Measures on Administrative Penalty for Environmental Protection

Decree of the State Environmental Protection Administration
No. 7

The Measures on Environmental Protection Administrative Penalty was adopted at the executive session of the State Environmental Protection Administration on July 8, 1999 and is hereby promulgated for implementation.

Minister Xie Zhenhua
State Environmental Protection Administration
August 6, 1999

Chapter I  General Provisions

Article 1  Pursuant to the Law of the People's Republic of China on Administrative Penalty and other relevant laws and regulations, these Measures are enacted for the purpose of standardizing environmental protection administrative penalties, ensuring and supervising the effective exercise of environmental management by the competent departments of environmental protection administration and protecting the lawful rights and interests of citizens, legal persons and other organizations.

Article 2  Types of environmental protection administrative penalties shall include:
(1) Disciplinary warnings;
(2) Fines;
(3) Confiscation of illegal gains;
(4) Orders for suspension of production or use;
(5) Rescission of permits or other certificates of similar character; and
(6) Other types of administrative penalties as prescribed by the environmental protection laws, regulations and rules.

Article 3  After investigation and confirmation of an act in violation of environmental law, the competent departments of environmental protection administration shall order the violator to rectify the illegal act or do so within a specified time limit, and impose administrative penalties according to the law.

Article 4  The competent departments of environmental protection administration shall impose administrative penalties in accordance with the environmental protection laws, regulations and rules.

Article 5  Environmental administrative penalties shall be imposed according to the principles of fairness and openness, and penalties shall be combined with education.

Investigation and evidence collection shall be separated from decision-making in imposing administrative penalties.

Article 6  For the same illegal act, administrative penalties constituting fines shall not be imposed more than once.

When the competent department of environmental protection administration imposes an administrative penalty constituting a fine, the decision-making process shall be separated from the process of collecting the fine.

Article 7  When the competent department of environmental protection administration imposes penalties for violation of environmental laws and regulations, it shall comprehensively consider the following factors and make decisions based on the types and scope of penalties stipulated by the laws and
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regulations:

(1) Seriousness of the violations;
(2) Harmful consequences caused by the illegal act(s);
(3) Attitude of the violator(s) and measures taken by the violator(s) to correct the illegal act; and

(4) Whether the violation(s) constitute(s) a first offence or recidivism.

Article 8 The legal affairs division of the competent department of environmental protection administration at or above the county level shall be responsible for the unified management of the department’s administrative penalties for environmental law violations.

Chapter II Organs Imposing the Administrative Penalty and Their Jurisdiction

Article 9 The competent departments of environmental protection administration at or above the county level shall impose administrative penalties for environmental law violations within their scope of statutory functions and powers.

Article 10 A competent department of environmental protection administration may, within its scope of functions and powers prescribed by law, entrust an environmental supervision and management institution with the imposition of administrative penalties. The entrusted environmental supervision and management institution shall, within the scope of this authorization, impose administrative penalties in the name of the entrusting competent department of environmental protection administration.

The entrusting competent department of environmental protection administration shall be responsible for supervising the imposition of administrative penalties by the entrusted environmental supervision and management institution, and shall bear legal responsibility for the consequences of penalties that are imposed by the entrusted institution.

Article 11 The local competent departments of environmental protection administration at or above the county level shall have jurisdiction over cases involving administrative penalties for environmental law violations within its administrative area.

Article 12 For the following cases of administrative penalties for environmental law violations, the competent departments of environmental protection administration prescribed by this Article shall have jurisdiction:

(1) Administrative penalties imposed on a party, that develops a construction project, of which violates the environmental impact assessment system or the planned environmental protection facilities of which are not put into use simultaneously with the principal construction, shall be decided by the competent department of environmental protection administration that examines the environmental impact statement, environmental impact form, or the environmental impact registration form for the project;

(2) Fines imposed on an enterprise or institution that fails to prevent and control pollution by a specified deadline shall be decided by the competent department of environmental protection administration of the people’s government that prescribes the deadline; and

(3) Administrative penalties imposed on a party that engages in the hazardous waste business without a business license or in violation of the business license shall be decided by the competent department of environmental protection administration in charge of the issuance of the license.

Article 13 Jurisdiction over an administrative penalty cases that involve transboundary administrative region pollution shall be decided, after negotiation, by the competent departments of environmental protection administration at the places where the act of pollution takes place and where the pollution incurs consequences; if a dispute arises over jurisdiction, the matter shall be reported to their common superior competent department of environmental protection administration for designation of jurisdiction.

When two or more competent departments of environmental protection administration have juris-
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diction over one administrative penalty case, the competent department of environmental protection administration that discovers the environmental pollution first or receives the pollution report first shall have jurisdiction over the matter.

Article 14 If a dispute arises concerning jurisdiction over an administrative penalty case, the parties at issue shall report the matter to their common superior department of environmental protection administration for designation of jurisdiction.

Article 15 If the competent department of environmental protection administration at a low level of administrative authority has difficulty in imposing a penalty in an administrative penalty case within its jurisdiction, it may report the matter to the competent department of environmental protection administration at a higher level for designation of jurisdiction.

If the competent department of environmental protection administration at the higher level believes that the competent department of environmental protection administration at the lower level has difficulty in imposing a penalty or is incapable of imposing a penalty independently, it may inform the competent department of environmental protection administration at the lower level and the party concerned of this determination and directly impose on the party in question an administrative penalty within the jurisdiction of the competent department of environmental protection administration at the lower level.

The competent department of environmental protection administration at the higher level may transfer a case under its jurisdiction to the competent department of environmental protection administration at the lower level for direct imposition of administrative penalty.

Article 16 Cases that are not under the jurisdiction of the competent departments of environmental protection administration as prescribed by the environmental protection laws and regulations shall be transferred to the department that has proper jurisdiction.

Article 17 The authority of local competent departments of environmental protection administration to impose fines shall be limited pursuant to these provisions:

(1) The competent department of environmental protection administration of the people’s government at the county level may impose fines not exceeding 10,000 Yuan; fines over 10,000 Yuan shall be reported to the competent department of environmental protection administration at the higher level for approval.

(2) The competent department of environmental protection administration at the municipality under the provincial government may impose fines not exceeding 50,000 Yuan; fines over 50,000 Yuan shall be reported to the competent department of environmental protection administration at the higher level for approval.

(3) The competent department of environmental protection administration at the provincial and autonomous region levels, and the level of municipalities directly under the Central Government, may impose fines not exceeding 200,000 Yuan.

The authority of State Environmental Protection Administration to impose fines is described under relevant environmental protection laws and regulations.

Chapter III Procedures for Imposition of Administrative Penalties

Section I Summary Procedures

Article 18 Where the facts about a violation of law are well-attested, where the violation is deemed minor, where there is a legal basis for finding the violation, and where the citizen involved is to be fined not more than 50 Yuan or the legal person or other organizations involved is to be fined not more than 1,000 Yuan or where a disciplinary warning is to be given, such administrative penalties may be decided on-the-spot by the competent department of environmental protection administration.

Article 19 When a decision to impose an administrative penalty is made on-the-spot, the presiding environment protection law-enforcement officers shall not be less than two, and they shall observe the following summary procedures:
(1) The officers shall show the party concerned their law enforcement identification certificates;
(2) The officers shall ascertain the facts associated with the violation on-the-spot and make a written record of the on-the-spot inspection;
(3) The officers shall explain to the party concerned the facts of violation, the grounds and basis according to which the administrative penalty(ies) is/are to be decided;
(4) The officers shall listen to the party's(ies)' statement and defense;
(5) The officers shall fill out an established and serial-numbered form of decision for administrative penalties to be signed or stamped by the officers. The form of decision for administrative penalties shall be given to the party concerned on-the-spot; and
(6) The officers shall notify the party that if he refuses to accept the decision of administrative penalties completed on-the-spot, he may apply for administrative review or bring an administrative lawsuit in accordance with the law.

The decision on administrative penalties made by the law enforcement officers on-the-spot shall be submitted to the legal affairs division of their department for record within three days after making the decision.

Section II Standard Procedures

Article 20 Except for administrative penalties which may be imposed on-the-spot as provided in Article 18 of these Measures, the competent department of environmental protection administration shall follow standard procedures provided in these Measures in imposing other administrative penalties.

Article 21 When the competent department of environmental protection administration discovers through inspection or receives a report about or accusation concerning a violation of environmental law or receives a transferred case, it shall examine the case and decide within seven days whether to place it on file.

Article 22 The competent department of environmental protection administration shall appoint persons to be specially in charge of the registered violation of environmental law and promptly organize investigation and evidence collection in regard thereto.

In investigation and evidence collection, the law enforcement officers shall show their identification certificates to the party or persons concerned. Written record shall be made of the inquiry or investigation.

Article 23 During the investigation, the law-enforcement officers are authorized to enter the site to investigate and collect evidence, and inspect or copy as necessary the pollutant discharge record and other relevant materials of the pollutant discharging unit.

The competent department of environmental protection administration and its law enforcement officers shall keep confidential the technical and business secrets of the unit or individual being inspected.

Article 24 When it is necessary to monitor a violation of environmental law already on file, the competent department of environmental protection administration shall appoint an environmental monitoring institution or other monitoring institution certified by the department to conduct environmental monitoring. The environmental monitoring institution and other certified monitoring institutions shall provide a report on the outcome of the environmental monitoring.

The report on the outcome of the environmental monitoring examined and verified by the competent department of environmental protection administration may be used as evidence for punishing a violation of environmental law.

Article 25 After the investigation is concluded, the investigation group appointed by the competent department of environmental protection administration shall provide verified facts and evidence concerning the environmental law violation, prepare an initial proposal for imposition of administrative penalties, and refer this information to the legal affairs division of its own department for examination.

Article 26 The legal affairs division of the competent department of environmental protection administration shall examine the following aspects of a case:

(1) whether the facts concerning the violation are clear;
(2) whether the evidence is irrefutable;
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(3) whether the investigation and evidence collection conformed with legal procedures;
(4) whether the application of the law is correct;
(5) whether the type and scope of the penalty are proper; and
(6) whether the relevant party’s statement or defense is tenable.

When, after examination, it is determined that the facts associated with the violation are unclear, the evidence inadequate, or that the investigation or evidence collection does not conform to legal procedures, the law enforcement officers carrying out the investigation shall be requested to conduct additional investigation and evidence collection, or conduct the investigation and evidence collection anew, according to the law.

When the examination is concluded, the legal affairs division shall issue recommendations on the imposition of administrative penalties and submit these to the head of the competent department of environmental protection administration for examination and approval.

Article 27 After examination, the head of the competent department of environmental protection administration shall make the following decisions in light of the particular circumstances of the case:
(1) No administrative penalties will be imposed where the facts regarding an illegal act are not established or the violation is minor and can be exempted from administrative penalties according to the law;
(2) A Decision on Environmental Administrative Penalties shall be executed by the legal representative of the department where the facts regarding an illegal act are established and imposition of administrative penalties is decided. Before imposing a heavier penalty for an environmental law violation of a grave nature, the leading-members of the department shall make a collective-decision on the issue through discussion;
(3) Where the laws, regulations and administrative rules stipulate that the administrative penalty shall be reported to the competent department of environmental protection administration at the higher level for approval, the competent department of environmental protection administration at the lower level shall submit a report in written form and a decision on penalty can be made only after the report is approved by the higher-level administrative authority;
(4) Where the laws, regulations and administrative rules stipulate that administrative penalties shall be imposed by the people’s government, recommendations on penalties shall be submitted to the people’s government with all the files of the case to assist in a decision on whether to impose administrative penalties; and
(5) Where the environmental illegal act is suspected of constituting a crime and may violate the Criminal Law, the case shall be transferred to the judicial organs for investigation of criminal liability according to the law.

Article 28 When the competent department of environmental protection administration makes a decision on administrative penalties, the legal affairs division shall prepare the decision for administrative penalties in written form.

Article 29 The form of decision for environmental administrative penalties shall clearly record the particulars stipulated by law.

The instrument of decision for administrative penalties constituting fines made by the competent department of environmental protection administration shall clearly state the amount of the fine(s) imposed on the party concerned, the time limit and methods to pay the fine(s), and shall make clear whether an additional fine for belated payment of the fine(s) will be added if the party fails to pay the fine within the specified time limit.

Article 30 An environmental administrative penalty case shall be concluded within three months from the time the case is entered into the official file. Under special circumstances, when it is necessary to extend this time limit, the competent department of environmental protection administration shall notify the party concerned in written form and explain the reasons.

Article 31 The competent department of environmental protection administration that makes the decision on administrative penalties shall, within seven days of making the decision, serve the instrument of decision on the punished person and send copies to units related to the case, as necessary.
The recipient of the decision shall acknowledge receipt of the instrument indicating the date of receipt and his name or stamp on the receipt. Date of receipt recorded by the recipient on the paper is the date of service.

Where the recipient refuses to sign or accept the instrument, the deliverer shall invite relevant persons to serve as witnesses, explain the matter and record the reason and date of refusal of receipt on the instrument and leave the instrument of decision of penalty at the place of the recipient, and the decision of penalty is thereby deemed served. When the recipient is not present, a leader of his unit or an adult member of his family may sign and accept the instrument on his behalf.

When a decision is served through mail, the date recorded on the returned receipt of the registered letter is deemed the date of service.

Section II Hearing Procedure

Article 32 Prior to the decision on an administrative penalty that involves suspension of production or use, rescission of business license, or the imposition of a "relatively large fine," the hearing procedure prescribed in this Section shall apply.

Article 33 Before making a decision on an administrative penalty case to which a hearing procedure applies, the competent department of environmental protection administration shall serve a notification of hearing to the party concerned.
The notification of hearing shall make clear the following particulars:
(1) Name or appellation of the party concerned;
(2) Facts of the environmental violation ascertained, and the grounds and bases of penalty(ies);
(3) The possible penalty decision by the competent department of environmental protection administration;
(4) Notification of the party concerned of the right to request a hearing; and
(5) Notification of the party concerned of the time limit during which such a request may be made and the name of the organ that arranges the hearing.

The notification of hearing may be served directly, entrusted to other organs for service, or served through a registered letter.

Article 34 If the party concerned requests a hearing, he may clearly state his request on the receipt, or put forward his request of hearing in written form within three days.

Article 35 When the party requests a hearing, the competent department of environmental protection administration shall accept the request, decide on the individual presiding over the hearing, and the time and place of the hearing within five days of receiving the request. The notification of hearing shall be served to the party concerned seven days prior to the hearing, and the party concerned shall sign the receipt.
The notification of hearing shall make clear the following particulars:
(1) Name or appellation of the party concerned;
(2) Time, place and form of the hearing;
(3) Names of those presiding over and the investigator of the case;
(4) Notification of the party concerned of the right to apply for recusal of the individual presiding over the hearing; and
(5) Notification of the party concerned to prepare evidence and inform witnesses in advance of the hearing.

Article 36 The individual presiding over the hearing shall be a member of the legal affairs division of the competent department of environmental protection administration, and he shall not be the investigator of the case.
The party concerned has the right to apply for recusal of the individual presiding over the hearing and shall state his reasons therefor. The application for recusal shall be reported to the head of the department by the individual to preside over the hearing, and the head of the department shall decide on whether to accept the application for recusal and let the party concerned know the reasons therefor.
The application for recusal of the individual presiding over the hearing shall be put forward within
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three days of receiving the notification of hearing.

Article 37 The hearing will be attended by the party concerned, the investigator, the witness and a third person directly related to the outcome of the case in interests.

The party concerned shall have the right to appoint no more than two agents to represent him at the hearing. The agent(s) at the hearing shall submit to the competent department of environmental protection administration an authorized power of attorney.

Article 38 The hearing shall proceed as follows:

(1) The individual presiding over the hearing announces the instructions for the hearing, notifies the party concerned of his rights and obligations, checks the identity of the participants, and declares the opening of the hearing;

(2) The person responsible for recording the hearing reads out the brief of the case, name of the working unit and position of the individual presiding over the hearing;

(3) The investigator provides the facts and evidence of the violation, bases of punishment and proposal for administrative penalties;

(4) The party concerned states the facts of the case and defends himself, provides relevant evidence and cross-examines the evidence provided by the investigator;

(5) The investigator and the party concerned present their arguments;

(6) The final statements are read by the parties concerned; and

(7) The individual presiding over the hearing declares the conclusion of the hearing.

During the process of the hearing, the individual presiding over the hearing may ask the investigator, the party concerned, the witness, or third persons questions, and the persons shall truthfully answer these questions.

Article 39 The competent department of environmental protection administration that organizes the hearing shall arrange for preparation of a transcript of the hearing.

When the hearing is concluded, the hearing transcript shall be given to the parties concerned for review and he shall sign or affix his seal on the transcript if he accepts it.

Article 40 After the hearing, the individual presiding over the hearing shall promptly report the result of the hearing to the head of the department. The competent department of environmental protection administration shall make decision in accordance with Article 27 of these Measures.

Chapter IV Enforcement of Administrative Penalties

Article 41 After a decision on environmental administrative penalties has been made in accordance with the law, the party concerned shall execute the penalty decision within the time limit specified by the instrument of the decision of penalty.

Where the party concerned applies for administrative review or brings an administrative lawsuit, enforcement of the administrative penalty decision shall not be suspended.

Article 42 Where the party concerned fails to apply for administrative review, fails to bring an administrative lawsuit, and also fails to execute the penalty decision within the specified time limit, the competent department of environmental protection administration that has made the decision shall apply to the people's court for compulsory execution of the decision.

Article 43 Where the party concerned fails to pay the fine within the specified time limit, the competent department of environmental protection administration that has made the decision may impose an additional fine of 3 percent of the amount of fine per day in accordance with Article 51 of the Law of the People’s Republic of China on Administrative Penalties.

Where the party objects to the additional fine, he shall first pay the fine and the additional fine imposed for belated payment, and then apply for administrative reconsideration according to the law.

Article 44 Administrative penalty cases that are closed shall be put filed one case per file, and the case manager shall put all materials related to the case into that file.

Article 45 The competent department of environmental protection administration at or above the
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The development of environmental protection administration at the lower level shall establish a system of administrative penalty record.

The competent department of environmental protection administration at the lower level shall, within 20 days of the conclusion of the case, report the cases designated by higher authorities, penalty cases that were the subjects of hearings, or penalty cases that were the subject of administrative lawsuits to the competent department of environmental protection administration at the higher level for record.

Article 46 When the competent department of environmental protection administration, through receiving the party's appeal and accusation, through examining the case file, or through other means, determines that an administrative penalty imposed by the competent department of environmental protection administration at a lower level violates the law or is unfair, it may order the department at the lower level to correct the violation or unfair decision.

Article 47 Where the competent department of environmental protection administration, through administrative review, determines that the administrative penalty decided by the competent department of environmental protection administration at the lower level violates the law or is obviously unfair, it may repeal the decision or alter the decision according to the law.

Article 48 The competent department of environmental protection administration at or above the county level shall establish a statistical system for administrative penalty cases and report to the competent department of environmental protection administration at the higher level statistics on administrative penalties within its administrative region, as required by the State Environmental Protection Administration.

Chapter V Supplementary Provisions

Article 49 The "relatively large fine" described in Article 32 of these Measures refers to a fine of over 5,000 Yuan imposed on an individual and a fine over 50,000 Yuan imposed on a legal person or other organization.

Where there are local regulations adopted by provinces, autonomous regions and municipalities directly under the Central Government regarding the amount of a "relatively large fine," or the local government issues additional regulations in this regard, the amount of the fine need not be confined to the amount mentioned above.

Article 50 Forms of the major legal documents related to environmental administrative penalties shall be uniformly formulated by the State Environmental Protection Administration.

Article 51 For aspects of environmental administrative penalties that are not stipulated by these Measures, the general provisions of the Law of the People's Republic of China on Administrative Penalties shall apply.

Article 52 Administrative penalties associated with the supervision and management of nuclear security shall be implemented in accordance with the rules regarding the supervision and management of nuclear security stipulated by the State.

Article 53 These Measures shall come into force as of the date of promulgation, and the Measures on Environmental Administrative Penalties, promulgated by the former National Environmental Protection Agency on July 7, 1992, shall be repealed on the same day.