posting project information and EIA report on the website; (iii) collecting opinions in writing from agencies and organizations directly related to the investment project such as the communal People's Committee, the management agency of the concentrated production, business and service zones where the project is located, etc. Investors are responsible for receiving the results of the consultation through the 3 methods mentioned above and taking them as a basis to come up with solutions to minimize the project's impacts and complete the EIA report before submitting to competent authorities for appraisal. The investors must be responsible to the law for the contents and results of the consultation in the EIA report.

The Draft Decree's focus on consultation procedures in EIA is considered as one of the important regulations, helping project investors absorb opinions from specific subjects directly affected by the environmental impacts of the project as well as relevant state management agencies. This makes EIA process consistent with the reality, measures environmental risks, and at the same time helps investors come up with measures to minimize environmental incidents during project implementation. This regulation also helps to strengthen the possibility to implement EIA and investors' responsibility in environmental protection.

Regulations on procedures for environmental license (EL)

With the procedure for EL issuance for the first time, depending on the type of projects, the investors will have to prepare the dossier and send to relevant licensing authority to apply for the license. The licensing authority will consider and handle the application for EL within 10 days after the results of actual inspection or the results of investment project appraisal are available. For investment projects with multiple phases or multiple works and work items, the EL may

also be issued by phase, by work or by work item that generates wastes, and the subsequently issued EL will integrate the contents of the previous one which is still valid. This regulation helps investors carry out EL procedures by phase in accordance with the set schedule of the investment project while still being able to control environmental issues of the project. The time limit for handling the procedures for replacement, adjustment, and re-issuance of EL is also regulated in the Draft Decree in the same direction as the time limit for the first issuance or from 7 to 10 days, depending on the relevant licensing authority.

The uniform regulation of using a single type of EL as prescribed in the LEP 2020 is an important advance in the process of strengthening the management of environmental related projects and saving costs for enterprises in investment, project implementation. However, the time limit for first issuance or adjustment of the EL specified in the Draft Decree may be prolonged because the Draft Decree has not specified the time limit for appraisal or actual inspection of investment projects after the licensing authority receives the EL application from investors. The systematization and simplification of these procedures will be a big challenge for environmental authorities in licensing and managing projects.

Regulations on liability insurance against environmental damage

The subjects that must buy liability insurance for environmental damage compensation stipulated in Article 154 of the Draft Decree are quite similar to those in Article 31 Decree 19/2015/ND-CP as amended by Decree 40/2019/ND-CP, including: (i) Petroleum activities including prospecting, exploration, field development and oil and gas exploitation; (ii) Use of dedicated vessels with over 1,000 GT capacity to transport petroleum, petroleum products and other dangerous goods when operating in seaport waters and Viet Nam's waters; (iii) Production, business of chemicals, petroleum; (iv) Production of

basic chemicals with the capacity of 10,000 tons of products/year or more; (v) Production of chemical fertilizers (except for mixing) with the capacity of 200,000 tons of products/year or more; (vi) Production of pesticides with the capacity of 10,000 tons of products/year or more; (vii) Manufacture of batteries with the capacity of 300,000 KWh/year or more or 600 tons of products/year or more; (viii) Refining and manufacture of petrochemical with 10,000,000 tons of products/year or more; (ix) Transport and treatment of hazardous wastes. However, the Draft Decree has not yet specified the minimum value of compensation liability in insurance contracts that the above subjects must engage. This may lead to the situation that organizations and individuals buy liability insurance for environmental damage at the lowest premium just to maintain insurance contracts in accordance with the provisions of law, but the insurance coverage may not be commensurate with the possible damage to the environment caused by their investment projects. At the same time, the Draft Decree has removed the contents related to setting up a reserve fund for environmental risks and damage compensation specified in previous legal documents. This may lessen the significance of compulsory insurance for projects with high environmental risks and prolong the process of resolving consequences when environmental incidents occur.

It can be seen that the Draft Decree is being developed in the direction of synthesizing and unifying environmental regulations in a single specific document, instead of scattering regulations in many various Decrees as before (e.g. the regulations on EIA are specified in Decree 18/2015/ND-CP, while the regulations on determining damage to the environment are provided for in Decree 03/2015/ND-CP, etc. in addition to the general decrees guiding some articles of the LEP 2014). This will help the environmental provisions be unified and reduce overlaps among different documents. At the same time, the Drafting Committee is also making efforts to develop and complete the Draft Decree in accordance with the spirit of the LEP 2020 to intensify environmental responsibility of the investors during project implementation as well as to strengthen the state management role of environmental authorities.

Enterprises should continue updating the drafting process of this Draft Decree to ensure that the implementation and operation of their projects comply with the law. In particular, it is necessary to pay attention to the grandfather clauses of the Draft Decree if projects are in the process of preparing and finalizing documents to carry out environmental related procedures in accordance with former regulations. This Decree is expected to be approved by the Government in September 2021. NHQuang&Associates will continue updating and analyzing the environmental regulations so that businesses can apply these regulations effectively.