

THE ROAD TO LEGISLATION FOR TRANSPORTING HAZARDOUS GOODS IN THAILAND

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Abstract

In 1990, a gas explosion caused by the overturning of a trailer, created extensive loss of life and property, and damage to the natural environment. That incident was the origin of heightened awareness of the need for insurance for the legal liabilities involved. The Thai government decided that insurance cover would be the tool to cope with the problem. Therefore in 1993, compulsory third party motor insurance was legally enforced in Thailand. The intention of this insurance is to provide compensation to help injured or killed people. This development, of liability insurance compensation was focused on human life and health, but was not directed at environmental harm and property damage. Moreover the compensation amount awarded to plaintiffs is very small and the litigation process takes a long time.

In 2006, based on recommendations from the Committee for Hazardous Substances, within the Department of Industrial Works, the Ministry of Industry announced that transporters and hauliers who use tankers for carrying hazardous substances must obtain insurance for their legal liability for (1) loss or damage to third parties, plus (2) compensation for environmental harm including clean-up costs. The limits and cover are beyond those in compulsory third party motor insurance.

The 1993 Act and the 2006 announcement were sensible extensions of compulsory cover, to protect people, property, and the environment. However, since the 2006 announcement, the legislation has been suspended because of many concerns expressed by insurance practitioners and hazardous substances operators.

This article will firstly examine and discuss the facts about the 2006 initiative, and the concerns of insurers and transporters parties about what they regard as

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imperfect legislation. Secondly, the article will focus on the imperfections of the legislation regarding environmental impairment and the remedies necessary. Finally, the focus is on the possibility of redesigning the 2006 compulsory liability insurance.

Introduction

Chemicals play a major role in various types of industry, and the trend is increasing in Thailand. As a result, the road transportation of hazardous substances is increasing, and so is the recognition of the possibility of massive damage from any accident, which could happen at any time.

The risk of damage by hazardous substances arises firstly inside the manufacturing premises whilst those substances are in the production process, or kept in storage as raw material or as finished products. Subsequently, the risk is extended to potential loss or damage arising outside the premises whilst the substances are in transit. In Thailand, the beginning of awareness of the dangerous effects of hazardous goods during transit was sparked in 1990 by the overturning of a Liquid Petroleum Gas (LPG) tanker at Petchaburi Road, a major business road in Bangkok. The victims of this accident needed compensation, and so they sued Siam Gas, the responsible company. It took many years from the date of the accident until the victims were awarded compensation. The victims have still not received payment as the company became bankrupt, and the victims' right to compensation was not protected, merely being treated as though the victims were ordinary creditors (Channak, 2009).

The government's first solution to cope with the compensation problem was to turn to motor insurance. Third Party motor insurance was made compulsory from 1993 by the 'Protection for Motor Vehicle Accident Victims Act'. This insurance, although State controlled, is organized by the motor insurers of Thailand. The cover is for death or injury, but not property. It is a no-fault scheme: strict liability (Lawrence, 2004). The concept is to help victims to receive quick payment without having to prove negligence. This development of compulsory insurance coincided with the increased use and transportation of hazardous substances, and stimulated the government in 2006 to form a Committee for Hazardous Substances, in the Department of Industrial Works (DIW), within the Ministry of Industry. The terms of reference for this committee were:

To compel all hazardous substances transporters using tankers to obtain additional liability insurance other than compulsory motor insurance.

The committee's recommendations were approved by the Minister of Industry and published in the Government Gazette (February 23, 2006) as 'Compulsory Insurance for Hazardous Substances Transported by Road'

The intention of this government initiative was to further develop compulsory insurance as a