

1. Environmental Samples Rules, 2009

Azad Government of the State of Jammu & Kashmir
Planning and Development Department
Environmental Protection Secretariat

‘Muzaffarabad’

Dated: April 11, 2009

NOTIFICATION

No. 1146-56/P&DD/Gen/2009. In exercise of the powers conferred by Section 30 of the Azad Jammu & Kashmir Environmental Protection Act, 2000 (IV of 2000), the Government is pleased to make the following rules, namely:—

- 1. Short title and commencement:—** (1) These rules may be called the *Environmental Samples Rules, 2009*.
(2) They shall come into force at once.
- 2. Definitions:—** (1) In these Rules, unless there is anything repugnant in the subject or context;—
 - (a) “**Act**” means the AJK Environmental Protection Act, 2000 (IV of 2000);
 - (b) “**Authorized Person**” means a person authorized by the Director-General under rule 3;
 - (c) “**Agency**” means Azad Jammu & Kashmir Environmental Protection Agency (AJK-EPA) established under Section 5 of the Act;
 - (d) “**Chief Analyst**” means the Chief Analyst of an environmental laboratory, and includes an Analyst who is performing the functions of the Chief Analyst in the environmental laboratory;
 - (e) “**Director-General**” means the Director-General of the Agency;
 - (f) “**Environmental Laboratory**” means a laboratory to which certification has been granted under the Azad Jammu & Kashmir Environmental Protection Agency (Certification of Environmental Laboratories) Regulations, 2009; and
 - (g) “**Form**” means the form annexed to these Rules;
 - (h) “**Government**” means the Azad Government of the State of Jammu & Kashmir;

(2) All other words and expressions used in these rules but not defined herein shall have the same meanings as are assigned to them in the Act.
- 3. Authorization:—** (1) Functions and powers specified in these rules including powers under clauses (g), (h), (i) and (j) of section 7 of the Act, of the Agency if delegated to it, may be performed and exercised by any person duly authorized by the Director-General in this behalf, under sub-section (5) of section 5 of the Act.

- (2) In performing such functions and exercising such powers under sub-rule (1), and authorized person may employ such assistance as he may consider necessary;
- (3) Provided that police assistance, if required, shall be obtained only under orders of the Environmental Tribunal or Environmental Magistrate having jurisdiction.

4. Entry and inspection:— (1) An authorized person shall before entering any place, record in writing the reasonable grounds leading him to believe that an offence under the Act has been, or is being committed therein.

- (2) For the purpose of determining whether, and if so in what manner, an offence under the Act has been, or is being committed, in any place an authorized person may;—
 - (a) Enter and inspect such place, and examine any machinery or equipment while in operating condition, or any relevant document or other article found therein; and
 - (b) Take into possession, against a signed receipt, any article which he has reason to believe has been or is involved in, or which may furnish evidence of, the commission of an offence.

Provided that where it is not practicable to take physical possession of any such article, the authorized person may, by order in writing in the form as set out in Form 'A' entrust the article to the custody of the owner or the person previously holding the article in his possession or charge, and direct him not to remove or otherwise deal with the article except with the prior written permission of the authorized person.

Provided further that where the owner or person previously holding the article in his possession or charge is not known or cannot be found within reasonable time, the authorized person may in one English and one Urdu daily newspapers, calling upon such person after publication notice to show cause as why the article should not be confiscated.

- (3) Any power under clause (b) of sub-rule (2) shall not be exercised if production or operations in such place will be adversely affected unless prior permission in writing is obtained from the Environmental Tribunal or Environmental Magistrate having jurisdiction.
- (4) The owner or person in charge of the place in which entry is sought by an authorized person shall, on being informed of his purpose and shown his authorization, allow him unimpeded access to such place and provide all reasonable facilities for his inspection:

Provided that the authorized person shall abide by all safety rules and precautions applicable to such place.

5. Search:— (1) Where an authorized person considers it necessary to search for an article of the nature specified in clause (b) of sub-rule 2 of rule 4, he may apply to the Environmental Tribunal or

Environmental Magistrate having jurisdiction for a search-warrant, specifying in his application, to the extent possible, the article for which search is to be made.

(2) The Environmental Tribunal or Environmental Magistrate may, on an application of an authorized person under sub-rule (1), for reasons to be recorded in writing, issue a search-warrant specifying the place to be searched and, to the extent possible, the article for which search is to be made, and may also lay down such other conditions as it may deem fit in the circumstances of the case.

(3) If despite stating his purpose and showing his search-warrant, an authorized person cannot obtain entry into such place, he may break or open any lock, door gate or window of such place:

Provided that if the place into which entry is sought is in the actual occupancy of a woman who, according to custom, does not appear in public, the authorized person shall give notice to such woman to withdraw and shall afford her every reasonable opportunity of withdrawing, before breaking or opening and entering such place.

(4) The provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall mutatis mutandis, apply to searches made under this rule.

6. Issuance of Environmental Protection Order:— Where on entry, inspection or search of any place, an authorized person is satisfied that the circumstances in such place require issue of an Environmental Protection Order in respect thereof, he shall immediately inform the Director-General in writing, for initiation of necessary action in accordance with the provisions of section 15 of the Act.

7. Procedure for taking samples:— (1) An authorized person taking samples under clause (h) of section 7 of the Act shall forthwith divide the same into three portions, in the presence of the person from whom the sample is taken:

Provided that where the sample is such that it cannot or need not be divided, additional samples should be taken, if possible.

(2) An authorized person shall take samples in clean, dry bottles or jars or other suitable containers which shall be closed sufficiently tight to prevent leakage or evaporation or entry of moisture:

Provided that where necessary the authorized person shall add preservative to the sample before sealing the container.

(3) All such bottles or jars or containers shall be labeled, placed in a cloth or other bag which shall be sewn or glued at the ends and then effectively sealed on the stitches or ends and suitably marked and signed by the authorized person and the person from whom the sample is taken.

(4) Where the person from whom the sample is taken is not available, or willfully absents himself or is unknown at the relevant time, or declines to add his seal or mark or signatures, the

Authorized person shall obtain on the sealed parcel the seal or mark and, if possible, signatures of one or more independent witnesses in whose presence the sample has been taken.

(5) Both the label and the sealed parcel shall contain a distinguishing number, a brief description of the sample and the preservative, if any, and the place, date and time of taking the sample.

8. Dispatch of samples:— (1) One portion of the sample duly packed, sealed and marked as provided in rule 7 shall be handed over to the person from whom the sample is taken, along with a notice in the form as set out in Form B:

Provided that, in cases covered under sub-rule (4) of rule 7, the first portion and notice in Form B shall be dispatched to the person from whom the sample is taken, if since traced by registered post.

(2) The second portion of the sample, or the second sample, or the sample itself where taking of only one sample is possible, shall, after being duly packed, sealed, labeled and marked as provided in rule 7, be delivered within forty-eight hours to an environmental laboratory for test and analysis, along with forwarding letter in the form as set out in Form C.

(3) The third portion of the sample or the third sample, after being duly packed, sealed, labeled and marked as provided in rule 7, shall be retained by the authorized person for future test and analysis, and comparison, as may be required.

(4) Specimen impression of the seal affixed on the parcel shall be sent by the authorized person to an environmental laboratory separately by registered post or courier.

9. Detailed Sampling Rule:— (1) Subject to the provisions of the rules 7 and 8, where the nature of the samples or the tests or analyses proposed to be carried out so required the Director-General may specify further details as to the procedures for taking, packing, storage and dispatch of samples, and where such details have been specified, the authorized person shall comply therewith.

10. Test and Analysis of Samples:— (1) On receipt of sealed parcel containing a sample for test and analysis, the Chief Analyst shall compare the seals on the parcel with the specimen impression received and shall note the condition of the seal thereon.

(2) Amongst other tests or analyses, the Chief Analyst shall particularly test or analyze the sample to determine whether it conforms to the National Environmental Quality Standards.

(3) After the test or analysis, the Chief Analyst, on receipt of fees payable in respect thereof, shall forthwith send to the authorized person a certificate in the form as set out in Form D, in triplicate, declaring the results of such test or analysis.

(4) The Chief Analyst shall, as far as possible, carry out the test or analysis and send the certificate in the form as set out in Form D to the authorized person within thirty days of receipt of the sample:

Provided that if for any reason the Chief Analyst is unable to carry out the test or analysis within the prescribed period, he shall inform the authorized person accordingly who may collect the sample and send the same to another environmental laboratory for the purpose.

- (5) On receipt of the certificate in the form as set out in Form D, in triplicate, the authorized person shall;—
- (a) Send one original to the person from whom the sample is taken;
 - (b) Submit the second original with the complaint, if any, filed with the Environmental Tribunal or Environmental Magistrate ; and
 - (c) Retain the third original in his record or in the record of the Agency for future use.

11. Admissibility and evidentiary value of certificate of environmental laboratory:— (1) Upon production in any inquiry, trial or other proceedings under the Act, of the certificate in Form D issued by the Chief Analyst of an environmental laboratory in respect of a sample, the person from whom the sample is taken may, within fifteen days of receipt of the certificate, give notice to the authorized person in writing of his intention to contest the results contained in the certificate.

- (2) Where on the request of the accused the Environmental Tribunal considers it necessary in the interests of justice, it may summon the Chief Analyst to give evidence in respect of the certificate issued by him:

Provided that the costs of summoning the Chief Analyst shall be deposited by the accused, and if the accused is subsequently acquitted, the same shall be refunded to him.

12. Filing of complaint:— (1) On receipt of a certificate in Form D, an authorized person may, if the said certificate indicates contravention or failure to comply with the provisions of sub-section (1) of section 10 of the Act, file a complaint against the person or persons responsible for such contravention or failure, with the Environmental Tribunal having jurisdiction.

- (2) A complaint referred to in sub-rule (1) shall be accompanied by an original certificate in Form D, and attested copies of a notice in Form B, forwarding letter of sample in Form C and notice if any, received under sub-rule (1) of rule 11.
- (3) The authorized person may also submit to the Environmental Tribunal any article taken into possession under clause (b) of sub-rule (2) of rule 4, if it is considered necessary and practicable to do so.

13. Expenses of prosecution:— Along with the complaint, the authorized person may also file a statement indicating the expenses incurred in the prosecution, including the costs of samples and of test and analysis thereof, and may request the Environmental Tribunal that in case of conviction the aforesaid expenses may be reimbursed to the complainant, in accordance with the provisions of section 545 of the Code of Criminal Procedure, 1898 (Act V of 1898).

14. Second test and analysis:— (1) Where the Environmental Tribunal is of the opinion, on the basis of evidence produced before it by the accused against whom the complaint has been filed, that further investigation is justified and is possible notwithstanding the time elapsed, it may, after recording the grounds for its opinion, direct that the third portion of the sample in the custody of the authorized person be sent for second test and analysis to another environmental laboratory:

Provided that the costs of the second test and analysis shall be deposited by the accused, and if the accused is subsequently acquitted, the same shall be refunded to him.

(2) The provisions of rules 10 and 11 shall apply to the second test and analysis under sub-rule (1), and the certificate in the form as set out in Form D in respect thereof shall be issued.

15. Procedure for trial:— The Environmental Tribunal shall try an offence under sub-section (1) of section 10 of the Act in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

16. Right of private persons to have samples analyzed:— (1) Any person may apply in writing to the Director-General for arranging test and analysis of such sample and from such person as may be specified in the application.

(2) If the Director-General approves the application, he shall instruct an authorized person to take the sample and arrange for its test and analysis, and the provisions of rules 7 to 11 shall, mutatis mutandis, apply thereto.

(3) The costs of taking the sample and of the test and analysis shall be paid by the applicant:

Provided that in case the sample is found by an environmental laboratory not to conform to the National Environmental Quality Standards, the amount paid by the applicant shall be returned to him.

FORM A
[See rule 4(2)(b)]
CUSTODY ORDER

To

[Name and address of person to whom Article is entrusted]

Dear Sir/Madam

WHEREAS I have reason to believe that the following article has been/is involved/may furnish evidence of commission of an offence under the AJK Environmental Protection Act, 2000 (IV of 2000), namely:—

(Description of article)

AND WHEREAS, the said article has been taken into possession by me under rule 4(2)(b) of the Environmental Samples Rules, 2009;

NOW THEREFORE, I hereby direct you, under rule 4(2) (b) of the aforesaid rules, to keep the above specified article in your safe custody and in proper storage and not to remove or otherwise deal with the article except with my prior written permission.

Place: _____

Date: _____

Time: _____

Authorized Person

Received: _____

(Signature of person to whom article is entrusted)

WITNESSES:

1. _____

2. _____

FORM B
[See rule 8(1)]
NOTICE

To

[Name and address of person to whom
Sample is taken]

Dear Sir/Madam

I have this day taken from the premises of (*name*) situated at (*address*) the sample described below, for test and analysis at an environmental laboratory, under the provisions of the AJK Environmental Protection Act, 2000, and the Environmental Samples Rules, 2009, namely: —

(Description of sample)

One portion of the sample, in sealed parcel bearing number ____, is being handed over/sent to you herewith

Place: _____

Date: _____

Time: _____

Authorized Person

Received: _____

(Signature of person to whom sample is taken)

WITNESSES:

(Name and address)

1. _____

2. _____

FORM C
[See rule 8(2)]
TEST AND ANALYSIS OF SAMPLE

To

The Chief Analyst
[Name and address of environmental laboratory]

Dear Sir/Madam

I hereby submit sealed parcel bearing no. _____ containing the following sample for test and analysis and report under clause (i) of section 7 of the AJK Environmental Protection Act, 2000, read with rules 8(2) and 10(3) of the Environment Samples Rules, 2009, namely: —

(Description of sample)

The sample was obtained from the premises of [*name*] situated at [*address*] on [*date*] at [*time*].

The parcel containing the sample has been affixed with seals and specimen impression of which is being sent to you separately.

Place: _____

Date: _____

Time: _____

Authorized Person

cc. [Name and address of person from whom sample is taken],

FORM D

[See rule 10(3)]

CERTIFICATE OF TEST OR ANALYSIS

[to be signed in triplicate]

I hereby certify that —

- (1) This laboratory had been granted certification as an environmental laboratory under the AJK Environmental Protection Agency (Certification of Environmental Laboratories) Regulations, 2000.
- (2) A parcel bearing no. _____ said to contain a sample of [*description*] was received in this laboratory on [*date*] at [*time*] dispatched by [*name, designation and address of person*] by post/courier/personal delivery.
- (3) The seals of the parcel were compared with the seal impression received separately and were found to match/not match.
- (4) The seals on the parcel were intact / broken.
- (5) The seals were opened in my presence and the sample was found fit/unfit for test/analysis.
- (6) I have carried out the following test / analysis:—

(7) I declare the results of the test / analysis as follows:—

Pursuant to the above results, I am of the opinion that the sample does/does not conform to the National Environmental Quality Standards, and that:—

Place: _____

Date: _____

(Chief Analyst)

[Name and address of environmental laboratory]

Section Officer

Planning & Development Department

Copy to:

1. Secretary to the President, GoAJK.
2. Secretary to the Prime Minister, GoAJK.
3. PS to Minister Environment., GoAJK.
4. PS to the Chief Secretary, GoAJK.
5. PS to the Additional Chief Secretary (Gen.), GoAJK.
6. PS to the Senior Member Board of Revenue, GoAJK.
7. PS to the Additional Chief Secretary (Dev.), GoAJK.
8. PS to the Director General Environment, GoAJK.
9. The Accountant General, Azad Kashmir.
10. The Controller, Govt. Printing Press, Muzaffarabad.
11. Master File.

Section Officer