

Interim Measures for Hearing the Administrative License in Respect of Environmental Protection[Effective]

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Order of the State Environmental Protection Administration
(No.22)

We have hereby formulated the Interim Measures for Hearing the Administrative License in Respect of Environmental Protection under such laws and regulations as the P.R.C Administrative License Law and the P.R.C Environmental Influence Assessment Law. These Measures have been adopted at the executive meeting of the State Environmental Protection Administration (hereinafter referred to as "SEPA") on June 17, 2004, are hereby promulgated and shall be effective as of July 1, 2004.

Director of the SEPA

Xie Zhenhua

June 23, 2004

Measures for Hearing the Administrative License in Respect of Environmental Protection

Chapter I General Provisions

Article 1 These Measures have been formulated under the provisions of the relevant laws and regulations such as the P.R.C Administrative License Law and the P.R.C Environmental Influence Assessment Law with a view to regulating the administrative license in respect of environmental protection, guaranteeing and supervising the administration carried out in accordance with law by the administrative department in charge of environmental protection, improving the scientificity, impartiality, reasonableness and democracy of the administrative license in respect of environmental protection and safeguarding the lawful rights and interests of citizens, legal persons and other organizations..

Article 2 The administrative department in charge of environmental protection above the country level shall, when implementing the administrative license in respect of environmental protection, hold a hearing in accordance with the present Measures.

Article 3 The administrative department in charge of environmental protection that is to make a decision on the administrative license in respect of environmental protection shall organize the hearing.

Article 4 The administrative department that organizes a hearing shall abide by the principle of openness, fairness, impartiality and convenience-for-people, fully hear the opinions from citizens, legal persons and other organizations and guarantee their respective rights to state their respective opinions, to cross-examine, and to defend themselves. A

hearing shall be held publicly with the exception of those involving any state secret, trade secret or personal privacy in the administrative license. Any citizen, legal person or other organization may apply for being present at a publicly held hearing as an observer.

Chapter II Scope for Application of a Hearing

Article 5 If any of the following circumstances arises in implementing the administrative license in respect of environmental protection, the present Measures shall apply:

- (1) A hearing on the implementation of administrative license in respect of environmental protection shall be organized under the provisions of laws, regulations and rules;
- (2) The administrative department in charge of environmental protection deems it necessary to hold a hearing on the implementation of administrative license in respect of the major environmental protection involving the public interest; or
- (3) An applicant or interested party claims to hold a hearing in accordance with the law, when the administrative license in respect of environmental protection directly involves the interests between the applicant and others.

Article 6 Except the construction projects that need to be kept confidential under the State provisions, the unit that undertakes the construction of any project listed in this article fails to seek legally the opinions from the relevant units and experts and the public or though it has sought the opinions from the relevant units and experts and the public, there are still differences in opinions prior to its submission of the environmental influence report for the approval, the administrative department in charge of environmental protection shall, prior to the examination and re-verification of the documents on assessing the environmental influence of the construction project, hold a hearing to seek the opinions of the relevant units and residents of the place where the project is located:

- (1) Such construction projects that may have major influence upon the environment and on which an environmental influence report shall be prepared;
- (2) Such construction projects that may produce oil fume, foul smell, noise or other pollutions and have a serious influence upon the residents' living environmental quality in the place where the project is located.

Article 7 If, prior to examining and approving and making a decision on the draft of such special planning relating to the industry, agriculture, animal husbandry, forestry, energy, water conservancy, traffic, municipal construction, tourism or natural resource development that may have a bad influence upon the environment and directly involve the environmental interests of the public, the people's government above the level of city divided into districts designates the administrative department in charge of environmental protection to examine the environmental influence report, the administrative department in charge of environmental protection may hold a hearing to seek the opinions from the relevant units and experts and the public on the draft of the environmental influence report with the exception of such planning that needs to be kept confidential under the State provisions.

Chapter III Hearing Host and Attendances

Article 8 The administrative department in charge of environmental protection that performs the license function shall organize a hearing on the administrative license in respect of environmental protection and designate a hearing host to implement the hearing specifically.

Only those who are not the working personnel being responsible for examining the application for the administrative license in the license examining institution under the administrative department in charge of environmental protection may act as hearing hosts.

If the administrative license is a major and complicated one, the administrative department decides to hold a hearing thereon, and the license may be handled partially where the working personnel of the license examining institution acts as a hearing host, the working personnel of the institution of legal affairs shall act as a hearing host.

A hearing host shall be responsible for designating a recorder.

Article 9 A hearing host shall exercise the following functions and powers in the activities relating to a hearing:

- (1) To decide the time, locality and way to hold a hearing;
- (2) To decide to defer, suspend and terminate a hearing;
- (3) To decide whether a witness is present at a hearing;
- (4) To enquire about the matters to be heard;
- (5) To receive and examine the relevant evidence, and to require the hearing attendances to provide and supplement the evidence when necessary;
- (6) To direct a hearing, to maintain the hearing order, and to impose a warning upon those violating the hearing disciplines or to order them to leave the hearing place;
- (7) To check and approve the hearing record; and
- (8) Other functions and powers delegated by laws, regulations and rules.

A recorder shall undertake the specific work relating to the hearing preparation and recording.

Article 10 The hearing host shall bear the following obligations in the activities relating to a hearing:

- (1) To decide to serve the notice relating to a hearing in a timely way to such hearing attendances as the administrative license applicant, interested parties, the administrative license examining personnel, identifying experts and translators;
- (2) To host a hearing impartially and insure that the parties may exercise their respective rights to state, defend themselves and cross-examine;
- (3) To withdraw from a hearing of his/her own accord if the proper reasons exist; and
- (4) To keep confidential all State secrets, commercial secrets and personal privacy involved in the hearing case.

The recorder shall prepare the hearing record accurately, and bear the obligations specified in Item (4) of this article.

Article 11 If a hearing host is under any of the following circumstances, he/she shall withdraw from a hearing of his/her own accord. The applicant for the administrative license in respect of environmental protection or the interested parties have the right to apply for his/her withdrawal orally or in writing:

- (1) He/she is the personnel examining the administrative license to be heard or the relative thereof;

(2) He/she is the party involved in the administrative license to be heard or the relative of the party or agent involved in the administrative license to be heard;

(3) He/she has the interests in the result of the administrative license; or

(4) He/she has other relations with the party involved in the administrative license to be heard which may have an influence upon the impartiality of the hearing.

The provisions of the preceding paragraph shall govern the persons identifying and monitoring the environment. If the applicant for the administrative license or the interested parties apply for the withdrawal of the hearing host, the reasons shall be explained. The responsible person of the administrative department in charge of environmental protection organizing the hearing shall decide on whether the hearing host needs to withdraw from the hearing place. Before such decision is made, the hearing host whose withdrawal is applied for shall suspend participating in the work relating to the hearing.

Article 12 The applicant for the administrative license in respect of environmental protection and the interested parties shall enjoy the following rights:

(1) To claim or waive a hearing;

(2) To apply for the withdrawal of the hearing host legally;

(3) Either to participate in a hearing personally or to entrust one or two agents to participate in a hearing;

(4) To state, defend oneself and adduce evidence for the heard matters;

(5) To cross-examine the evidence;

(6) To make a final statement prior to the conclusion of a hearing;

(7) To check and approve the hearing record; and

(8) To consult the case files.

Article 13 The applicant for the administrative license in respect of environmental protection and the interested parties shall bear the following obligations:

(1) To attend a hearing at the time and the locality designated by the administrative department in charge of environmental protection that organizes the hearing;

(2) To adduce evidence legally;

(3) To make answers in accordance with the facts to the enquiries of the hearing host; and

(4) To abide by the hearing disciplines.

If the person applying for a hearing fails to attend the hearing, he shall be deemed as waiving the rights to the hearing.

If the person applying for a hearing violates any hearing discipline and is ordered to leave the hearing place in case of the serious circumstances, he shall be deemed as waiving the rights to the hearing.

Such hearing attendances as the experts identifying or monitoring the environment, the witnesses and translators shall bear the obligations set forth in Item (3) and Item (4).

Article 14 If the applicant for the administrative license, the interested party or their respective legal agent entrusts others to participate in a hearing, he or it shall submit an authorization letter signed or sealed by the principal to the administrative department in charge of environmental protection organizing the hearing. The authorization letter shall contain the entrusted matters and the scope of authorization.

Article 15 The administrative department in charge of environmental protection organizing the hearing may inform the units and persons knowing the matters involved in the administrative license to be heard of attending the hearing. The relevant units shall support the units and persons knowing the matters involved in the administrative license to be heard to attend the hearing. If a witness is unable to attend the hearing due to real difficulties, he/she may submit the written evidence signed or sealed by him/her.

Article 16 If the matters involved in the administrative license in respect of environmental protection need to be identified or monitored, such matter shall be entrusted to the qualified identifying institution or the monitoring institution. The entrusted institution shall have the right to consult the relevant materials, and, when necessary, may enquire of the applicant for the administrative license, the interested parties or witnesses. The identifying institution or the monitoring institution shall submit the written identified or monitored result signed or sealed by it.

Chapter IV Hearing Procedures

Article 17 If the administrative department in charge of environmental protection decides to hold a hearing on the matters involved in the administrative license in respect of environmental protection set forth in Item (1) and Item (2) of Article 5 in the present Measures, it shall make an announcement to the society for ten days prior to the holding of the hearing in a proper way such as in the newspaper, over the Internet or by a release. The announcement shall contain the matters involved in the license to be heard, the time and locality of the hearing and the method for attending the hearing.

Article 18 The administrative department in charge of environmental protection organizing the hearing may determine the number of the hearing attendances based upon such conditions as how many attendances the hearing place may hold.

Article 19 If the citizens or the people from legal persons or other organizations to participate in a hearing on the administrative license in respect of environmental protection are too numerous, they may elect their respective representatives to attend the hearing.

Article 20 The administrative department in charge of environmental protection shall, prior to making a decision of the administrative license on the matters involved in the administrative license in respect of environmental protection set forth in Item (3) of Article 5 in the present Measures, inform the applicant for the administrative license and the interested parties that they enjoy the right to claim holding a hearing and serve the Information Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection. The Information Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection shall indicate the following matters:

- (1) The names of the applicant for the administrative license and of the interested parties;
- (2) The matters involved in the administrative license to be heard;
- (3) The preliminary examination opinions, evidence of and the reasons for the administrative license to be heard;
- (4) To notify the applicant for the administrative license and the interested parties that they have the right to apply for holding a hearing; and
- (5) To inform them of the time limit for applying for holding a hearing and the organ organizing the hearing.

The Information Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection may be served by such means as the direct service, entrusted service or the mail service. And the applicant for the administrative license and the interested parties shall sign the service receipt.

If the applicants for the administrative license or the interested parties are too numerous or there are other necessary circumstances, the Information Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection may be published to the society in a proper way such as in the newspaper, over the Internet or by a release.

Article 21 If the applicant for the administrative license or the interested party claims to hold a hearing, he or it shall file a written application for the hearing within 5 days as of the receipt of the Information Notice.

Article 22 The Application for Holding a Hearing on the Administrative License in Respect of Environmental Protection shall contain the following contents:

- (1) The name and address of the person applying for the hearing;
- (2) The specific requirements for applying for holding a hearing;
- (3) The basis and reasons for applying for holding a hearing; and
- (4) Other relevant materials.

Article 23 The administrative department in charge of environmental protection organizing the hearing on the administrative license shall, after receiving the hearing application, examine the application materials. If the application materials are not complete, it shall notify for once the applicant of making a supplement to the materials.

Article 24 If the hearing application involves any of the following circumstances, the administrative department in charge of environmental protection shall not accept the application and give the written reasons therefor:

- (1) The person applying for hearing is neither of the applicants for hearing nor of the interested parties involved in the administrative license in respect of environmental protection;
- (2) The hearing application fails to be filed with 5 working days after The Information Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection is received; or
- (3) Other circumstances under which the conditions for applying for holding a hearing fail to be fulfilled.

Article 25 The administrative department in charge of environmental protection organizing the hearing shall, upon examination, accept the hearing application satisfying the hearing conditions and organize the hearing within 20 days.

Article 26 The administrative department in charge of environmental protection organizing the hearing shall, 7 days before the hearing is held, serve the Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection to the applicant for the administrative license and the interested parties respectively, who shall sign the service receipt respectively.

The Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection shall contain the following contents:

- (1) The names of the applicant for the administrative license and of the interested parties;
- (2) The reasons and basis for holding the hearing;
- (3) The time, locality at and the way in which the hearing is to be held;
- (4) The names and positions of the hearing host and the personnel examining the administrative license;
- (5) To inform the applicant for the administrative license or the interested parties to pre-prepare the evidence and to notify the witnesses.
- (6) To inform the applicant for the administrative license and the interested parties of their respective rights and obligations; and
- (7) Other matters to be noted.

If the applying persons or the interested parties are too numerous or there is any other necessary circumstance, the Notice may be published to the society in a proper way such as in the newspaper, over the Internet or by a release.

Article 27 The applicant for the administrative license in respect of environmental protection and any of the interested parties shall, after receiving the Notice, be present at a hearing on time. If he/she fails to be present at the hearing, or leaves the hearing place during the hearing without the consent of the hearing host, he/she shall be deemed as waiving his/her right to the hearing. And the matter shall enter into the hearing record.

Article 28 A hearing on the administrative license in respect of environmental protection shall be held in accordance with the following procedures:

- (1) The hearing host announces the disciplines for the hearing place, informs the hearing applicant and the interested parties of their respective rights and obligations, inquires about and check the capacities of the hearing attendances and announces the beginning of the hearing;
- (2) The recorder announces the matters to be licensed, which are involved in the hearing and the names, working units and positions of the hearing host and hearing examiners;
- (3) The personnel examining the administrative license raise the preliminary examination opinions and the reasons and evidence therefor;
- (4) The applicant for the administrative license and the interested parties state and defend themselves for the matters involved in the administrative license, adduce the relevant evidence and cross-examine the evidence adduced by the personnel examining the administrative license;

(5) The personnel examining the administrative license, the applicant for the administrative license and the interested parties argue the matters involved in the administrative license;

(6) The applicant for the administrative license and the interested parties make final statements; and

(7) The hearing host announces the end of the hearing.

During the hearing, the hearing host may question the personnel examining the administrative license, the applicant for the administrative license, the interested parties and the witnesses, and the relevant person shall make answers in accordance with the facts.

Article 29 The administrative department in charge of environmental protection organizing the hearing must prepare a hearing record.

The hearing record shall contain the following contents and be signed by the hearing examiners and the recorder:

(1) The matters to be licensed that are involved in the hearing;

(2) The names and positions of the hearing host and the recorder;

(3) The basic information of the hearing attendances;

(4) The time and locality of the hearing;

(5) The publicity of the hearing;

(6) The preliminary examination opinions, the reasons and basis raised by the personnel examining the administrative license;

(7) The main point of view, the reasons and basis of the applicant for the administrative license, the interested parties and other attendances;

(8) The explanations for deferring, suspending or terminating the hearing;

(9) The handling by the hearing host of the relevant matters arising in the hearing; and

(10) Other matters that the hearing host deems to be recorded into the hearing record.

By the end of the hearing, the hearing record shall be signed or sealed by the applicant for the administrative license and the interested parties after it is handed over to and checked by them. If any of them refuses to sign or seal the hearing record without the justified reasons, the matter shall be recorded into the hearing record.

Article 30 After the conclusion of a hearing, the hearing host shall report the hearing record to the responsible person of this department timely.

The administrative department in charge of environmental protection shall, according to the hearing record, make a decision on the administrative license in respect of environmental protection and attach to such decision the explanations on whether to adopt the main points of view reflected during the hearing.

Article 31 If any of the following circumstances arises, a hearing may be deferred:

(1) The hearing is unable to be held on schedule due to force majeure;

(2) The applicant for the administrative license or any of the interested parties applies for the withdrawal of the hearing host at the time when the hearing begins;

(3) The applicant for the administrative license or any of the interested parties applies for deferring the hearing with justified reasons; or

(4) Other circumstances under which the hearing may be deferred.

If the hearing is deferred, the administrative department in charge of environmental protection organizing the hearing shall notify the hearing attendances in writing.

Article 32 If any of the following circumstances arises, a hearing may be suspended:

(1) The hearing host holds that new facts, the reasons or basis raised in the course of the hearing should wait to be further investigated and checked or identified;

(2) Any citizen applying for the hearing dies, or a legal person or other organization terminates, and his or its successor has not been determined; or

(3) Other circumstances under which the hearing may be suspended.

If the hearing is suspended, the administrative department in charge of environmental protection organizing the hearing shall notify the hearing attendances in writing.

Article 33 After the circumstances that cause the deferment or the suspension of a hearing disappear, the administrative department in charge of environmental protection organizing the hearing shall decide on whether to resume the hearing and notify the hearing attendances of the decision in writing.

Article 34 If any of the following circumstances arises, a hearing shall be terminated:

(1) The applicant for the administrative license, or the interested parties waive the hearing right expressly after receiving the Information Notice;

(2) The hearing applicant withdraws the hearing requirements;

(3) The hearing applicant fails to attend the hearing without justified reasons;

(4) The hearing applicant claims to quit during the hearing;

(5) The hearing applicant leaves the hearing place during the hearing without the consent of the hearing host;

(6) If the hearing applicant is a legal person or other organization, and the other legal person or organization that inherits its rights after its termination waives the hearing right;

(7) The hearing applicant violates the hearing disciplines and, under the serious circumstances, is ordered by the hearing host to leave the hearing place; or

(8) Other circumstances under which the hearing may be terminated.

Chapter V Penalties Provisions

Article 35 If the administrative department in charge of environmental protection and its working personnel violate any of the provisions of the P.R.C Administrative License Law, and are under any of the following circumstances, they shall be ordered by the relevant authority to make corrections. If the circumstances are serious, administrative penalties shall be imposed upon the directly responsible person in charge and other directly responsible persons:

(1) The hearing on the matters involved in the administrative license in respect of environmental protection on which a hearing shall be organized under the provisions of laws, regulations and rules fails to be organized;

(2) The application for holding a hearing on the administrative license in respect of environmental protection that fulfills legal conditions fails to be accepted;

(3) The statutory obligation to inform the applicant or any of the interested parties fails to be performed in accepting, examining or deciding the administrative license in respect of environmental protection; or

(4) The reasons for not accepting the application for a hearing on the administrative license in respect of environmental protection or for not holding a hearing fail to be explained legally.

Article 36 The administrative penalties shall be imposed upon the hearing host or recorder of the administrative department in charge of environmental protection who neglects his/her duties, abuses his/her powers or plays any favoritism and commits any illegality. If a crime is constituted, the criminal responsibility shall be prosecuted for according to the law.

Chapter VI Supplementary Provisions

Article 37 The formats of the Announcement of a Hearing on the Administrative License in Respect of Environmental Protection, the Information Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection, the Application for Holding a Hearing on the Administrative License in Respect of Environmental Protection, the Notice on Holding a Hearing on the Administrative License in Respect of Environmental Protection and the Service Receipt shall be specified uniformly by the State Environmental Protection Administration.

Article 38 The expenditure for the organization of a hearing by the administrative department in charge of environmental protection shall be incorporated into the budget of the administrative authority under the provisions of Article 58 of the P.R.C Administrative License and guaranteed by the finance of the local government.

Article 39 If any laws or regulations relating to environmental protection that the administrative department in charge of environmental protection is authorized to draft or any rules that it drafts under its functions and powers are directly associated with any vital interest of any citizen, legal person or other organization, and the relevant authorities, organizations or citizens have major differences in the opinions concerning any draft thereof, the administrative department in charge of environmental protection may take the form of a hearing to hear the opinions from the society. A hearing on environmental legislation may be handled by referring to the provisions of the present Measures on the hearing organization and hearing procedures in addition to abiding by the procedures specified in such laws and regulations as the Regulations on the Procedures for Formulating Rules.

Article 40 These Measures shall enter into force as of July 1, 2004.

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