

## The current situation of environmental registration and solutions to complete the law

### Thực trạng đăng ký môi trường hiện nay và giải pháp hoàn thiện pháp luật

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**Abstract:** Along with the development of the economy, environmental issues and sustainable environmental development are increasingly important, with a harmonious and close combination of economic, social, and environmental factors in the development process of a country. To minimize the impact of the consequences that environmental pollution brings, the law imposes an obligation to protect the environment for enterprise and take the responsibility for the consequences caused by emitting environmental pollution. In particular, the most basic form of regulation is environmental registration, which has been used as a tool to help control enterprises' emissions. This article focuses on analyzing legal regulations, stating the current situation of environmental registration. Eventually, we propose several solutions to perfect the law and help sustainably develop the economy.

**Keywords:** *Environmental registration; Estonia law comparison; Recommendations; Sustainable development; Vietnam's Current situation.*

**Tóm tắt:** Cùng với sự phát triển của nền kinh tế, vấn đề môi trường và phát triển bền vững về môi trường ngày càng quan trọng, với sự kết hợp hài hoà, chặt chẽ, hợp lý giữa các yếu tố kinh tế, xã hội và môi trường trong quá trình phát triển của một quốc gia. Để giảm thiểu hậu quả mà ô nhiễm môi trường mang lại, pháp luật đặt ra nghĩa vụ bảo vệ môi trường cho các doanh nghiệp và trách nhiệm về hậu quả do phát thải gây ra. Trong đó, hình thức cơ bản nhất theo quy định là đăng ký môi trường đã được sử dụng như công cụ giúp kiểm soát việc phát thải của các doanh nghiệp. Bài viết này tập trung phân tích quy định pháp luật, nêu các thực trạng về đăng ký môi trường hiện nay. Từ đó, bài viết sẽ đưa ra kiến nghị một số giải pháp hoàn thiện pháp luật, giúp nền kinh tế phát triển bền vững.

**Từ khóa:** *Đăng ký môi trường; Kiến nghị; Phát triển bền vững; So sánh luật Estonia; Thực trạng tại Việt Nam.*

#### 1. Introduction

With the current economic development rate, statistics on environmental pollution from consumer products and waste generated daily are huge and have caused many serious consequences, such as contaminated water sources, the air containing much fine dust, and the ozone layer thinning. According to research, this environmental pollution comes from

production activities in business establishments, factories of enterprises, cooperatives, and business households. Therefore, ensuring the sustainable development of a country while ensuring economic growth and protecting a healthy living environment for people and creatures has become a complex problem not only in Vietnam, but also in the region and around the world.

Therefore, to protect the common atmosphere and environment of Vietnam, the ASEAN region and the world, and to ensure compatibility between domestic laws and commitments in the Vietnam and EU Free Trade Agreement (EVFTA) and other agreements around the world. Although Vietnam has previously enacted the Law on Environmental Protection in 2014 (LEP 2014), environmental protection measures take three forms as follows: (i) strategic environmental assessment; (ii) environmental impact assessment and (iii) environmental protection commitments. However, these measures still have many points that are not feasible and ineffective. Therefore, in order to ensure stricter and overcome the limitations, Vietnam has promulgated the Law on Environmental Protection 2020 (LEP 2020), environmental protection measures have been stipulated in more detail with four forms, namely keeping the first two forms and separating the form of environmental protection commitment into "environmental license" and "environmental registration".

The ordinary "environmental registration" will apply to low-emitters, small-scale, less-generating-waste entities. Regarding manufacturing, distribution and retail enterprises, the scope of environmental registration will be applied at their business locations, such as small-scale factories, warehouses, transshipment warehouses, shops, etc. Although a new form of environmental registration appears from the LEP 2020, this is a form separated from the environmental protection commitments, so this form still retains the spirit of supporting environmental protection. According to the experience of other countries around the world, this is not a new problem because Estonia is already regulated. The "environmental registration" is the simplest and most effective procedure for the government to control environmental protection.

Comparing to the world, "environmental registration" is not the first regulation to appear, but in Vietnam, after two years of applying the LEP 2020, the regulation on "environmental registration" of enterprises has arisen many problems that need to be solved, namely that there are many unclear regulations and the application in each locality is different especially causing difficulties in implementation, lack of specific processes, not guided in detail, making it difficult to apply in practice. Therefore, the legal provisions on "environmental registration" still have to be completed to support enterprises fulfilling their responsibilities. Therefore, competent governing bodies need to have specific guidelines and regulations to ensure consistency, help individuals, business organizations and competent governing bodies to effectively implement and manage "environmental registration" in environmental protection, develop a sustainable economy.

To contribute to the improvement of legal regulations on environmental protection in the process of sustainable economic development, the authors focus on the following issues: (1) Regulations on environmental registration; (2) Current status of environmental registration and (3) Proposing solutions to complete the law on environmental registration soon.

During the research, the authors used the following methods: Theoretical research methods (by collecting, analyzing and synthesizing documents from many reliable sources such as scientific articles, legal scientific journals); methods of analysis; generalization method; actual case research methods (analysis based on aggregated data from cases that the author team has carried out or collected). By these methods, the authors delved deeper into the theory and reality of environmental registration, thereby evaluating and recognizing the problem in many aspects. Therefore, the

author team can make some feasible recommendations with high practical significance to apply.

## **2. Overview of some theories about environmental registration in Vietnam nowadays**

### **2.1. The concept of environmental registration**

Before exploring the legal provisions on "environmental registration", the authors explored the concept of the elements that make up the phrase "environmental registration", as follows:

"Registration: Recorded in the register of the regulator to be officially recognized for benefits or obligations" [1]

"Environment: (1) Where a phenomenon or process takes place, in relation to that phenomenon or process. (2) The totality of the natural and social conditions in which a person or an organism exists and develops, in relation to man or to creatures." [2].

The LEP 2020 stipulates: "Environmental registration according to regulations is the responsibility of investment projects owners, production, business and service establishments to register with governing bodies contents related to waste discharge and environmental protection measures of investment projects, production, business and service facilities." [3]. From this legal provision, it can be seen that the subjects performing the "environmental registration" are owners of investment projects, production, business and service establishments, which may include individuals and organizations and enterprises. These entities shall carry out procedures for registration of their environmental information to local governing bodies. In fact, this procedure is more similar to notification than registration because after submitting the application, the regulator does not need to respond to the registration of the applicant.

The information that the entity needs to declare is the contents of discharge and measures that this enterprise is or plans to apply to its business location or project.

Therefore, "environmental registration" is the legal form in which owners of investment projects, production, business, and service establishments make registration dossiers to competent governing bodies regarding waste generation of such investment projects or establishments. At the same time, the subjects take measures to protect the environment.

### **2.2. Legal provisions on environmental registration**

#### **2.2.1. Entities performing environmental registration**

Article 2 of the LEP 2020 stipulates that "This Law applies to agencies, organizations, communities, households and individuals in the territory of the Socialist Republic of Vietnam, including land, islands, seas, underground and airspace". Because environmental registration is governed by the LEP 2020, environmental registration is applied to the subjects which this Law applies. Therefore, the implementing entity will not be limited to individuals or organizations but apply to all waste generating entities. The scope of application is also not limited to any business lines and the information to be declared to governing bodies is unlimited as long as it is within the scope of environmental protection. Emitters are responsible for declaring the current status and measures being and will be taken to governing bodies. Regarding the business environment, enterprises will be the implementing subjects. Especially in the production and distribution network, each activity can generate waste in the environment. Therefore, the enterprise will carry out the environmental registration with the local governing bodies. The article will focus mainly on enterprises, business

organizations, economic organizations, and similar entities with the highest emission capacity and collectively refer to these entities as enterprises.

#### 2.2.2. Subjects of implementation and exemption from implementation of environmental registration

Compulsory implementation objects include two main objects: (i) Investment projects that are expected to generate waste. These projects are not subject to environmental permits as prescribed in Article 39 of the LEP 2020; (ii) Production, business and service establishments operating before January 1st, 2022, and generating waste. However, these subjects are not required to have an environmental permit under Article 39 of the LEP 2020 [4].

For subjects exempted from environmental registration, according to the provisions of Clause 2, Article 49 of the LEP 2020 and guided by Article 32 of Decree 08/2022/ND-CP guiding the Law on Environmental Protection effective from January 10th, 2022 (Decree 08/2022), subjects exempted from permits are divided into:

First, investment projects and establishments belonging to government secrets, related to national defense and security issues.

Second, the investment project is expected to be put into operation and production, business and service establishments that will not generate waste.

Third, the planned investment project or production, business, or service establishment generating only domestic solid waste of less than 300 kg/day shall be managed according to regulations of local authorities; or generating wastewater of less than 05 m<sup>3</sup>/day, exhaust gas of less than 50 m<sup>3</sup>/hour treated by on-site treatment equipment or managed according to regulations of local government.

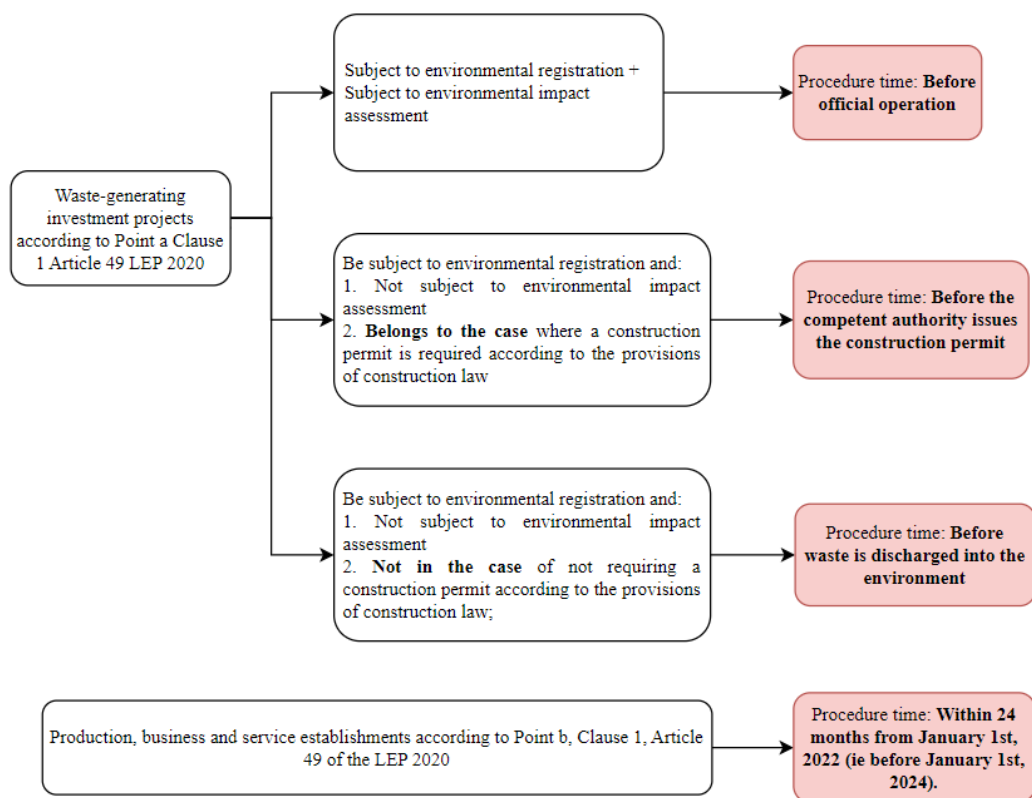
Final, there are other subjects on the list of investment projects and establishments exempted from environmental registration specified in Appendix XVI of Decree 08/2022.

Because of this regulation, not all subjects are required to carry out environmental registration. To determine the subjects of implementation, investors and business owners will consider all exemptions here stipulating that environmental laws have used the exclusion method, specifically if they do not fall into the above exemptions, they are required to carry out environmental registration procedures.

Regarding wastewater, domestic wastewater and industrial wastewater have different indicators and regulations and are prescribed different technical regulations. This suggests that the impact of this wastewater on the environment is different. The regulation of wastewater below 05 m<sup>3</sup>/day does not specify what kind of wastewater this is. In addition, the regulation of a fixed number can make it difficult to protect the environment because it is impossible to predict emissions below the prescribed number but persist and accumulate for a long time, the waste still pollutes the environment. A common subjective mentality is that people do not have expertise in the environment and waste classification, so there are still cases where people think that their activities cannot generate serious problems to the environment.

#### 2.2.3. Environmental registration deadline

After the LEP 2020 came into effect on January 1st, 2022, to ensure the timely implementation of the law and limit risks when applied, the law stipulates the timing of environmental registration which is summarized as follows:



**Figure 1.** Time to perform environmental registration according to each object

The implementation time limit of each object is considered appropriate because existing enterprises have 24 months to comply with provisions of the law and carry out environmental registration procedures in the locality. As for investment projects according to Point a, Clause 1, Article 49 of the LEP 2020, the time has not been clearly defined and depends on enterprises and relevant governing bodies in the construction field.

#### 2.2.4. Environmental registration procedures

The registration dossier according to Article 22 of Circular 02/2022/TT-BTNMT guiding the Law on Environmental Protection promulgated by the Minister of Natural Resources and Environment takes effect from January 10th, 2022 (Circular 02/2022) stipulates that only 02 components are:

First, the Environmental Registration Document (Form No. 47 of Circular 02/2022). This form has fully included

environmental registration contents according to Clause 4, Article 49 of the LEP 2020. Enterprises need to declare registration information:

(i) General information about investment projects or facilities.

(ii) Type of production, business and service; technology, capacity, products; raw materials, fuels, chemicals used (if any).

(iii) Type and volume of waste generated.

(iv) Plan for collection, management, and treatment of waste according to regulations.

(v) Commitments to environmental protection.

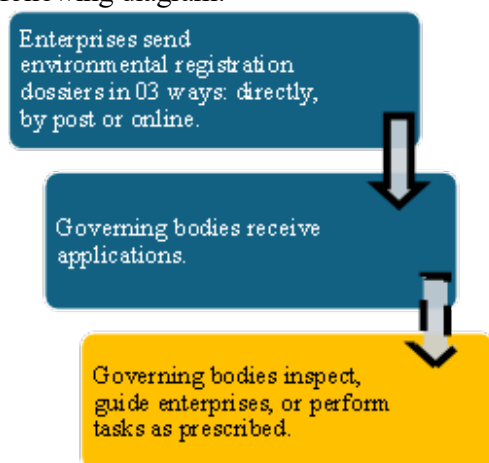
Both the provisions of the LEP 2020 and accompanying guiding documents stipulate quite unclear the content of environmental registration. The types of production, business, and services in subsection (ii) above do not have been guided by any uniform classification documents.

Technology, capacity, and raw materials are not clearly regulated.

The type and volume of waste generated is the most difficult to determine under this procedure. Form No. 47 of Circular 02/2022 does not absolutely stipulate that there are categories of waste. The advantage of this regulation is that enterprises are free to determine the list of waste. However, the disadvantage is that the business is not clear according to what criteria to determine. The type of waste is still controversial as many types of waste have not been clearly classified by conventional methods that require expert identification. This invisibly causes a cost that weighs on the finances of the registrants. Enterprises have to spend additional costs inviting experts and organizations with specialized functions to carry out in-depth assessments to help businesses classify waste and serve environmental registration.

Second, the decision approving the appraisal results of the environmental impact assessment report of the investment project or establishment in case the project is subject to an environmental impact assessment report before operation.

The sequence of environmental registration is generalized into the following diagram:



**Figure 2.** Diagram of environmental registration steps

According to the diagram, the registrant completed the registration as soon as the governing bodies received the registration dossier. On the part of governing bodies, they will have a post-inspection period after receiving the dossier. This is an important period to examine how environmental protection law enforcement is doing.

#### 2.2.5. Corporate responsibility

Corporate responsibilities are distributed but always follow the criteria that emitters must pay and be responsible for their emissions. Enterprises are responsible for determining whether they are subject to environmental registration or not and complying with regulations.

#### 2.2.6. Responsibilities of governing bodies

According to regulations, the competent governing bodies to receive environmental registration dossiers is the commune-level People's Committee where the enterprise generates the project or establishment emitting into the environment. If the enterprise has the scope of operation in many different administrative units, the enterprise may select the commune-level People's Committee to submit the application [5]. Thus, commune-level People's Committees must be responsible for environmental registration dossiers of enterprises, in particular:

"a) Receipt of environmental registration;

b) Examine and handle violations of the law on environmental protection by organizations and individuals registering for the environment in according to the law;

c) Guide and settle proposals on environmental protection for contents already registered by environmental registration organizations or individuals;

d) Update data on environmental registration in the national environmental information system and database." [6].

This regulation shows that commune-level People's Committees play a very important role in environmental protection

in localities. They will have to manage all procedures, post-inspection process, and continuously update environmental information.

### **3. The current situation of environmental registration in Vietnam**

Since the promulgation of the LEP 2020 and its implementation in life, this law has achieved certain achievements that are:

First, society in recent times has made positive changes in awareness of environmental law enforcement in the community and business. This contributes to the environmental protection by the people and the government management is increasingly effective. Many activities, propaganda and education movements organized and launched have brought practical effects, making important contributions to raising awareness and changing behavior about the importance of the living environment and environmental protection tasks of organizations and individual households. In addition, the sense of compliance with legal regulations on enterprises' environmental protection has also had many positive changes, gradually shifting from the attitude of dealing with the authorities to the sense of self-compliance.

Second, the government has actively controlled large waste sources (Industrial Parks, industrial clusters, craft villages, projects, large production, and business service establishments, etc). The coordination between central-level agencies and local-level agencies needs to be flexible and uniform, which contributes to competent governing bodies taking the initiative in controlling, supervising, and resolving establishments that pollute the environment and raise environmental problems. Investment in installing automatic wastewater monitoring equipment, continuously transmitting data directly to governing bodies in charge of environmental protection has been strongly interested and invested by localities and organizations. There have appeared many

models of urban, rural, industrial parks, craft villages, ecological and environmentally friendly production facilities. The proportion of industrial parks operating with centralized wastewater treatment systems meeting technical environmental standards, the proportion of industrial parks that have invested in installing automatic wastewater monitoring equipment, the proportion of establishments with serious environmental pollution according to Decision No. 1788/QĐ-TTg being thoroughly treated and the proportion of communes meeting environmental and food safety criteria are up compared to the previous period [7].

In addition to the achievements, the current legal framework on environmental registration still has some shortcomings, at the workshop on improving the effectiveness of the implementation of the LEP 2020 organized by the Institute for Environmental Economic Policy, questions about environmental registration of many enterprises were answered by experts, governing bodies explained. According to Assoc. Prof. Dr. Luu Duc Hai, President of the Vietnam Association of Environmental Economics affirmed: "Environmental permits and environmental registration are not new issues for countries around the world. But for Vietnam, this is a new issue and will be difficult for Vietnamese businesses." This shows that the implementation of environmental registration in Vietnam is still an extremely new issue and causes many difficulties for project owners, production facilities, etc business and services need environmental registration. Therefore, the actual situation still exists violations related to the implementation of environmental registration dossiers.

First, at Point a, Clause 7, Article 49 of the LEP 2020 stipulates: "Commune-level People's Committees shall receive environmental registration". This clause only stipulates the responsibilities of competent governing bodies for the receipt

of environmental registration, but at present the guiding documents do not stipulate the time limit for responding to the receipt. These intangibles cause difficulties and obstacles for environmental registration entities on the time limit for receiving and evidence for complaints.

Second, the current legal documents do not specify the process of receiving and settling environmental registration, specifically in Article 23 of Circular 02/2022/TT-BTNMT guiding the LEP because the Minister of Natural Resources and Environment only promulgates regulations on receiving environmental registration: "Commune-level People's Committees shall receive environmental registration dossiers sent by owners of investment projects and establishments in the form of direct receipt, by post or electronic copies through the online public service system; Commune-level People's Committees shall update data on environmental registration in the national environmental information system and database." This clause only mentions the method of sending/receiving records and updating data into the system. It does not specify how to proceed, the time limit of each stage of settlement and the results of the procedure. This makes it difficult for the subjects to determine the time of completion and the competent governing bodies is confused in the settlement process. Besides, it takes time of the parties, the time limit for settlement procedures is delayed and prolonged.

Third, environmental registration has been mentioned by lawmakers, regulated since 2020 and effective from 2022, but so far there is no online public service system. At this time, environmental registration entities can only carry out procedures in the traditional form of submission in person or by post.

Through the analysis of inadequacies and achievements in environmental protection in general and environmental registration in particular, it is shown that the

environment and environmental protection are one of the top concerns of each country because the environment has a great impact on life, the development of society. Regulations on environmental registration are considered as one of the regulations for simplifying administrative procedures for uniform and cross-cutting use of environmental criteria in determining subjects to preliminary environmental impact assessment, environmental registration. The regulation of environmental registration also helps in better management of projects. Moreover, procedures for environmental registration for investment projects, production and service establishments are also simplified and help governing bodies manage waste prevention, control and treatment, ensuring the trend of sustainable economic and environmental development.

#### **4. Recommendations contribute to improving the law and improving the efficiency of management on environmental registration**

From the above shortcomings, the current implementation of environmental registration still has some difficulties and obstacles in policies and legal corridors. To complete legal regulations and improve the management of competent governing bodies, the authors make several recommendations as follows:

First, the government should specify the time for responding to receipt. This contributes to creating a basis for registration subjects to protect the right to complain when there are statutory grounds for the time limit delayed by competent governing bodies, prolonging or giving multiple reasons for not settling. During the research process, in this regard, the authors have researched the law on environmental registration, specifically Estonia, which can be open for Vietnam to learn. Estonian legislation provides for the disclosure of environmental registration data. Accordingly, the agency managing and



processing the dossier shall publish the data within 10 days from the data entry date on the registration card [8]. This is a step forward because when the registration situation is publicized, the management agency will capture and statistics on how the actual situation of environmental protection is happening. Also, through environmental registration documents, governing bodies will discover new measures that entities responsible for environmental registration are applying. From there, the management agency will have appropriate policies and measures to apply, helping Estonia achieve the goal of reducing greenhouse gas emissions by 70% in 2030, compared to 1990 and climate neutrality by 2050 it has committed to [9]. In addition, this act deals with data, the current state of the environment, natural resources, procedures for registration, record keeping, and other matters related to environmental registration [10]. The next similarity between Vietnamese law and Estonian law on environmental protection is that Article 43 of Vietnam's 2013 Constitution stipulating the environmental protection obligations of Vietnamese citizens, Section 53 of the Estonian Constitution also stipulates the obligations and responsibilities of each Estonian citizen with respect to the natural environment [11]. Before Vietnam, Estonia enacted two sets of frameworks shaping its environmental legislation: the Natural Environment Protection Act of 1990 and the Sustainable Development Act of 1995. By 2002, Estonia continued to enact the Act on Environmental Registration. This Act first came into force in 2004 and has been amended and supplemented several times over the years. In 2019, the Act was amended and now takes effect from March 15th, 2019. Therefore, Vietnam can learn from Article 44 of the Environmental Registration Act 2019 on response time, specifically 05 working days.

Second, the government should provide a guide on the process of receiving registration for environmental reception in detail the steps, the time of each step, powers/responsibilities of competent entities. This contributes to the competent entity having a direction to implement and uniform in the settlement process.

Third, in the spirit of Resolution 52-NQ/TW in 2019 on guidelines and policies to actively participate in the Fourth Industrial Revolution issued by the Politburo; Decision No. 749/QĐ-TTg of the Prime Minister: Approving the "National Digital Transformation Program to 2025 with orientation to 2030"; Resolution No. 131/NQ-CP dated October 06, 2022 on promoting administrative procedure reform and modernizing the direction and administration methods to serve people and businesses, the Ministry of Natural Resources and Environment needs to study and deploy an online public service system on environmental registration, contributing to simplifying administrative procedures in accordance with the times current technology.

Fourth, legal documents should annotate words after phrases that may cause confusion, or embarrassment to the declaring entity in the Environmental Registration Form specified in Circular 02/2022 of the Ministry of Natural Resources and Environment similar to administrative documents, specifically, phrases should be explained such as: "Technology and type of production", "type and quantity of waste generated", etc. This annotation contributes to a complete, clear, and unmistakable declaration. In addition, the management entity will be convenient in managing the data that the registered entity declares when they declare accurately, specifically, clearly and truthfully.

Fifth, governing bodies and organizations should regularly organize

seminars and training for cadres, civil servants, and officials working in the field of environmental registration. Promote propaganda and dissemination of environmental registration to people and businesses, especially enterprises - objects with high emission potential. Thereby raising the awareness of environmental protection, awareness and social responsibility of businesses and traders.

### 5. Conclusion

Environmental protection is an issue that has always got attention not only in Vietnam but also in other countries in the world. Therefore, to ensure effective work, environmental registration procedures were born as environmental management and protection tools. Environmental registration is a new form under the LEP 2020 that has made certain achievements. However, environmental registration procedures still encounter inadequacies in the application process. Unknown response time, difficulties declaring forms and settlement processes of competent governing bodies, etc are all practical difficulties that arise. Therefore, it is necessary for the law to change and supplement accordingly, removing difficulties for special entities such as enterprises. From there, enterprises reduce unnecessary burdens, have space to create effective and focused environmental protection measures and contribute to sustainable economic development.

### References

- [1] H. Phe, Vietnamese Dictionary, Hong Duc Publishing House, pp. 371, 2009.
- [2] H. Phe, Vietnamese Dictionary, Hong Duc Publishing House, pp. 809, 2009.
- [3] Vietnam, National Assembly, Law on Environmental, 2020.
- [4] Vietnam, National Assembly, Law on Environmental Protection, 2020.
- [5] Vietnam, National Assembly, Law on Environmental Protection, 2020.
- [6] Vietnam, National Assembly, Law on Environmental Protection, 2020.

- [7] Department of Environmental Pollution Control - Ministry of Natural Resources and Environment, “5th National Environment Conference: Achievements of environmental protection work in the period 2016-2022 (2023)”, February 20th 2023, Available: <https://pcd.monre.gov.vn/tin-tuc-su-kien/5851/hoi-nghi-moi-truong-toan-quoc-lan-5-ket-qua-dat-duoc-cua-cong-tac-bvmt-giai-doan-2016-2022> [Accessed 04 20 2024].
- [8] Estonia, Riigikogu, “Environmental Registration Act 2019”, March 15th, 2019, Available: <https://faolex.fao.org/docs/pdf/est38895ENG.pdf> [Accessed 04 20 2024].
- [9] S. Tatomir, “Estonia’s climate policy: challenges and opportunities”, in OECD Economic Surveys: Estonia 2022, Ed. Paris: OECD Publishing, 2022, Available: <https://www.oecd-ilibrary.org/sites/25d93653-en/index.html?itemId=/content/component/25d93653-en#> [Accessed 04 20 2024].
- [10] Estonia, Riigikogu, “Environmental Registration Act 2019”, March 15th, 2019, Available: <https://faolex.fao.org/docs/pdf/est38895ENG.pdf> [Accessed 04 20 2024].
- [11] H. Veinla, “Development of Estonian Environmental Law: Integration with Europe, Juridica International. Law Review. University Of Tartu, 1997, pp.30-34.

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