

(Draft)EIA/EHIA Reform Guidelines**Target**

To bring about effective and comprehensive EIA/EHIA reforms to cover environmental, social and health impacts in every way, leading eventually to the amendment of the Enhancement of National Environment Quality Act B.E. 2535(1992).

EIA/EHIA Reform Guidelines

The details are as follows:

1. Principles and system of EIA/EHIA

1.1 A requirement is made to prepare a Strategic Environmental Assessment (SEA) report taking into consideration the participation of the public before the policy and development plan are approved, and the Enhancement of National Environment Quality Act B.E. 2535(1992) is amended to include SEA report requirements and the connection between SEA and EIA/EHIA.¹

1.2 Studies on carrying capacity of the area are conducted, covering environmental, economic and social aspects including the administrative capability of the agencies concerned, and the report must include the assessment of the impacts of the potential carrying capacity of the area if the project or activity is added to the area.¹

1.3 The National Environment Commission and the Ad Hoc Expert Committee should have in place a process to consider projects of the same category or in the same vicinity, focusing on the system as a whole/the entire area (not on a project-by-project basis) and bearing in mind the potential carrying capacity of the area.

1.4 The project feasibility study (FS) must be improved in two ways: 1) showing the connection of FS and EIA/EHIA and 2) the economic returns of the project must be added, taking into account environmental, health, and economic costs of the community and society.

1.5 If EIA/EHIA indicate a high level of serious impacts and there are no suitable and practical measures to mitigate the impacts, the EIA/EHIA report can be used as a decision-making basis to stop the project, whether public or private.¹

1.6 Local government organizations should use EIA/EHIA reports as important sources of information to decide whether or not to approve or permit any activity related to the project/activity that requires EIA/EHIA reporting.

1.7 Guidelines for improving the public participation process

1.7.1 Laws and regulations

▪ If the projects belong to the same category and are located in the same vicinity, criteria should be set up to allow for the participation of the people sector. Arrangements can be made for the people to participate in several projects in one go, while the mechanisms for screening and approval should be left to the community in the area to decide. This is designed to reduce the burdens of the people sector in the participation process.

▪ Rules on public hearing and participation by the public sector, private sector, and the people in the area should be improved to ensure a meaningful output-oriented quality process. The rules should not be too rigid but should adhere to the provisions of the Constitution, especially Articles 56, 57, 58 and 59 as well as Articles 66 and 67.

¹ These are cases that require the amendment of the Enhancement of National Environment Quality Act B.E. 2535 (1992).

- Attempts should be made to separate commissioning a contract for public scoping from an assessment contract; the outcome of the public scoping should be used as a basis for hiring a suitable impact assessment when the budget allows. It is imperative to have mechanisms for the public to consider and approve the scope of study and the way the impact assessment is conducted before undertaking the actual assessment.

1.7.2 People who have the right to prepare EIA/EHIA reports

- People with the right to prepare EIA/EHIA reports must be experts in the participatory hearing process including the knowledge of community rights. Certificates should be issued to the participation experts.

1.7.3 Community

- Arrangements must be made to set up a system for appointing the community's technical consultants approved by the community. These consultants will help the community with technical aspects, reading analytical reports and participating in the hearing process at various stages of the study. Adequate budgetary support should be made available for the purpose; the budget could possibly come from "EIA/EHIA fund (Item 2.1); and the community in the area shall be involved in helping analyze environmental and health impacts and technical assistance.

1.8 The community's capacity building should be enhanced to ensure fundamental rights in the participatory process and access to project information from the report preparation to approval processes.

1.9 Attempts should be made to disclose information, relevant documents and EIA/EHIA reports – during the report preparation, consideration, and revision and after approval – to the public and various organizations (e.g. Independent Environmental and Health Committee and National Health Commission). Disclosure should include reporting on the results of the work to prevent and redress environmental impacts as well as on environmental follow-up measures. These results should be made available for easy access to all.

2. Report preparation

2.1 An "EIA/EHIA fund" should be set up with contributions from the owners of projects or enterprises that require EIA/EHIA reporting in accordance with the regulations to be laid down. The fund will be managed by a specific agency charged with selecting and hiring appropriate EIA/EHIA report preparers for each project. The agency is also to support the work of the ad hoc expert committee, enhance the participation of stakeholders, and support the follow-up of the implementation of measures to mitigate impacts described in EIA/EHIA.¹ It must be made clear that the project owner shall send contributions to the Fund including the costs involved in the monitoring the implementation of the impact-mitigation measures after the project has begun.

2.2 A timeframe should be set to enable the approved EIA/EHIA reports to be used for permit application. The timeframe should be 2-3 years, depending on the category of each project.¹ In the case where the project owner wants to cancel the project, notification must be made in writing to the Office of Natural Resources and Environmental Policy and Planning and will automatically result in the cancellation of the EIA/EHIA of the project.

2.3 Guidelines for solving problems of evasion of EIA/EHIA reporting as required by the list of projects or enterprises:

(1) A complaint system is put in place to deal with cases in which project owners that want to evade reporting or have a new project with potentially high impacts but not on the prescribed list. If the case is in line with the existing criteria, the National Environment Commission shall be able to order additional EIA/EHIA reporting.¹

(2) A clear timeframe is set for revising the project list, e.g. every four years, and providing channels for various agencies concerned and the people sector to propose improvements.¹

(3)Improvements are made on conditions (e.g. size, site, and production capacity) set for various project categories to prevent any evasion and to appropriately meet the level of seriousness of the impacts accordingly.

(4) The approving/authorizing agencies add further requirements to the operation to reduce impacts of the projects or enterprises on the list that require EIA/EHIA but do not have the characteristics set out in the notification. Some such additional requirements are Environmental Safety Assessment², Regulatory Impact Assessment², and Conflict Impact Assessment.

3. Report consideration

3.1 Attempts should be made to improve the work of the ad hoc expert committee to be more open to the public and more transparent. For example, they should examine whether there are false data. They should go to study the project area, especially when the project is marked by a high level of conflicts. A system should be created to register people qualified to be on the ad hoc expert committee. At the same time the public should be allowed to participate more in the work process of the committee, e.g. having community representatives in the project area (both advocates and opponents) to act as committee members and participate in the deliberations of the committee. The information prepared by the community is to be submitted into the process of EIA/EHA consideration, and the public shall be notified of the date of the meeting and its result.

3.2The structure of the ad hoc committee shall be revised to ensure the inclusion of the academic, public, and private sectors as well as the affected community in appropriate proportion, making sure to select persons well-versed in health matters to be members of the reading party and to consider the EIA/EHIA report as well.

3.3 Attempts should be made to use town planning currently in use together with the draft town planning (that has gone through public hearing as required by the law, that has been approved by the Town Planning Commission, and that is in the process of being announced) as a basis for making comments on the EIA/HEIA reports at every stage.

3.4 A timeframe should be set for completion of revised reports in light of the comments and reviews of the ad hoc expert committee.³

4.Examination, follow-up and evaluation

4.1 Improvement is made on the setting of conditions at the end of the permit/license, including follow-up and evaluation of the action taken as laid down in the measures to mitigate environmental impacts as follows:

- Improve the laws so that the approving/authorizing agencies will have the power to use measures designed to prevent and redress environmental impacts together with follow-up measures as set out in the approved EIA/EHIA reports and to add further conditions to the approval/permit. If no compliance is made to prevent and redress environmental impacts and after warning/punishment probation is issued, the authorizing agencies shall cite such breach as a basis for discontinuing or revoking the permit.

- Owners of megaprojects (such as industrial plants, airports, dams and mines) shall organize forums to present their action on the measures to mitigate environmental impacts every six months and shall invite all people concerned, including the people sector, approving/authorizing agencies, public agencies concerned, academics from education institutes in general and from the locality, to the event for information and comment on their work as well as to hear about the problems and impacts from the people concerned.

² In the case of Department of Works, projects have already been categorized.

- In the case of megaprojects with a high degree of conflict, a multipartite committee should be set up to follow up and evaluate the actions taken in light of the plan and measures to mitigate environmental impacts.

- Cooperation networks should be set up for the people sector and education institutes in the area to participate in the examination, follow-up and evaluation of the plan and measures to mitigate the environmental impacts during and after the project.

4.2 Decentralization of power and duties shall be made to regional environmental offices and local government organizations that are well-equipped to do the work. This should be undertaken at the same time as the efforts to decentralize tax collection to local government organizations for projects that require EIA/EHIA reporting so that the local government organizations have an adequate budget and greater motivation to work (this is a delegation of duties and allocation of resources for the operation at the same time).¹