

Reply of the State Environmental Protection Administration on the Relevant Issues concerning Ordering the Units Which Start Construction without Conducting the Environmental Impact Assessment to Stop Construction and Make up Formalities

(No. 190 [2008] of the State Environmental Protection Administration)

Environmental Protection Bureau of Henan Province:

Your Request for Instructions on the Relevant Issues concerning Administrative Law Enforcement (No. 36 [2008] of the Environmental Protection Bureau of Henan Province) has been received. Upon deliberation, we hereby reply as follows:

I. With regard to an order of stopping construction

Article 66 of the Administrative Procedure Law provides that: "Where a citizen, a legal person or any other organization neither brings a suit against nor carries out a specific administrative action within the prescribed time limit, the administrative organ may apply to the people's court for enforcement of the action or enforce the action according to law." The environmental protection department shall order a construction unit to stop construction according to Article 31 (1) of the Law on Environmental Impact Assessment, and if the construction unit neither brings a suit against nor performs the decision on stopping construction, the environmental protection department may apply to the people's court for enforcement of the decision according to law.

II. With regard to making up formalities

Article 31 (1) of the Law on Environmental Impact Assessment provides that: "Where a construction unit fails to submit the environmental impact assessment documents of a construction project for examination and approval according to law, or fails to submit anew the environmental impact assessment documents for examination and approval or submit the environmental impact assessment documents for reexamination and approval according to Article 24 of this Law, and starts construction without permission, the competent administrative department of environmental protection which has the authority to examine and approve the environmental impact assessment documents of the project shall order the construction unit to stop

construction and make up formalities within a prescribed time limit.”

The term “make up formalities” as mentioned in this provision shall be a requirement for a construction unit which violates the environmental impact assessment provisions, i.e., a construction unit shall, according to the requirements of the environmental protection department, submit the environmental impact assessment documents of a construction project, submit anew the environmental impact assessment documents for examination and approval, or submit the environmental impact assessment documents for reexamination and approval according to law.

The environmental protection department may make an official reply of approval or disapproval according to law after examining the environmental impact assessment documents submitted by the construction unit according to the requirement of “make up formalities”.

September 3, 2008