

COMMENTS ON THE DRAFT DECREE ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS IN ENVIRONMENTAL PROTECTION

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In order to provide the penalties compatible with the provisions of the Law on Environmental Protection (**LEP**) 2020 and the Decree guiding the LEP 2020 (currently in the drafting stage), the Government has published a Draft Decree on penalties for administrative violations in the field of environmental protection (**the Draft Decree**), and is currently consulting relevant individuals, organizations and agencies on the Draft. Compared to Decree 155/2016/ND-CP, amended by Decree 51/2020/ND-CP (**Decree 155**), the applicable document governing this issue, the Draft Decree supplements the penalties for new violations of LEP, and at the same time increases the level of penalties significantly for existing violations which cause great harm to the environment. In this Legal Newsletter, NHQuang&Associates will analyze some new regulations of the Draft Decree that may affect business operations of enterprises.

Additional regulation on statute of limitations for handling administrative violations in environmental protection

Currently, the issues related to the statute of limitations for handling administrative violations are not regulated separately in Decree 155 but governed by the Law on Handling of Administrative Violations 2012, amended in 2020. Accordingly, the statute of limitations for handling administrative violations is 2 years, and the starting time to calculate the above statute of limitations is (i) the time when the violation ceases, for the terminated administrative



violations, or (ii) the time when the violation is detected, for the ongoing administrative violations.

The Draft Decree has supplemented a provision on this issue; accordingly, the statute of limitations is 2 years and the starting time to calculate the statute of limitations applies provisions of the Law on Handling of Administrative Violations. At the same time, the Draft Decree also specifies the starting time for calculating the statute of limitations for 3 particular cases as follows:

- (i) The time when the violation is detected: applicable to some nonaction acts, such as failure to construct and install environmental protection works, failure to prepare or submit reports on test operation results, etc.;
- (ii) The time when organizations and individuals are supposed to conduct periodical environment monitoring, publish information or submit reports as prescribed: applicable to violations in conducting periodical environmental monitoring, publishing results of waste monitoring, reporting on environmental protection, etc.;
- (iii) The time when organizations and individuals receive analysis results of waste samples corresponding to violation acts: applicable to violations of wastewater discharge, exhaust emission, noise, and vibration.

The Draft Decree's supplement of the method to determine the starting time of the statute of limitations for some specific violations in environmental protection will make the determination of the statute of limitation easier and more accurate. At the same time, the clearer regulation on determining the statute of limitations for handling administrative violations also aims to enhance the responsibility of competent state agencies in handling violations in the field of environment protection,

preventing promptly the consequences caused by these acts.

Additional regulations on penalties related to environmental license

Environmental license is a new type of license specified in the LEP 2020, which has the function of replacing the component licenses specified in the LEP 2014 such as: Certificate of environmental protection work completion, License for wastewater discharge into water sources; License for exhaust emission; License for hazardous waste treatment, etc. Currently, for each component license, violation acts are regulated in various documents with different penalty levels. For example, under Decree 155, acts of not having the certificate of environmental protection work completion can be sanctioned with the lowest penalty of VND 140,000,000, the highest penalty of VND 180,000,000, depending on the agency authorized to issue the license; under Decree 36/2020/ND-CP on sanctioning of administrative violations in water and mineral resources, the act of discharging wastewater without the license for wastewater discharge into water sources shall be fined from VND 30,000,000 up to VND 250,000,000, depending on wastewater discharge volume.

However, because environmental license is an alternative to these component licenses, the regulations on administrative penalties for violations related to environmental license should be unified. In accordance with the Draft Decree, the act of not having an environmental license shall be subject to a penalty ranging from VND 30,000,000 to VND 250,000,000, divided into 3 levels, corresponding to the agency authorized to issue the environmental license: District People's Committee, Provincial People's Committee and the Ministry of Natural Resources and Environment. The unified regulation on penalty for violations related to environmental license in the Draft Decree will help businesses determine the penalty

levels easily, avoiding the current situation of scattered regulations in various documents.

Additional regulations on penalties related to environmental safety distance

Environmentally safe distance is the minimum distance from the emission source in normal operating conditions of a production facility or a warehouse to the nearest legal housing boundary of the concentrated rural residential area, inner area of urban centers to meet national technical regulations on environment. LEP 2014 already stipulates that businesses, service facilities and warehouse establishments must ensure an environmentally safe distance from residential areas, however Decree 155 does not prescribe any sanctions for violations in this regard.

The Draft Decree guiding the LEP 2020 has supplemented a new regulation on the responsibility of the provincial People's Committee in providing a relocation plan for establishment owners to ensure an environmentally safe distance. Accordingly, the Draft Decree also supplements a new penalty frame for the act of not relocating to ensure an environmentally safe distance from residential areas in conformity with the relocation plan prescribed by competent state agencies, with a penalty ranging from VND 200,000,000 to VND 250,000,000. The supplement of regulations on administrative penalty for this violation aims to comply with the LEP 2020, and at the same time to solve the actual needs of enhancing environmental protection responsibilities in residential area.

Enterprises need to update the drafting process of this Draft Decree to ensure that the implementation and operation of their projects are in line with the law. In particular, it is necessary to pay attention to the transition clause of the Draft Decree if their projects are in the process of preparing and finalizing dossiers to carry out environmental related procedures in accordance with previous legal regulations.

