



Vietnam: Law on Environmental Protection 2020 (Part 2)

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On 17 November 2020, the National Assembly approved Law No. 72/2020/QH14 on Environmental Protection (the “**New LEP**”), replacing the Law on Environmental Protection 2014 (the “**Current LEP**”). The New LEP will, with certain exceptions, take effect from 1 January 2022.

In continuation of the article “Vietnam – Law on Environmental Protection 2020 (Part 1),” we address in this Part 2 matters relating to environmental permits, the cause-effect relationship in compensation for environmental damages, safe distance from residential areas, environmental audits, and ozone protection.

1. Environmental Permits.

The New LEP introduces an integrated environmental permit that combines the contents of, and replaces the individual environmental permits/licenses¹ provided under, the Current LEP.

This mechanism of a single integrated environmental permit allows enterprises to apply with only one state authority for an integrated environmental permit for each particular investment project or facility, depending on the types and characteristics of such project or facility. This stands in contrast to the Current LEP, under which different individual environmental permits/licenses may be issued by different state authorities depending on the type of such permits as well as the characteristics of the relevant facility or investment project.

For production, business and service facilities and zones and industrial clusters that are in operation before the effective date of the New LEP, an integrated environmental permit must be obtained within 36 months from the effective date of the New LEP. However,

¹ These are: certificate of completion of environmental protection works, certificate of eligibility for environmental protection in the import of scrap for use as production material, hazardous waste disposal permit, registration of owner of hazardous waste source, industrial emission permit, wastewater discharge permit, and permit for wastewater discharge into irrigational works.

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if enterprises have obtained certain individual environmental permits/licenses² under the Current LEP, such individual environmental permits/licenses may continue to be used for the permitted contents therein until their expiry dates, or for five years from the effective date of the New LEP if such permits/licenses have an indefinite term.

The integrated environmental permit must be publicly disclosed by the issuing authority and the relevant project/facility owners on their electronic portal and their information site/via other means, respectively. Exceptions will be made for any content that constitutes an enterprise secret or state secret.

2. Obligation to Disprove Cause and Effect.

Under the Current LEP and relevant regulations, in the event of an environmental dispute, the burden of proving the cause and effect relationship between the alleged violation and the damages sought therefor is borne by plaintiffs, who are most often affected civilians or communities without the appropriate tools at their disposal to prove such causal relationship.

In view of this, the New LEP provides that, for purposes of resolution of claims for compensation in court, defendants now bear the burden of proving the absence of a causal relationship between the alleged violations and the damage incurred by the plaintiff. This is intended to remove the practical barrier that has previously discouraged victims of environmental pollution from pursuing their claims in court.

3. Safe Distance from Residential Areas.

The New LEP provides for principles and criteria in determining production, business and service facilities and warehouses that must maintain a safe distance from residential areas. These entail facilities and warehouses that:

- handle or store flammable or explosive substances;
- contain radioactive substances, radioactive waste or radiation equipment;
- handle or store substances that are toxic to humans and other organisms;
- pose a risk of spreading of dust, unpleasant odors, or noise that adversely affects human health; or
- pose a risk of polluting water sources.

The aforementioned criteria are substantially similar to those prescribed under the Current LEP. However, the New LEP provides that provincial-level People's Committees must promulgate a roadmap for implementation of the safe distance requirement applicable to the facilities or warehouses that are subject to the safe distance requirement and operate in the relevant provinces but that fail to meet the safe distance requirement.

4. Environmental Audit.

The environmental audit has now, for the first time, been introduced under the New LEP. The New LEP describes an environmental

² Namely: certificate of completion of environmental protection works, certificate of satisfaction of environmental standards, certificate of eligibility for environmental protection in the import of scrap for use as production material, hazardous waste disposal permit, wastewater discharge permit, or permit for wastewater discharge into irrigational works.

audit as a systematic and comprehensive review and assessment of the efficiency of environmental management and pollution control with respect to the production, business and service facilities of the audited enterprise.

The main focus of the environmental audit is (i) the use of energy, chemicals, raw materials, and scrap imported for use as production materials, and (ii) pollution control and waste management. Independent audit firms may be engaged to carry out environmental audits, or a self-environmental-audit can be conducted in accordance with the technical guidance for self-audit activities provided by the Ministry of Natural Resources and Environment. Under the New LEP, environmental audits are encouraged, not compulsory, for production, business and service facilities.

5. Ozone Layer Protection.

With regard to ozone layer protection in particular and climate change in general, the New LEP provides more detailed regulations compared to those under the Current LEP and identifies the responsibilities of the Prime Minister, the Ministry of Natural Resources and Environment, and relevant ministries/agencies, as well as local authorities, in climate change adaptation and greenhouse gas emission reduction.

Such provisions under the New LEP are intended to facilitate actual implementation of policies that promote adaptation to climate change and reduce greenhouse gas emissions, replacing the general provisions that are unclear and ineffective under the Current LEP, and may impose additional obligations on enterprises in relation to adaptation to climate change and greenhouse gas emissions. Such additional obligations shall be further stipulated in guiding Decrees of the New LEP, which are under drafting at the moment.

In addition, for the purpose of greenhouse gas emission reduction and ozone layer protection, the New LEP newly provides for a domestic carbon market, with exchange and offset mechanisms for greenhouse gas emission quotas and carbon credits.

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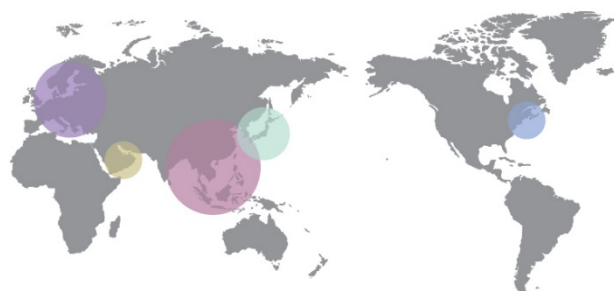


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