

EXTRAORDINARY

REGISTERED NO. P.III

GOVERNMENT

G A Z E T T E



KHYBER PAKHTUNKHWA

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**GOVERNMENT OF THE KHYBER PAKHTUNKHWA FORESTRY, ENVIRONMENT AND WILDLIFE
DEPARTMENT**

NOTIFICATION

Peshawar Dated, the 21st September, 2017.

No. SO(Envt)FE&WD/1-19/APR/2016:- In exercise of the powers conferred by section 31 of the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (Khyber Pakhtunkhwa Act No. XXXVIII of 2014), read with clause (iii) of sub-section (3) of section 17 thereof, the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA ENVIRONMENTAL PROTECTION (ADMINISTRATIVE PENALTY) RULES, 2017.

1. Short title and commencement.---(1) These rules may be called the Khyber Pakhtunkhwa Environmental Protection (Administrative Penalty) Rules 2017.

(2) These shall come into force at once.

2. Definitions:-(1) In these rules, unless the context otherwise provides;-

- (a) "Act" means the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (KP Act No. XXXVIII of 2014);
- (b) "authorized officer" means an officer of the Agency, duly authorized by the Director General, for the purpose to exercise such functions as are assigned to him;
- (c) "Director General" means the Director General of the Agency;
- (d) "revenue officer" means a revenue officer of the Government, empowered under the West Pakistan Land Revenue Act 1967 (Act No. XVII of 1967), to collect arrears of land revenue; and
- (e) "violation" means contravention or failure to comply with the provisions of sections 11, 12, 13, 14, 15, 16 and 17 of the Act.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are respectively assigned to them in the Act.

Consideration of Administrative Penalty.--- Where there is evidence or reasonable grounds which give the Director General or an authorized officer, as the case may be, reason to believe that a violation has been committed, or likely to commit, the Director General or the authorized officer, as the case may be, for the purpose of deciding whether an administrative penalty is appropriate or not, shall assess facts of the case against the following criteria, namely:

- (a) severity of the contravention or failure to comply;
- (b) gravity of penalty;
- (c) severity of the environmental impact; and
- (d) Previous infringement history.

4. Show Cause Notice:--(1) Where the Director-General or the authorized officer, as the case may be, is of the opinion that a violation has been committed or is likely to commit, he may serve to such person a show cause notice, as specified in **Form-A**, as to why the person should not pay to the Agency an administrative penalty, as per amount set out in the show cause notice in accumulative form, based on the calculation, made for each day against which the contravention continues or as a single time penalty, as the case may be:

Provided that no show cause notice under this rule shall be issued by the Director-General or the authorized officer, as the case may be, relating to a contravention in respect of which a complaint has already been filed in the Tribunal or before the Environmental Magistrate, as the case may be.

(2) The Director-General or the authorize officer, as the case may be, may withdraw a show cause notice before or after the payment of the administrative penalty, if it is served in error, contains technical errors or is served to the wrong person.

(3) Where a show cause notice is withdrawn and any amount paid by the person, to whom a show cause notice has been served, shall be repaid, in full, to such person, but in appropriate circumstances a new show cause notice may be served

5. Opportunity of being heard.---The Director General or the authorized officer, as the case may be, shall consider the written reply, if any, of the person to whom the show cause notice has been served, under rule 4, such person shall be given an opportunity of hearing, if the person desires to be heard in person or through his counsel, as the case may be.

6. Procedure where such person appears to Show Cause.---(1) If the person, to whom the show cause notice has been served, under rule 4, appears before the Director-General or the authorize officer, as the case may be, the Director General or the other officer, as the case may be, may make such inquiry as he may be deem proper.

(2) If the Director General or the authorized officer, as the case may be, is satisfied that the show cause notice, served under rule 4, is reasonable and proper, he shall proceed further in the matter under these rules:

Provided that in case the Director-General or the authorize officer, as the case may be, is satisfied that the show cause notice is not reasonable and proper he may suspend further proceedings in the case.

7. Notice for Payment of Administrative Penalty.-- Once the Director General or the authorize officer, as the case may be, has finally decided that an administrative penalty should be imposed, it shall serve a notice of penalty, as specified in **Form-B**, to the person for violation such person is liable to pay the administrative penalty within the time specified in the notice of penalty.

8. Failure to pay the Administrative Penalty.---(1) If the person, to whom the notice of penalty has been served under rule 7, fails to pay the administrative penalty by the date as so specified in the said notice, the Director-General or the authorized officer, as the case may be, may initiate proceedings against such person under the West Pakistan Land Revenue Act, 1967 (Act No. XVII of 1967).

(2) The Director General, or the authorize officer, as the case may be, after the date so specified in the notice of penalty, is of the opinion that the person, who is required to pay the administrative penalty under these rules, fails to pay, shall refer the matter through a complaint to the revenue officer to collect such administrative penalty from such person as arrears of land revenue in the manner, as specified in the West Pakistan Land Revenue Act, 1967 (Act No. XVII of 1967).

(3) The revenue officer, upon receiving the complaint, shall proceed further in the matter, under the West Pakistan Land Revenue Act, 1967 (Act No. XVII of 1967). and shall recover the administrative penalty from such person as arrears of land revenue.

(4) Where such person appears before the revenue officer and produces proof of deposit of administrative penalty, or unconditionally admitting his failure, deposits the administrative penalty forthwith, further proceedings, against such person, shall be abated.

(5) The administrative penalty, so collected by the revenue officer shall, on collection, be deposited in the head account of fund of the Agency and the Agency shall be intimated by the revenue officer in this regards.

9. Amount of Administrative Penalty.--- (1) The administrative penalty, required to be paid under a show notice, served under rule 4, shall be determined, by keeping in view the extent and duration of the contravention and the attending circumstances of the case, but shall not, in any case, be less and more than the limit as specified in section 18 of the Act.

(2) The administrative penalty, specified in the notice of penalty, under rule 7, shall not exceed the amount, as specified in the show cause notice, served under rule 4.

(3) Notwithstanding anything contained in these rules, the Agency may, instead of determining the amount of administrative penalty, under sub-rule (1), impose a single time penalty for a contravention for the violation where the circumstances are as such that shall demand imposition of a single time penalty.

10. Maintenance of register.---(1) The Director-General shall maintain a register, containing relevant details of notices for payment of administrative penalties, served under these rules.

(2) The register, mentioned in sub-rule (1), shall be open to inspection by the public during office hours.

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SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT AND WILDLIFE DEPARTMENT

Form A
[see rule 4(1)]
Show Cause Notice for payment of Administrative Penalty
by the Environmental Protection Agency

To _____

1. On the basis of information received/investigation made, I am of the opinion that you have prima facie contravened the provisions of the Khyber Pakhtunkhwa Environmental Protection Act 2014 (Khyber Pakhtunkhwa No. XXXVIII of 2014), or these rules on _____ such _____ and _____.

2. In the circumstances, I hereby call upon you to show cause why I should not, in exercise of powers under sub-section (3) of Section 17 of the Act, require you to pay to the Khyber Pakhtunkhwa Environmental Protection Agency an administrative penalty in the amount of Rs. _____ as single time penalty/ penalty for each day as the contravention continues. The said contravention commenced on _____ and continued till _____. The accumulated amount of administrative penalty comes to Rs. _____. Please note that if you pay the aforesaid accumulated amount of administrative penalty, you shall not be charged under the Act with an offence in respect of the contravention.

3. Your reply should reach the undersigned within seven days of receipt of this notice, failing which it shall be presumed that you do not wish to contest the matter, and I shall proceed to serve you notice to pay the aforesaid administrative penalty without further reference.

Director General / Authorized Officer

Dated: _____

Form B
[See rule 7]
Notice for payment of Administrative Penalty by the
Environmental Protection Agency

To: _____

WHEREAS, on the basis of information received/investigation made I had formed the opinion that you have prima facie contravened the provisions of Section the Khyber Pakhtunkhwa Environmental Protection Act 2014 (Khyber Pakhtunkhwa No. XXXVIII of 2014), these or rules on _____ at _____ and _____.

AND WHEREAS, in response to show-cause notice dated _____ served by me, you have furnished reply dated _____ to the following effect _____ or have opted not to file a reply of the said notice.

AND WHEREAS, after carefully considering your written reply dated and having granted you an opportunity of personal hearing on _____,

I have come to the conclusion that your reply is liable to be rejected for the following reasons. _____

NOW THEREFORE, in exercise of powers under section (3) section 17 of the Act, I hereby served notice requiring you to pay to the Khyber Pakhtunkhwa Environmental Protection Agency within _____ days of receipt hereof an administrative penalty in the amount of Rs. _____. Please note that if you pay the administrative penalty by the due date, you shall not be charged under the Act for an offence in respect of the contravention. However, in case you fail to make payment, I shall initiate appropriate proceedings against you in respect of the contravention in accordance with law.

Director General / Authorized Person

Date: _____