

NOTABLE PROVISIONS OF THE DECREE ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS IN THE FIELD OF ENVIRONMENT

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In order to provide the penalties compatible with the provisions of the Law on Environmental Protection 2020, Decree 08/2022/ND-CP (**Decree 08**) and Decree 06/2022/ND-CP (**Decree 06**), the Government has issued Decree 45/2022/ND-CP on penalties for administrative violations in the field of environmental protection (**Decree 45**), taking effective from August 25, 2022. Compared to the previous Decree 155/2016/ND-CP amended by Decree 51/2020/ND-CP (**Decree 155**), Decree 45 supplements regulations on penalties against many new administrative violations and amends the regulations on penalties against existing administrative violations to match management requirements and practices of application. In this Legal Newsletter, NHQuang&Associates will analyze the new regulations of Decree 45 that may affect business operations of enterprises. It should be noted that the penalties mentioned in this article are meant for organizations, so they **double the penalties for individuals** specified in Chapter II of Decree 45.

Firstly, supplement regulations on penalties for administrative violations of manufacturers and importers' responsibilities on recycling products and packages. New regulations on manufacturers and importers' responsibilities related to recycling and processing products and packages have been supplemented to the Law on Environmental Protection 2020 and Decree 08, which took effect on January 10, 2022. Specifically, for the products and packages specified in Column 3 of Appendix XXII attached to Decree 08, manufacturers and importers will choose to carry out one of the two obligations: (i) Recycle them in compliance with the compulsory proportion, specification and roadmap set out for each type of product and package; at the same time, register the recycling plan and report the recycling

results to the Ministry of Natural Resources and Environment, or (ii) Make a financial contribution to the Environmental Protection Fund. Decree 45 stipulates the penalties for administrative violations related to the above obligations, for example:

- Violations against regulations on registration of recycling plans, declaration of contributions to support recycling, and reporting recycling results shall be fined from 300 million to 2 billion Viet Nam Dong;
- Violations against regulations on compulsory recycling proportion, compulsory recycling specifications and payment of recycling support contributions shall be fined from 900 million to 2 billion Viet Nam Dong;
- Violations against regulations on self-recycling, signing of recycling contracts, authorization contracts for recycling organization shall be fined from 1.7 billion to 2 billion Viet Nam Dong.

Secondly, increase the penalties for acts of building or installing equipment, pipes or other discharging systems to discharge untreated waste to the environment. Previously, under Decree 155, an organization's act of building or installing equipment, pipes or other discharging systems to discharge untreated waste to the environment can be subject to a fine within the range of 2 million to 300 million Viet Nam dong. Decree 45 has significantly increased the range of fine for this act, from 70 million Viet Nam Dong to a maximum of 2 billion Viet Nam Dong.

Thirdly, supplement regulations on violations related to mitigation of greenhouse gas (**GHG**) emission and protection of the ozone layer. The regulations on these two contents have been newly supplemented to the Law on Environmental Protection 2020, specifically guided by Decree 06, which took effect

on January 7, 2022. Decree 06 stipulates that establishments subject to GHG emission mitigation will be obliged to implement GHG emission mitigation methods; measure GHG emission mitigation; prepare GHG emission mitigation report, GHG inventory, GHG emission mitigation plan, etc.; and follow specific roadmaps. Correspondingly, Decree 45 provides penalties related to the preparation of GHG inventory reports and GHG emission mitigation reports, such as non-submission of reports (subject to warning), provision of incorrect and incomplete information in reports (to be fined from 10 million to 20 million Viet Nam Dong), failure to make reports (subject to a fine from 60 million to 100 million Viet Nam Dong).

Regarding ozone layer protection, Decree 45 has supplemented provisions on administrative sanctions for such violations as failing to register the use of controlled substances; failing to develop an appropriate roadmap to replace or eliminate controlled ozone-depleting substances and substances causing greenhouse effect under regulations; failing to submit or make reports on the use of controlled substances within the prescribed time limit; providing incorrect or incomplete information in the report on the use of controlled substances, etc. Depending on each specific violation, corresponding penalties are provided in Decree 45, including warning, fines and additional penalties (if any).

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 45 is considered as one of the measures to ensure that the provisions of the Law on Environmental Protection 2020, Decree 08, Decree 06 and related documents are strictly and efficiently enforced. From the new points analyzed above, Decree 45 deems to be an important document containing many heightening penalties compared to the old documents, which enhances deterrence in sanctioning. Enterprises need to update the new contents of Decree 45 to ensure the implementation and operation of their projects in accordance with the law. At the same time, they should also pay attention to the transitional provision of this Decree to understand the specific regulations on handling administrative violations occurring within the transition period from Decree 155 to Decree 45.