

Establishment of Provincial Sustainable Development Funds

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List of Abbreviations

APTPMA	All Pakistan Textile Processing Mills Association
DG	Director General
ESC	Environmental Standards Committee
EUAFW	Ministry of Environment, Urban Affairs, Forestry and Works
FPCCI	Federation of Pakistan Chambers of Commerce and Industry
IUCN	The World Conservation Union
MELG&RD	Ministry of Environment, Local Government and Rural Development
NEQS	National Environmental Quality Standards
NGO	Non-Governmental Organization
OICCI	Overseas Investors Chamber of Commerce and Industry
PC	Pollution Charge
PEPA	Pakistan Environmental Protection Agency
PEPC	Pakistan Environmental Protection Council
PETF	Provincial Environmental Trust Fund
PSDF	Provincial Sustainable Development Fund
PTA	Pakistan Tanners Association
SDPI	Sustainable Development Policy Institute
TTSID	Technology Transfer for Sustainable Industrial Development

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Executive Summary

This paper provides details of the decisions made by the Environment Standards Committee (ESC) on the establishment of Provincial Sustainable Development Funds (PSDFs). It also documents the progress made so far in the implementation of these decisions. The Pakistan Environmental Protection Council (PEPC) constituted the Environmental Standards Committee on March 11, 1996. Dr. Shamsh Kassim Lakha, President Aga Khan University, was appointed as its chairperson while the members included senior representatives from government, industry and public interest organizations. The Committee held eight meetings up to August 1998, and made out with several important recommendations on the modalities for implementing National Environmental Quality Standards. Section 2 of this paper provides details on the agreements through the ESC on the above-mentioned issues. Section 3 provides details of the developments that took place from August 1998 to date. Section 4 of the paper provides the status of implementation to date.

1. Introduction

This paper serves as a background document and provides details of the system and arrangements for the collection and disbursement of (PC) through the establishment of Provincial Sustainable Development Funds (PSDFs). The paper also documents the progress made so far in the implementation of these decisions.

The Pakistan Environmental Protection Council (PEPC) constituted a committee, called the Environmental Standards Committee (ESC), on March 11, 1996. Dr. Shamsh Kassim Lakha President Aga Khan University, was appointed as its chairperson. The members of the committee included senior representatives from government, industry and public interest organizations. Representatives from Ministry of Environment, Pakistan Environmental Protection Agency (PEPA), Federation of Pakistan Chambers of Commerce & Industry (FPCCI), Overseas Investors Chamber of Commerce & Industry (OICCI), All Pakistan Textile Processing Mills Association (APTMA), and Pakistan Tanners Association (PTA) participated in the proceedings on a regular basis. Non-Government Organizations like The World Conservation Union (IUCN) and Sustainable Development Policy Institute (SDPI) also played very active role during this consultative process.

The Committee accomplished important tasks to review and rationalize the National Environmental Quality Standards (NEQS), recommend modalities for enforcing the NEQS, and suggest ways and means for financing implementation work. SDPI worked as the secretariat of the Committee and also provided technical support through its Swiss-funded Program of 'Technology Transfer for Sustainable Industrial Development (TTSID)'. The composition of the Committee was later expanded through mutual agreement to include representatives from government organizations and industry associations representing different sectors for wider participation. The ESC held eight meetings on May 6, 1996; May 16, 1996; June 24, 1996; July 2, 1996; July 15, 1996; September 23, 1997; March 10, 1998; and August 6, 1998. All decisions were taken through participation and consensus. The Final Report of the proceedings was prepared and presented to the Eighth PEPC meeting on August 26, 1999, which approved all its recommendations for implementation. Details of the proceedings and the decisions on different issues are available in the PEPC Secretariat record.

2. Agreements Through Environmental Standards Committee

Details of the agreements on the technical procedures for the determination of pollution charge and the management of collected money are provided in an accompanying background paper.

2.1 *Establishment of Provincial Sustainable Development Funds*

Throughout the negotiations in the ESC, industry representatives remained concerned about the system for the collection and disbursement of pollution charge money (see box-1 below). Detailed discussions were held to agree on an institutional arrangement through which industry representatives could ensure their participation and control over these funds.

Box-1

Use of Pollution Charges

Money collected will be used primarily for the activities that will help in abatement of environmental pollution through the following activities:

- Provision of soft loans for the purchase of pollution treatment equipment;
- Installation of combined treatment plants in industrial estates;
- Research and analysis in support of pollution abatement;
- Round tables, conferences, workshops for pollution abatement;
- Provision of incentives to develop indigenous technology for pollution control; and
- Training and advisory services for industry.

Source: ESC Recommendations to PEPC, May 20, 1996

Ever since it was agreed that the money collected as pollution charge would be made available for environmental services to benefit industry, the private sector has remained adamant that these funds must not be deposited into the national treasury, through Provincial Sustainable Development Funds (PSDFs). The concern has been that they are likely to be utilized for other purposes once they are part of the treasury monies. Instead, they have strongly advocated the creation of Provincial Environment Trust Funds (PETFs) that would be governed by a tripartite board of private sector, government and NGO representatives. Furthermore, the private sector recommended that industry associations collect these charges.

Although these arrangements received initial endorsement by the ESC and they were formally submitted as recommendations to PEPC, certain legal restrictions have prevented the establishment of such institutional arrangements. Article 11(2) of the Environmental Protection Act 1997 states that "The Federal Government (will) levy a pollution charge on any person who contravenes or fails to comply with the provisions of sub-section (1), to be calculated at such a rate, and collected in accordance with such procedures as may be prescribed". The Act, however, does not specify where these funds are to be deposited or for what purpose they are to be used. It is implicit nevertheless that, since the Federal Government is responsible for the collection of the pollution charge, they must be deposited as revenue of the Federal Treasury.

Article 9(3)(a, b) of the Act, calls for the establishment of Provincial Sustainable Development Funds (PSDFs). These Funds would be responsible for "Providing financial assistance to the projects designed for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, the sustainable development of resources and for research in any specified aspect of environment; and any other purpose which in the opinion of the Board will help achieve environmental objectives of this Ordinance". The government is of the opinion that the PSDFs can be used as the PETFs mentioned by the private sector through the framing of suitable and mutually acceptable rules. However, the anomaly is

that the pollution charges have not been included as one of its sources in Article 9(2). The Article specifies the following sources:

- (a) Grants made or loans advanced by the Federal Government or the Provincial Governments.
- (b) Aid and assistance, grants, advances, donations and other non-obligatory funds received from foreign governments, national or international agencies and non-governmental organizations; contributions from private organizations, and other persons.

Industry representatives did not agree to any arrangements whereby the collected money becomes part of the provincial government funds. FPCCI also submitted their written suggestions as 'Proposed guidelines on Operational Mechanisms and Administration of PETFs' through the ESC (Annex-1).

It was agreed during the last ESC meeting that FPCCI would send their proposal in the form of a draft amendment in the Act and the Ministry of Environment would move the case on the basis of agreed amendments. It was also agreed that any proceedings in that direction would not be linked with the implementation of the pollution charge system.

3. Later Developments

A coordination meeting was arranged at SDPI in October 2000, on the initiative of the Minister for Environment, Mr. Omar Asghar Khan, in which senior government and industry representatives participated. DG, PEPA Mr. Asif Shujah Khan and Mr. Azharruddin Khan (FPCCI representative) also made presentations during this meeting. They both confirmed that government and industry had remained in touch with each other, after August 1998, on important environmental issues including the pollution charge system. They also provided some details of the developments by that time. Before writing this paper, some more information on the progress made during these years was collected through personal meetings with key government and industry representatives and/or through phone calls¹. Information on the progress made so far, as collected from these sources, is reported below:

Negotiations between FPCCI and the Ministry of Environment/ Pak. EPA continued during the year 2000. Legal aspects were discussed with the legal advisor, Mr. Zahid Hamid to incorporate the concerns of FPCCI. Both sides confirmed that a verbal agreement was reached between government and industry on not moving for an amendment in the Act, and on framing mutually acceptable rules and regulations under the existing law. In the light of these agreements, the government has already framed rules and regulations for Provincial Sustainable Development Funds (PSDFs) within the scope of the Act. These were developed through regular consultations with industry representatives to ensure that all their concerns are fully addressed. Although the exact details were not made available, we were informed that the total amount collected in the PSDFs as the pollution charge money will be transferred to a sub-head within the Fund, which will be governed under the organizational arrangements and the rules suggested by industry. Industry representatives also added that the proposed rules and regulations would ensure a tripartite control by industry associations, government and NGOs.

4. Status of Implementation

Rules and regulations framed by the Ministry of Environment under the Act, and agreed by industry representatives, have already been endorsed by the Law Ministry and are now in the process of being issued as statutory orders. This is expected any time. After this notification,

¹ Meetings were held with Mr. Asif Shujah Khan (DG, Pak EPA), Mr. Javed Ali Khan (Director, PEPC), Dr. Samiuzzaman (Chairman Committee on Environment, FPCCI) and Mr. Mehmood Ahmed (V.P, FPCCI).

the provincial governments would constitute and notify the Provincial Sustainable Development Funds in their respective provinces.

The decision of the Council (PEPC) during its ninth meeting on February 3, 2001, in this regard is as follows:

"Collection of Pollution Charge as per agreed formula shall commence with effect from July 1, 2001. The rate of pollution charge from polluting industries shall be gradually increased equal to the cost of cleanup. The charges so collected shall be deposited in the Provincial Sustainable Development Funds. The administration of the levy of the pollution charges shall be overseen by Tripartite Committees comprised of representatives of Industrial Associations, EPAs and Non-governmental Organizations. Provincial Sustainable Development Funds shall be available for investment in the environmental friendly projects. Necessary notifications in this regard shall be issued by the Ministry of environment, LG & RD².

5. Recommendations

The National Environmental Quality Standards (NEQS) were issued in 1993. These were applicable on new industries from July 1994 and on old industries from July 1996. The implementation however has remained suspended for various reasons. Industry wanted negotiated settlement of detailed modalities and more time for preparations, whereas the government has remained soft on implementation mainly due to limited implementation capacity and financial resources.

A detailed and comprehensive process of stakeholders' consultation was completed through the Environmental Standards Committee (ESC) from March 1996 to August 1998. There was a total consensus to implement the agreed decisions, after PEPC's approval, from January 1999. The meeting of the Council took place in August 1999 and approved the implementation of these decisions from January 2000. The government then decided to implement the program in phases and started a pilot project for self-monitoring and reporting by industry on a voluntary basis, which was started during early 2000. During its eighth meeting in August 2000, PEPC decided to form an Implementation Committee to facilitate smooth implementation of agreed decisions. This committee mandate was to discuss the details of the implementation process with industry representatives afresh. In the meantime, PEPC decided during its last meeting in February 2001, that collection of pollution charge, as per agreed formula, would commence with effect from July 1, 2001. In view of all this, the following recommendations are made:

FPCCI played a major role in reaching consensus decisions during the consultative process through the ESC and in finalizing the Rules through subsequent negotiations. It is recommended that the implementation committee should now discuss only the implementation details, and guard against entering into negotiation process on the same issues once again.

2 Reference Minutes of the Meeting F.No.2 (2)/2000-(PEPC), Islamabad 10, March 2001, Vide Para No. 54(ii), issued by Government of Pakistan

Annex-1

Proposed Guidelines on Operational Mechanisms and Administration of Provincial Environmental Trust Funds (FPCCI Proposal)

1. Introduction

Environmental Act 1997, under section 9 and 10 permits the establishment of "Provincial Sustainable Development Funds (PSDF)". The Fund will be managed by a Board. The composition of Board will be as follows:

• Chairman of the Provincial Planning and Development Board	Chairman
• Six members of the government	Including secretaries in-charge of Finance, Industries and Environmental Departments
• Ten members of the private sector	Including representatives of provincial chambers of commerce and industry, non-government organizations and major donors.
• Director General of the Provincial Agency	Member/Secretary

The Fund can drive finances from a wide base of sources. Its finances can be utilized for various environmental related activities and projects.

Private sector has taken a position that the proposed arrangements are too broad to be practical. It is stated that such establishments should be simple to operate and precise by functions. It is also commented that PSDF will predominantly be managed by the government. Past experiences of the private sector with government functionaries on such joint establishments were not positive.

As an alternative, Federation of Pakistan Chambers of Commerce and Industry (FPCCI) along with its members associations proposes the establishment of Provincial Environmental Trust Funds (PETF) under the auspices of FPCCI. Principle function of PETF will be to collect pollution charges. Management of pollution charges will be precisely done under the principles and arrangements stated below.

Under the present Environmental Act, 1997, there is no provision for the establishment of such trust fund.

1.0 *Guidelines for the Establishment of PETF*

1.1 Guiding Principles

- The trusts will be established under the auspices of FPCCI and functions as no-profit entity;
- The chairman of the Board of Directors will be Ex-Officio President of FPCCI;

- Board will be comprised of six private sector members (four industrial associations, two local chambers in two years rotation)³, three provincial government representatives (one from P&D and two from Provincial EPA), and two non-government organization's representatives;
- Trusts will only function - operate for the collection of pollution charges, and the disbursement of collected funds against the agreed expenditure heads;
- Amendment will be made in the Environmental Act, 1997, to legalize the establishment of the Fund.

1.2 Arrangements

1.2.1 Establishment Arrangement

The trust will be registered under Trust Act. Registration will be arranged by FPCCI. Ex-Officio President of FPCCI will be the Chairman of the Board. The President shall nominate six members of the private sector. The president will also request the provincial governments to nominate their representatives. NGO representatives will be jointly nominated by FPCCI and government representatives.

The Board will appoint the Chief Executives and other professionals and support staff for the establishment of trust's secretariats.

1.2.2 Financial Arrangement

Industrial Associations and Provincial Governments on equal basis will contribute three years working capital for trusts. It is envisaged that after three years the trusts can be run through pollution charges funds and its long-term investments. The trust can arrange finances through donations from local and international donors.

1.2.3 Collection of Pollution Charges

Pollution charges will be collected in collaboration with industrial associations. Non-complying industrial units will be followed by the environmental sub-committee of the respective industrial association. The collected pollution charges will be deposited in the trust's bank account. Receipt of the pollution charges will be issued by trusts.

1.2.4 Disbursement of Trust Funds

a. Reimbursement to the Industrial Unit

Those industries who after paying pollution charges, start the implementation of environmental management plan within a year time of the payment, the collected pollution charges from those industrial units will be reimbursed to them as incentive.

b. Secretariat Expenses

Part of the secretariat expenses will be released from the financial pool of collected pollution charges.

c. Research and Development Projects in the field of Industry and Environment

Unclaimed pollution charges under the incentive scheme at the end of each financial year will be allocated to the R&D activities and their dissemination.

3 Registered Industrial Associations relevant to environmental issues and local chambers are 24 and 35 respectively. Representatives of these associations and chambers will serve the Board in a rotation of two years.