

THE GOVERNMENT

DECREE No. 150/2004/ND-CP OF JULY 29, 2004 PRESCRIBING THE SANCTIONING OF ADMINISTRATIVE VIOLATIONS IN THE FIELD OF MINERALS

THE GOVERNMENT

*Pursuant to the Law on Organization of the
Government of December 25, 2001;*

*Pursuant to the Minerals Law of March 20,
1996;*

*Pursuant to the Ordinance on Handling of
Administrative Violations of July 2, 2002;*

*At the proposal of the Minister of Natural
Resources and Environment,*

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Objects and scope of regulation

1. This Decree prescribes acts of administrative violation in the field of minerals; sanctioning forms and levels; sanctioning competence; sanctioning procedures and remedial measures.

2. Administrative violations in the field of minerals are acts of violating law provisions on basic geological surveys of mineral resources (including the making of geological maps,

geological research and evaluation of mineral potentials); mineral prospection, exploration, exploitation and processing and protection of mineral resources, which are intentionally or unintentionally committed by organizations or individuals and do not constitute crimes but, according to the Ordinance on Handling of Administrative Violations and this Decree, must be administratively sanctioned.

3. Administrative-violation acts, which are governed by other legal documents, not prescribed in this Decree but related to the field of minerals, shall be administratively sanctioned according to the provisions of such legal documents.

Article 2.- Sanctioned subjects

1. Domestic organizations and individuals that commit acts of administrative violation in the field of minerals.

2. Foreign organizations and individuals that commit acts of administrative violation in the field of minerals, except for cases where the international agreements which the Socialist Republic of Vietnam has signed or acceded to contain different provisions, the provisions of such international agreements shall apply.

Article 3.- Principles and statute of limitations for sanctioning of administrative violations

1. The principles for sanctioning of administrative violations in the field of minerals shall comply with the provisions of Article 3 of the Ordinance on Handling of Administrative Violations.

2. The statute of limitations for sanctioning of

an administrative violation in the field of minerals is one year counting from the date such administrative violation is committed; past the above-said time limit, no sanction shall be imposed but the measures prescribed in Clause 3, Article 6 of this Decree, must be applied to remedy the consequences caused by such administrative violation.

Article 4.- The time limit for being considered having not yet been sanctioned for administrative violations

The time limit for being considered having not yet been sanctioned for administrative violations in the field of minerals is one year counting from the date the administratively sanctioned organizations or individuals completely serve the sanctioning decisions, during they do not relapse into violations.

Article 5.- Extenuating circumstances, aggravating circumstances

The extenuating and aggravating circumstances to be applied upon the sanctioning of administrative violations in the field of minerals shall comply with the provisions of Article 8 and Article 9 of the Ordinance on Handling of Administrative Violations.

Article 6.- Forms of sanctioning administrative violations and remedial measures

1. For each administrative-violation act, the violating organizations or individuals shall be subject to one of the following sanctioning forms:

- a) Caution;
- b) Fine.

2. Depending on the nature and seriousness

of administrative violations in the field of minerals, the violating organizations or individuals may also be subject to one or more of the following additional sanctioning forms:

a) Deprivation of the licenses;

b) Confiscation of material evidences and means used for commission of administrative violations.

3. Apart from the sanctioning forms prescribed in Clauses 1 and 2 of this Article, the organizations and individuals committing administrative violations in the field of minerals may also be subject to the application of one or more of the following remedial measures:

a) Forcible restoration of the initial state altered due to the administrative violations;

b) Forcible destruction of articles which cause harms to human health, domestic animals and crops;

c) Forcible submission of reports on basic geological surveys of mineral resources and mineral activities to competent State bodies;

d) Forcible fill-up and leveling of construction works; full satisfaction of the requirements on mineral resources and environmental protection according to regulations;

e) Forcible registration with competent agencies of plans on basic geological mineral resource surveys and mineral activities;

f) Forcible payment for the use of the State's data and information on mineral survey and/or prospection results;

g) Forcible mine designing; appointment of mine executive directors according to regulations.

Article 7.- Principles for determining fine

levels

When the sanctioning form of fine is applied, the specific fine level for an administrative-violation act in the field of minerals shall be the average level of the fine bracket prescribed in this Decree for such act; if the violation involves extenuating circumstance(s), the fine level may be reduced but must not be lower than the minimum level of the fine bracket; for violations involving aggravating circumstances, the fine levels may be increased but must not be higher than the maximum level of the fine bracket.

Chapter II

ACTS OF ADMINISTRATIVE VIOLATION IN THE FIELD OF MINERALS, SANCTIONING FORMS AND LEVELS

Article 8.- Violating the regulations on basic geological surveys of mineral resources

1. A fine of between VND 500,000 and 2,000,000 for acts of not registering basic geological mineral resource survey plans with competent State agencies according to regulations.

2. A fine of between VND 2,000,000 and 10,000,000 for one of the following violation acts:

a) Conducting basic geological mineral resource surveys without approving decisions of competent State bodies;

b) Failing to comply with the basic geological mineral resource surveys already approved or permitted for adjustment by competent State bodies;

c) Failing to submit reports on basic geological mineral resource surveys results,

geological samples as provided for.

3. Remedial measures

a) Forcible registration of basic geological mineral resource survey plans as prescribed, for violation acts specified in Clause 1 of this Article;

b) Forcible submission of reports on results of basic geological mineral resource surveys, geological samples as prescribed, for violation acts stipulated at Point c, Clause 2 of this Article.

Article 9.- Violating the regulations on mineral prospection

1. A fine of between VND 2,000,000 and 5,000,000 for one of the following violation acts:

a) Conducting mineral prospections without permits as prescribed or with expired permits, except for cases where dossiers of application for extension have been submitted according to regulations;

b) Failing to submit reports on prospection results as provided for or submitting them later than schedule for thirty (30) days or more as from the date the prospection permits terminate their validity;

c) Moving out of prospection areas geological or mineral samples with quantities and categories being at variance with the prospection permits granted by competent State bodies.

2. For violation acts prescribed at Point b, Clause 1 of this Article, apart from fines, the violators must also submit reports on prospection results as provided for.

Article 10.- Violating the regulations on mineral exploration

1. A fine of between VND 500,000 and 2,000,000 for acts of failing to notify the exploration plans to competent State bodies.

2. A fine of between VND 2,000,000 and 10,000,000 for one of the following violation acts:

a) Failing to observe the regime of periodical reporting to competent State bodies according to regulations;

b) Failing to submit reports on exploration results according to regulations or submitting them later than schedule for thirty (30) days or more as from the date the exploration permits terminate their validity.

3. A fine of between VND 10,000,000 and 20,000,000 for one of the following violation acts:

a) Conducting mineral prospection without permits as provided for or with expired permits, except for cases where the dossiers of application for extension thereof have been already submitted;

b) Failing to fill up and level exploration works or filling up and leveling them not according to the requirements on protection of mineral resources, protection of the environment as provided for when the exploration permits have expired.

c) Moving out of exploration areas geological and mineral samples with quantities and categories being at variance with exploration permits granted by competent State bodies.

4. Additional sanctioning forms and remedial measures

a) Deprivation of licenses, for violation acts prescribed at Point c, Clause 3 of this Article if they involve aggravating circumstances as

provided for;

b) Forcible notification of the exploration plans as prescribed, for violation acts prescribed in Clause 1 of this Article;

c) Forcible submission of reports on exploration results, for violation acts prescribed at Point b, Clause 2 of this Article;

d) Forcible termination of exploration activities; forcible fill-up and leveling of exploration works and application of measures to protect the mineral resources and environment, for violation acts prescribed at Points a and b, Clause 3 of this Article.

Article 11.- Violating the regulations on mineral exploitation

1. A fine of between VND 500,000 and 2,000,000 for acts of failing to notify the exploitation plans, failing to register the dates of commencing the capital construction of mines, the dates of commencing production activities with the competent State bodies according to regulations.

2. A fine of between VND 2,000,000 and 10,000,000 for one of the following violation acts:

a) Exploiting minerals without mine designs; without executive directors of the mines as provided for;

b) Failing to make deposit as security to ensure environmental and soil rehabilitation after exploitation and mine closure according to regulations;

c) Failing to observe the periodical report regime, making reports with wrong data on mineral exploitation activities to competent State bodies according to regulations;

d) Exploiting minerals to the utmost while the permits have expired, except for cases where the application for extension thereof has been submitted according to regulations.

3. A fine of between VND 20,000,000 and 50,000,000 for one of the following violation acts of exploiting minerals other than gold, silver, platinum, gemstones rare earth:

a) Exploiting minerals without the prescribed permits or with expired permits, except for cases where the application for extension thereof has been submitted according to regulations;

b) Failing to apply or improperly applying measures after exploitation and mine closure according to regulations;

c) Failing to pay for the use of State's data, information on mineral prospection or exploration results according to regulations when being notified in writing by competent State bodies.

4. A fine of between VND 50,000,000 and 100,000,000 for one of the violation acts prescribed in Clause 3 of this Article for cases of exploiting minerals being gold, silver, platinum, gemstone, rare earth.

5. Additional sanctioning forms and remedial measures

a) Deprivation of permits, for violation acts prescribed at Points a, b and c of Clause 2 of this Article when aggravating circumstances are involved as provided for;

b) Forcible application of relevant measures prescribed in Clause 3, Article 6 of this Decree to redress the consequences caused by the violation acts prescribed in Clause 1; Points a, b and c of Clause 2; Clauses 3 and 4 of this

Article;

c) Confiscation of material evidences and/or violation means, for violation acts prescribed at Point d of Clause 2, Point a of Clause 3, and Clause 4 of this Article.

Article 12.- Violating the regulations on mineral processing

1. A fine of between VND 500,000 and 2,000,000 for failing to observe the periodical report regime, reporting false data to competent State bodies according to regulations.

2. A fine of between VND 2,000,000 and 10,000,000, for acts of processing minerals other than gold, silver, platinum, gemstone, rare earth without the prescribed permits or with expired permits, except for cases where application for extension thereof has been submitted according to regulations.

3. A fine of between VND 10,000,000 and 20,000,000 for acts prescribed in Clause 2 of this Article in case of processing minerals being gold, silver, platinum, gemstone, rare earth.

4. Additional sanctioning forms: Deprivation of mineral processing licenses, for violation acts prescribed in Clause 1 of this Article when they involve aggravating circumstances as provided for.

Article 13.- Other violations regarding mineral management

1. A fine of between VND 400,000 and 2,000,000 for acts of obstructing lawful activities of basic geological mineral resource survey, mineral prospection and exploration.

2. A fine of between VND 10,000,000 and 20,000,000 for one of the following violation acts:

a) Concealing, destroying, harming the quality of, or illegally buying, selling, transporting particularly precious and rare geological samples or minerals according to law provisions on minerals;

b) Failing to report or untruthfully reporting on detected mineral spots to competent State bodies, causing difficulties for management and protection of mineral resources;

c) Disclosing information on mineral resources classified as State secrets but not seriously enough to be examined for penal liability;

d) Obstructing minerals examination or inspection activities of persons on duty and competent State bodies;

e) Obstructing lawful activities of mineral exploitation and processing.

3. Additional sanctioning forms: Confiscation of particularly precious and rare geological samples or minerals, which are illegally purchased, sold, transported.

Chapter III

COMPETENCE, PROCEDURES FOR SANCTIONING OF ADMINISTRATIVE VIOLATIONS IN THE FIELD OF MINERALS

Article 14.- Competence of People's Committees of different levels to sanction administrative violations in the domain of minerals

1. The commune-level People's Committee presidents have the competence:

a) To serve caution;

b) To impose fines of up to VND 500,000;

c) To confiscate material evidences, means used for commission of administrative violations, which are valued at up to VND 500,000;

d) Forcible application of measures to redress consequences caused by administrative violations.

2. The district-level People's Committee presidents have the competence:

a) To impose caution;

b) To impose fines of up to VND 20,000,000;

c) To confiscate material evidences, means used for commission of administrative violations;

d) To confiscate illegally exploited minerals;

e) To strip of the right to use permits falling under their respective competence;

f) To force the application of measures to redress consequences caused by administrative violations.

3. The provincial-level People's Committee presidents have the competence:

a) To serve caution;

b) To impose fines of up to the maximum level for domains prescribed at Points d and e of Clause 2, Article 14 of the Ordinance on Handling of Administrative Violations;

c) To strip of the right to use permits falling under their respective jurisdiction;

d) To confiscate material evidences, means used for commission of administrative violations;

e) To confiscate illegally exploited minerals;

f) To force the application of measures to

redress consequences caused by administrative violations.

Article 15.- Mineral inspectors' competence to sanction administrative violations in the field of minerals

1. Mineral inspectors on duty have the power:

a) To serve caution;

b) To impose fines of up to VND 200,000;

c) To confiscate material evidences, violation means valued at up to VND 2,000,000;

d) To stop violation acts and force the redress of consequences caused by violation acts.

2. The chief inspectors of the provincial/ municipal Natural Resources and Environment Services have the power:

a) To serve caution;

b) To impose fines of up to VND 20,000,000;

c) To confiscate material evidences, means used for commission of administrative violations;

d) To strip of the right to use permits falling under their respective jurisdiction;

e) To stop violation acts, to force the redress of consequences caused by violation acts.

3. The chief inspector of the Ministry of Natural Resources and Environment has the power:

a) To serve caution;

b) To impose fines of up to VND 100,000,000;

c) To confiscate material evidences, means used for commission of administrative violations;

d) To confiscate illegally exploited minerals;

e) To strip of the right to use permits falling under his/her jurisdiction;

f) To stop violation acts, to force the redress of consequences caused by administrative violations.

Article 16.- Authorization and principles for determination of competence to handle administrative violations in the field of minerals

1. The authorization of handling of administrative violations in the field of minerals shall comply with the provisions of Article 41 of the Ordinance on Handling of Administrative Violations.

2. The principles for determination of competence to handle administrative violations in the field of minerals shall comply with the provisions of Article 42 of the Ordinance on Handling of Administrative Violations.

Article 17.- Procedures for sanctioning of administrative violations in the field of minerals

1. The procedures and order of sanctioning administrative violations in the field of minerals shall comply with the provisions of the Ordinance on Handling of Administrative Violations and Decree No. 134/2003/ND-CP of November 14, 2003 detailing the implementation of a number of articles of the 2002 Ordinance on Handling of Administrative Violations.

2. The sanctioning of administrative violations in the field of minerals must be recorded in dossiers and fully archived at the sanctioning agencies.

3. Organizations and individuals subject to fines must pay fines according to the provisions of Articles 54 and 58 of the Ordinance on Handling of Administrative Violations.

4. When applying the form of confiscating minerals, material evidences and/or violation means, the persons having the sanctioning competence must strictly comply with the provisions of Article 60 and Clause 1, Article 61 of the Ordinance on Handling of Administrative Violations.

Article 18.- Execution of decisions to sanction and coercive execution of decisions to sanction administrative violations in the field of minerals

1. Organizations and individuals sanctioned for administrative violations under this Decree must strictly execute the sanctioning decisions of agencies or persons with the sanctioning competence within the prescribed time limits. If they fail to do so or deliberately shirk the execution of sanctioning decisions, they shall be forced to do so as provided for in Article 66 of the Ordinance on Handling of Administrative Violations.

2. When applying measures to force the execution of decisions on sanctioning of administrative violations in the field of minerals, the competent agencies and persons must comply with the law-prescribed order and procedures for coercion.

Chapter IV

COMPLAINTS, DENUNCIATIONS, HANDLING OF VIOLATIONS

Article 19.- Complaints, denunciations

1. Organizations and individuals sanctioned for administrative violations in the field of minerals or their lawful representatives may lodge complaints about sanctioning decisions of competent agencies or persons.

Citizens have the right to denounce to competent State bodies illegal decisions on sanctioning of administrative violations in the field of minerals.

2. The procedures for complaints, denunciations and the settlement thereof shall comply with the provisions of Article 118 of the Ordinance on Handling of Administrative Violations.

Article 20.- Handling of violations committed by persons competent to sanction administrative violations in the field of minerals

Persons competent to sanction administrative violations in the field of minerals, who commit acts of harassing for bribes, tolerating or covering up violators; failing to sanction or improperly handling or sanctioning ultra vires shall, depending on the nature and seriousness of their violations, be administratively disciplined or examined for penal liability; if causing damage to the State, citizens and/or organizations, they must pay compensations therefor according to law provisions.

Article 21.- Handling of violations committed by persons sanctioned for administrative violations

Persons who are sanctioned for administrative violations in the field of minerals,

if committing acts of resisting persons on duty, delaying or shirking the execution of other acts, shall, depending on the nature and seriousness of their violations, be administratively handled or examined for penal liability; if causing damage, they must pay compensations therefor according to law provisions.

Chapter V

IMPLEMENTATION PROVISIONS

Article 22.- Implementation effect

This Decree takes implementation effect 15 days after its publication in the Official Gazette.

It replaces the Government's Decree No. 35/CP of April 23, 1997 prescribing the administrative violations in the field of State management over minerals.

Article 23.- Implementation organization

The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the concerned ministries and branches in, guiding and organizing the implementation of this Decree.

The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI