

Newsletter

January 2022

What's new?

—
"Communities of Citizens"
entity

—
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environmental impact and
environmental criteria

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Registration

—
Other improvements



- Contributed by Benjamin Yap Soon Tat and Le Thi Kim Quy -

Law on Environmental Protection

issued on 17 November 2020

Law on Environmental Protection No. 72/2020/QH14 of the National Assembly (the "**New Law on Environmental Protection**") was recently issued last year - 2020 and will come into effect on 1 January 2022 with the aim at replacing the old provisions which may not be practical for the moment and reducing remarkably burden of administrative procedures existing in previous regulations governing the same matter.



Duong Lam ancient village, Ha Noi - Le Bich's picture

Introducing new concept of “Communities of Citizens”

The New Law on Environmental Protection introduces series of new concepts for clarification to ensure the consistency during implementation. Amongst other notable concepts, the concept of “Communities of Citizens” is considered as a major supplementation since it did not exist in the previous regulations and is, under applicable scope of this new Law, treated as a separate entity with certain granted powers to enable them to supervise businesses in terms of environment effects and enrol in certain procedures (such as environmental impact assessment).

Generally, the “Communities of Citizens” are defined under this new Law as a *group of individuals living in a specific location in Vietnam*. This definition however is not clear enough which may help identifying this group of people in practice. A deficiency of the new Law is its non-provision of mechanism or any other criteria (such as term of residency, recognition from the local authorities, etc.) to identify the “Communities of Citizens”. While unable to define this group, the “Communities of Citizens” may find difficulties in enforcing their rights provided by laws or, in the worse situation, delay in businesses when implementing procedures which are required to be consulted with “Communities of Citizens”.

Environmental Impact Assessment

With the modification to level of impacts on environment as discussed above, a traditional procedure - environmental impact assessment is significantly modified too. Particularly, only projects having level of environmental impact falling into Group I and certain of circumstances in Group II, are subject to mandatory conduct of environmental impact assessment. According to the New Law on Environmental Protection, the timeline for the authorities to review the report is also reduced to maximum 45 days, instead of 45 working days as set out in the previous regulations.

Additionally, the New Law on Environmental Protection also reduces the burden of administrative procedure, notably on the preliminary environmental impact assessment requirement. Previously, according to Decree No. 54/2021/ND-CP issued by the Government on 21 May 2021, the preliminary environmental impact assessment is required for all projects which are subject to the environmental impact assessment according to the laws of that time. Under this new Law, only projects falling within Group I are subject to preliminary environmental impact assessment.

Re-classification of Level of Environmental Impact and Environmental Criteria

The New Law on Environmental Protection re-classifies groups of environmental impact level by way of providing environmental criteria for investment project. In particular, there are four levels of impact the highest and lowest of which are Group I and Group IV respectively. These four Groups need to be further detailed by the Government’s decree in the future but generally, the criteria for classification of those groups shall be based on the following:

- (i) Scale and types of business;
- (ii) Used land area and used water area; or scale of exploiting natural resources;
- (iii) Other environmental sensitive factors.

Each Group will be subject to different legal requirements and environmental supervision.



Picture from: <https://spritelypt.com/2016/09/28/9-icf-environmental-factors/>



Picture from: <https://baodautchau.vn/nhung-khu-cong-nghiep-duoc-gan-mac-xanh-post99107.html>

Environmental License

Environmental License is considered as a sub-license which allows projects to emit or discharge waste to the environment. In contrary to environmental impact assessment procedure, the projects which are required to have Environmental License, are ranging from Groups I to III. Environmental License will have the term up to 10 years. Projects must generally have the Environmental License before official operation unless it is subject to certain exemptions provided by laws.

Environmental License will cover following fundamental aspects regarding the management, utilization, treatment and emission of the following types of waste:

- | | |
|---------------------|----------------------------|
| (i) wastewater; | (iii) hazardous waste; and |
| (ii) gas and noise; | (iv) imported scrap. |

Environmental License is expected to reduce number of administrative procedure and consolidate previous environmental sub-licenses (such as wastewater discharge permit, hazardous waste treatment license, etc.) into one. Another benefit of this improvement in the new Law is to delete overlapping situation of authorities' powers, the documentation and timeline for licensing purposes.

Other Improvements

Motivation for individuals to classify waste at source

The New Law on Environmental Protection changes the fee calculation basis for waste collection and transportation from "number of individuals" to "amount of classified wastes". This will encourage individuals to proactively classify the waste at source before discharging into the centralized location.

Encouragement for conducting environmental audit

The New Law on Environmental Protection encourages, instead of implying an obligation on, businesses to conduct the audit on their environmental issues to identify the consumption of resources and other pollution issues for enhancing the management and control of environmental problems.

Environmental Registration

In the previous version of environmental regulations, "Hazardous Waste Owner Registration" may also be required for projects prior to implementation. According to the New Law on Environmental Protection, a reasonable interpretation is that this requirement is replaced by "Environmental Registration" procedure. The content of Environmental Registration will generally be similar to but may have less details than the Environmental License. Where the laws require, Environmental Registration must be conducted before official operation.

Environmental Registration is required for the projects the implementation of which leads to the discharge of any type/amount of waste, however, are not required to have the Environmental License. Regardless of that, in respect of projects where there is discharge a minor amount of waste and are subject to other exemptions (to be clarified by the Government's decree), this procedure will not need to be carried out.



Picture from: <https://kinhthemoitruong.vn/nhieubat-cap-trong-xu-ly-nuoc-thai-tai-cac-khu-cong-nghiep-51765.html>

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