

Subject:

ENVIRONMENTAL PROTECTION

Order of the State Environmental Protection Administration

(No. 25)

The Measures for the Procedure for Formulating Regulations on Environmental Protection, which were deliberated and adopted at the executive meeting of the State Environmental Protection Administration on April 11, 2005, are hereby promulgated and shall come into force as of June 1, 2005. The Measures for the Administration of Regulatory Documents of the State Environmental Protection Administration, which were promulgated by the State Environmental Protection Administration on March 12, 1990, shall be simultaneously abolished.

Director General of the State Environmental Protection Administration Xie Zhenhua

April 25, 2005

Measures for the Procedure for Formulating Regulations on Environmental Protection

Chapter I General Provisions

Article 1 The present Measures are formulated in accordance with the Legislation Law of the People's Republic of China, the Regulation on the Procedure for Formulating Administrative Regulations, the Regulations on the Procedure for Formulating Ministerial Rules, the Regulations on Recording the Ministerial Rules of the Department of Regulations and the Implementation Outline for Overall Pushing Forward Administration by Law in order to regulate the procedures for formulating regulations on environmental protection and ensure the quality of legislation.

Article 2 The term "regulations on environmental protection" as mentioned in the present Measures refers to the following regulatory documents as formulated by the State Environmental Protection Administration (hereinafter referred to as the Administration) according to the entrustment of the relevant organs of the National People's Congress or according to the authorization of any law or administrative regulation or according to the duties and powers:

- (1) Any draft of laws on environmental protection as drawn up on behalf that is entrusted by the relevant organs of the National People's Congress;
- (2) Any draft of laws or administrative regulations on environmental protection that is to be reported to the State Council for review; and
- (3) Ministerial rules of environmental protection departments.

Article 3 The proposal, drafting, examination, submitting for review of any law or administrative regulation on environmental protection and the proposal, drafting, examination, adoption, publication, archival filing and interpretation of the ministerial rules of environmental protection departments shall be governed by the present Measures.

The procedure for handling those opinion-solicitation draft on the relevant laws, regulations or

ministerial rules that are sent by any other state organ or department to the Administration for solicitation shall be governed by the relevant provisions of the present Measures.

Chapter II Proposal

Article 4 The Administration shall formulate an annual legislative schedule for the current year at the beginning of each year.

The legislative projects concerning laws or administrative regulations on environmental protection that are adopted in the annual legislative schedule fall into categories of the first category, the second category and the third category of legislative projects:

(1) Those projects as included into the legislative schedule of the Standing Committee of the National People's Congress or of the State Council that the Administration shall, within the year, report or shall have reported to the National People's Congress or to the relevant legislative institutions of the State Council for examination in collaboration shall fall into the first category of legislative projects;

(2) Those legislative projects as reported within the year through the best efforts of the Administration, in which the legislative basis is well-established, the legislative thought is clear, the solution of problems therein is urgently demanded by the administrative work of environmental protection, the major institution and measures as suggested for adoption is feasible shall fall into the second category of legislative projects; and

(3) Those legislative projects that require studies, demonstration or drafting shall fall into the third category of legislative projects.

Article 5 Any legislative project concerning the ministerial rules of environmental protection departments shall be decided according to the actual requirements of work at an appropriate time, without any legislative schedule.

For any project, on which studies on environmental legislation are required to be conducted by the direction of a leader of the State Council, the Administration shall carry out the relevant work in a timely manner.

Article 6 Except those legislative projects that have been included into the legislative schedule of the Standing Committee of the National People's Congress or the annual legislative schedule of the State Council, where the relevant department (office, bureau) of the Administration deems that it's necessary to formulate any regulation on environmental protection, it shall make a proposal before the end of January of each year.

For the proposal as put forward, an application form of proposal shall be filled out (see Attachment I for the form), written materials on explanation of the legislation necessity, the major problems to be solved and the major institution and measures to be formulated shall be submitted where reference materials concerning legislation both home and abroad may be attached.

Article 7 The department of regulations shall summarize and conduct researches on the proposals, put forward a suggestion on the annual legislation schedule of the Administration and report it to the executive meeting of the Administration for deliberation and decision.

Article 8 The annual legislation schedule as adopted by deliberation at the executive meeting of the Administration is the working basis of the legislation of the Administration at the current year.

Chapter III Drafting

Article 9 The department (office, bureau) that takes the specific charge of drafting laws or regulations on environmental protection shall organize the relevant legislative personnel, personnel in charge of specific work, experts and scholars to carry out the drafting.

The department of regulations shall participate in the drafting of laws and regulations on environmental protection at appropriate time.

Article 10 In the process of drafting any law or regulation on environmental protection, materials shall be collected on a wide-ranging base, in-depth investigations and researches shall be carried out, and the opinions of relevant organs, organizations and citizens shall be solicited on a wide-ranging base.

Forms of holding discussion meetings, expert demonstration meetings, department coordination meetings, enterprise representative seminars and hearings, etc. may be adopted for opinion-solicitation.

Article 11 The department (office, bureau) in charge of drafting shall, where the first draft of any law or regulation on environmental protection is completed thereby, solicit opinions of the other relevant departments (offices, bureaus) and the relevant instrumentalities under direct administration of the Administration, and, according to the opinion as fed back there from, revise the first draft so as to form an opinion-solicitation draft of the law or regulation on environmental protection, which shall, on the strength of the signature of the person-in-charge of the drafting department (office, bureau), be reported to the general director's meeting for a special subject of the Administration for deliberation.

The focus of the director's meeting for a special subject of the Administration shall be put on the deliberation of the necessity and feasibility of the major legal institution and measures and the suitability and legality of the establishment of administrative licensing and administrative sanction, etc. as involved in the opinion-solicitation draft of laws and regulations on environmental protection.

Article 12 The department (office, bureau) in charge of drafting shall, according to the opinion as concluded by the deliberation at the director's meeting for a special subject of the Administration, revise the opinion-solicitation draft so as to form the opinion-solicitation document of laws and regulations on environmental protection and the statement thereof, which shall be sent to the environmental protection departments at the provincial level and the relevant departments of the State Council to solicit opinions in the form of an Administration Letter.

The department (office, bureau) in charge of drafting may, according to the range as covered by the opinion-solicitation document of laws and regulations on environmental protection, solicit the opinions of the relevant local people's governments, the environmental protection departments below the provincial level and the representative enterprises and citizens.

The statement of the opinion-solicitation document shall include explanations on such major contents as the necessity of legislation and the major institution and measures.

Article 13 Where any law or regulation on environmental protection directly involves the interests of a citizen, legal person or any other organization, the opinion-solicitation document may be publicized to the general public to solicit opinions.

Where any regulation or rule on environmental protection may have any impact on trade or investment, the opinion-solicitation document shall be publicized through the external circulation procedure in accordance with the relevant provisions of the state.

The opinion-solicitation document of laws and regulations on environmental protection may be publicized on such media as the China Environment News and the website of the Administration.

Article 14 In the process of drafting any law or regulation on environmental protection, where it involves or is closely related to any function of the other departments of the State Council, the department (office, bureau) in charge of drafting shall fully solicit the opinion of the other departments; where there is any different opinion therebetween, a sufficient consultation shall be carried out; where no agreement is reached through consultation, the department (office, bureau) in charge of drafting shall illustrate the situations and reasons in the statement of the draft-for-review of laws and regulations on environmental protection.

Article 15 The department (office, bureau) in charge of drafting shall, according to the opinions as solicited, revise the opinion-solicitation document and the statement thereof so as to form the draft-for-review of laws and regulations on environmental protection and the statement thereof, which shall be transferred to the department of regulations for examination with other relevant materials upon the signing of the person-in-charge of the department (office, bureau) in charge of drafting.

The statement of the draft-for-review shall include such contents as explanations on the necessity of legislation, the process of drafting, the major institution and measures, the solicitation of opinions and the treatment for those opinions that haven't been adopted.

The other relevant materials shall mainly include: the analysis on the present administration and existing problems, the special demonstration materials on the necessity and feasibility of the major institution and measures as provided in the draft, a summary form of solicited opinions and the treatment thereof, explanations on the major different opinions that haven't been adopted, the relevant reports of researches on legislation and the other reference materials on legislation both home and abroad including the articles of regulations.

Chapter IV Examination

Article 16 Where the department (office, bureau) in charge of drafting fails to solicit opinions or prepare the relevant demonstration materials according to Chapter III of the present Measures, the department of regulations may transfer it to the department (office, bureau) in charge of drafting to go through the relevant procedure or supplement the relevant demonstration materials.

Article 17 The department of regulations shall, in collaboration with the department (office, bureau)

in charge of drafting, examine the draft-for-review of laws and regulations on environmental protection in the following aspects:

- (1) Whether or not the item of administrative licensing concerning environmental protection complies with the Administrative Licensing Law and any other law, regulation or any provision on administrative licensing of the other regulatory documents of the State Council;
- (2) Whether or not the administrative sanction of environmental protection complies with the Administrative Sanction Law and any other law, administrative regulation or any provision on administrative sanction of the other regulatory documents of the State Council;
- (3) Whether or not it is inline with and links up with the relevant regulations and policies of the state;and
- (4) Whether or not it meets the technical requirements of legislation.

Article 18 In the process of examination,where the department of regulations holds that the legal problems as involvedin the draft-for-review of the regulations on environmental protection needfurther studies, the department of regulations may organize a spotinvestigation and hold a seminar or demonstration meeting to solicit opinions.

Where the draft-for-review of laws andregulations on environmental protection includes any administrative licensingitem or directly involves the immediate interests of any citizen, legal personor any other organization and the relevant organ, organization or citizen hasany big opinion divergence therein, the department of regulations and thedepartment (office, bureau) in charge of drafting may solicit opinions openlyfrom the general public or may adopt such forms as a hearing to solicit theopinions of the relevant organs, organizations and citizens.

Article 19 The department of regulationsshall, in collaboration with the department (office, bureau) in charge ofdrafting, complete the revision of the draft-for-review of the ministerialrules of environmental protection departments within 20 workdays, and completethe revision of draft-for-review of laws and administrative regulations onenvironmental protection within 40 workdays so as to form a draft-for-review oflaws and regulations on environmental protection. In the event of an opiniondivergence on a certain issue that requires coordination, the time limit ofexamination may be extended in an appropriate manner but the maximum time limitshall not exceed 60 workdays.

The department of regulations shall putforward a signed draft-for-review of regulations on the strength of signatureof the department (office, bureau) in charge of drafting and submit it with thedraft of laws and regulations on environmental protection and the statementthereof and the catalog of special demonstration materials to the executivemeeting of the Administration for deliberation.

The statement of drafting shall include thenecessity of legislation, the process of drafting, the explanation on the majorinstitution and measures, the solicitation of opinions and the treatment ofthose opinions that haven't been adopted, etc.

The statement of examination shall includethe basis of legislation, the legality of establishment of administrativelicensing or administrative sanction therein, the compliance of the draft oflaws and regulations on environmental protection with the relevant laws andregulations.

Article 20 Where the relevant parties haveany big divergence in respect of the administrative

system, the major institution or measures as provided by the draft-for-review of laws and regulations on environmental protection, the department of regulations may, in collaboration with the department (office, bureau) in charge of drafting, put forward one or more reserve schedules in the draft of laws and regulations on environmental protection and submit it to the director's meeting for a special subject for deliberation.

Chapter V Submission for Approval, Decision and Publication

Article 21 The draft of laws and regulations on environmental protection shall be deliberated at the executive meeting of the Administration.

Article 22 In the deliberation of the draft of laws and regulations on environmental protection, the department (office, bureau) in charge of drafting shall make a statement for the draft and shall take charge of making explanations or answers for such special issues as the necessity and feasibility of the present situation of administration, the major institution and measures of administration.

The department of regulations shall make a statement on examination and shall take charge of making explanations or answers for such legal issues as the legality of establishment of administrative licensing or administrative sanction and the link-up between the draft of laws and regulations on environmental protection and the other laws and regulations.

Article 23 The department of regulations shall, in collaboration with the department (office, bureau) in charge of drafting, revise the draft of ministerial rules of environmental protection departments according to the opinion upon deliberation at the executive meeting of the Administration so as to form the ministerial rules of environmental protection departments, which shall be reported to the director-general of the Administration for signature and an order for promulgation.

The department of regulations shall, in collaboration with the department (office, bureau) in charge of drafting, revise the draft of laws or administrative regulations on environmental protection so as to form a draft-for-review of laws or administrative regulations on environmental protection, which shall be reported to the State Council in the form of a document of the Administration.

The Administration shall, according to the draft of laws on environmental protection as entrusted to be drawn out by the relevant organ of the National People's Congress, make a letter report of the Administration to the entrusting organ.

The relevant special demonstration materials shall be attached in the draft-for-review of laws and administrative regulations on environmental protection and the draft of laws on environmental protection as worked out on behalf.

Article 24 In the order on publicizing a ministerial rule on environmental protection, the serial number, name, date of adoption, date of implementation, signature of the director-general of the Administration and date of promulgation thereof shall be indicated. Attachment II is the publication format for a ministerial rule on environmental protection.

Any ministerial rule on environmental protection as jointly promulgated by the Administration and the State Council shall be co-signed by the principals of the relevant departments for publication. Where the Administration is the organ in primary charge, the order serial number of the Administration shall be used.

Article 25 The China Environment News and the website of the Administration shall publicize ministerial rules on environmental protection departments in a timely manner upon the signature and promulgation.

Article 26 The ministerial rules on environmental protection as published in the Gazette of the State Council or in the China Environment News shall be the standard version.

Article 27 The ministerial rules of environmental protection departments shall come into force after 30 days as of the date of promulgation. Where any delayed implementation upon promulgation may obstruct the implementation thereof, the relevant ministerial rules shall come into force as of the date of promulgation.

Chapter VI Archival Filing and Explanations

Article 28 The department of regulations shall, according to the provisions of the Legislation Law and the Regulations on Recording the Ministerial Rules of the Department of Regulations, handle the specific archival filing of the ministerial rules of environmental protection departments within 30 days as of the date of promulgation.

Where any ministerial rule of environmental protection departments is reported for archival filing, the report of archival filing, the text and statement of the ministerial rule shall be submitted, which shall be stitched into books with 10 copies for 1 edition. Attachment III is the format for the archival filing of the ministerial rules of environmental protection departments.

The department of regulations shall, before January 31 of each year, report the catalog of the ministerial rules of environmental protection departments as formulated in the previous year to the Legislative Affairs Office of the State Council.

Article 29 The power to interpret the ministerial rules of environmental protection departments shall remain with the Administration. The power to interpret those ministerial rules as jointly promulgated by the Administration and the relevant departments of the State Council shall remain with the Administration and the relevant departments of the State Council jointly.

Any ministerial rule of environmental protection departments that is under any of the following circumstances shall be subject to the interpretation of the organ with the power thereof according to the provisions of the preceding paragraph:

- (1) Where the provisions of any ministerial rule of environmental protection departments require further clarification of specific meanings; or
- (2) Where there arises any new circumstance that requires clarification of the application basis after the formulation of the ministerial rules of environmental protection departments.

The procedure for conducting the interpretation of the ministerial rules of environmental protection departments shall be governed by the relevant provisions of the Measures for the Administration of the Interpretation to Laws and Regulations on Environmental Protection.

The interpretation to the ministerial rules of environmental protection departments shall have the same force as that of the ministerial rules of environmental protection departments.

Article 30 The interpretation in the specific applicable process of any law or administrative regulation on environmental protection shall be governed by the relevant provisions of the Decision of the Standing Committee of the National People's Congress on Intensifying the Interpretation of Laws, the Circular of the General Office of the State Council on the Power Limit and Procedure for Interpreting Administrative Regulations and the Measures for the Administration of the Interpretation to Laws and Regulations on Environmental Protection.

Chapter VII Treatment of the Opinion-solicitation Documents of Other Departments

Article 31 Any law, administrative regulation or ministerial rule as drafted by any other state organ or ministry that is submitted to the Administration to solicit opinions shall be put under the administration of the department of regulations and shall be respectively sent to the relevant departments (offices, bureaus) for solicitation according to the content it involves.

Article 32 The relevant departments (offices, bureaus) shall put forward their opinions and send them to the department of regulations within the prescribed time limit.

The department of regulations shall, according to the principles of compliance and link-up among laws, administrative regulations and ministerial rules, take charge of the collection and researches and draft a letter reply of the relevant opinions.

Article 33 Where there is any comparatively big divergence among the departments (offices, bureaus) of the Administration on an opinion-solicitation document of laws, administrative regulations or ministerial regulations as drafted by any other state organ or ministry, the department of regulations shall take charge of the coordination. Where an agreement cannot be reached through consultation, the divergence shall be reported to the director's meeting for a special subject for deliberation and negotiation.

Article 34 Where there is any big contradiction or intersection between the administrative system, major institution or measures as suggested to be established in the opinion-solicitation document of any law, administrative regulation or ministerial rule that is drafted by any other state organ or ministry and any law, administrative regulation and ministerial rule on environmental protection, or the administrative system, major institution or measures as suggested to be established in the opinion-solicitation document of any law, administrative regulation or ministerial rule may have any impact on the supervision and administration work of environmental protection departments, the department of regulations may, in collaboration with the relevant departments (offices, bureaus), put forward opinions and suggestions which shall be reported to the director's meeting for a special subject or the executive meeting of the Administration for deliberation.

Chapter VIII Supplementary Provisions

Article 35 Where any ministerial rule of environmental protection departments may have an impact on trade or investment, an English edition of the rule shall be rendered upon promulgation according

to the relevant provisions and shall be publicized according to the prescribed procedure.

For any law or administrative regulation on environmental protection that is drafted by the Administration, the English edition thereof shall be rendered upon promulgation according to the relevant provisions.

For the English edition of any law or regulation on environmental protection, the first draft shall be produced by the international department of the Administration and, upon the examination of the relevant department (office, bureau) in charge of drafting, it shall be publicized according to the relevant provisions or shall be reported to the relevant state organ for examination.

The rendition of regulations on environmental protection into languages of ethnic minorities shall be carried out according to the relevant provisions of the state.

Article 36 The Administration shall straighten out the ministerial rules of environmental protection departments on a frequent basis. Where any of the said rules fails to be in compliance with or has any contradiction with any law, administrative regulation or any other superior law or where any of the said rules fails to adapt to a new situation, it shall be revised or abolished in a timely manner.

The procedure for revising or abolishing the ministerial rules of environmental protection departments shall be carried out according to the relevant provisions of the present Measures.

Article 37 The editing and publication of the compilation of laws and regulations on environmental protection shall be carried out by the department of regulations according to the provisions of the Provisions on the Administration of the Editing and Publication of the Compilation of Laws and Regulations.

Article 38 The present Measures shall come into force as of June 1, 2005.

The Measures for the Administration of Regulatory Documents of the State Environmental Protection Administration as promulgated by the State Environmental Protection Administration on March 12, 1990 shall be simultaneously abolished.

Attachments: I. Application Form for Proposal

II. Format for the Publication of Ministerial Rules

III. Format for the Archival Filing of Ministerial Rules

IV. Chart of the Procedure Flow for the Formulation of Laws and Regulations on Environmental Protection (omitted)

Attachment I. Application Form for Proposal

Department

Name of Regulation

Law/ Administrative Regulation

Please put on archive the XXX as promulgated on X(Month) X(Date), X(Year) by this Administration and 10 copies of its statements.

(Seal of the State Environmental Protection Administration

X(Month) X(Date), X(Year)