



AUG 31 2004

ADMINISTRATIVE ORDER

No. 2004 - 54

SUBJECT: AMENDMENTS TO DENR ADMINISTRATIVE ORDER NO. 96-40, AS AMENDED

In line with the continuing policy of the Government to provide for a responsive regulatory framework and in consonance with the streamlining and decentralization of the functions of the Department of Environment and Natural Resources (DENR), Sections 39, 52, 53 and 111 and Chapters XIV, XV and XVIII of DENR Administrative Order (DAO) No. 96-40, as partly amended by DAO Nos. 99-57, 2000-61, 2000-99 and 2003-46 are hereby further amended for the guidance and compliance of all concerned:

Section 1. The following Sections and Chapters of DAO No. 96-40, as amended, are hereby further amended to read as follows:


“Section 39. Terms and Conditions of a Mineral Agreement

The following terms and conditions shall be incorporated in the Mineral Agreement:

- a. A stipulation that the Contractor shall not, by virtue of the Mineral Agreement, acquire any title over the contract/mining area without prejudice to the acquisition by the Contractor of the land/surface rights through any mode of acquisition provided for by law;
- b. Representations and warranties that the Contractor has, or has access to, all the financing and technical capability and technology required to promptly and effectively carry out the objectives of the Agreement with the understanding to timely utilize these resources under its supervision pursuant to the periodic work programs and related budgets, and when proper, providing an exploration period up to two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of six (6) years for nonmetallic minerals exploration or eight (8) years for metallic minerals exploration, subject to annual review and approval by the Director in accordance with these implementing rules and regulations. In cases where further exploration is warranted beyond the six (6)- or eight (8) year period and on condition that the Contractor has substantially implemented the Exploration and Environmental Work Programs as verified by the Bureau, the Director may further grant renewal of the Exploration Period: *Provided*, That the Contractor shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs. The conduct of feasibility studies shall be included during the term of the Exploration Period. The Contractor shall file in the Regional Office concerned the Declaration of Mining Project Feasibility within the term of the Exploration Period.

In case the Contractor opts for a renewal of its Exploration Period, it shall file, prior to the expiration, a renewal application in the Bureau,

copy furnished the Regional Office concerned, accompanied by the following mandatory requirements:

- i. Justification of renewal;
 - ii. Comprehensive technical reports on the outcome of the two (2)-year Exploration and Environmental Work Programs, signed by a licensed Mining Engineer or Geologist and an Environmental Officer, respectively;
 - iii. Audited financial statements covering the term of the Exploration Period;
 - iv. Two (2)-year Exploration Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
 - v. Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A);
 - vi. Certification by the Regional Office concerned as to the compliance of the Contractor with the terms and conditions of the Mineral Agreement during the Exploration Period; and
 - vii. Other supporting papers as the Bureau may require.
- c. Representations and warranties that the applicant has all the qualifications and none of the disqualifications for entering into the Agreement;
- d. A stipulation that the Contractor may relinquish totally or partially the original contract area during the exploration period. After the exploration period and prior to or upon approval of Declaration of Mining Project Feasibility by the Director, the Contractor shall finally relinquish to the Government any portion of the contract area which shall not be necessary for mining operations and not covered by any declaration of mining feasibility with the corresponding submission to the Bureau/Regional Office concerned of geologic report and pertinent maps in the scale of 1:50,000. ***In the evaluation of the pertinent Mining Project Feasibility Study, the expected life of mine, grade management, mining sequence, conservation measures and the capability of the project to pay the Government Share and absorb the environmental and social costs shall be strictly taken into consideration. There shall be a provision guaranteeing the payment of the Government Share notwithstanding the grant of any incentives by other Government agency(ies). The number of operating years without tax holidays should be more than the number of operating years with tax holidays.*** The minimum exploration expenditures for the remaining area after relinquishment shall be based on the approved Exploration Work Program;
- e. A stipulation that each mining area after final relinquishment shall not be more than five thousand (5,000) hectares for metallic minerals and two thousand (2,000) hectares for nonmetallic minerals: *Provided*, That the Director, with the approval of the Secretary, may allow a Contractor to hold a larger mining area depending upon the nature of the deposit subject to technical verification and evaluation by the Bureau as to the technical/financial capability of the Contractor;
- f. A stipulation that the mining operations shall be conducted in accordance with the provisions of the Act and these implementing rules and regulations;
- g. A stipulation that the Contractor shall give preference to goods and services produced and offered in the Philippines of comparative quality and cost. In particular, the Contractor shall give preference to qualified Filipino construction enterprises, construction materials and skills available in the Philippines, Filipino sub-contractors for road construction and transportation, and Philippine household equipment, furniture and
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- food;
- h. A stipulation that the Contractor is obliged to give preference to Filipinos in all types of mining employment for which they are qualified and that the technology shall be transferred to the same;
 - i. A stipulation that the Contractor shall not discriminate on the basis of gender and that the Contractor shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;
 - j. A stipulation requiring the Contractor to effectively use the best available appropriate anti-pollution technology and facilities to protect the environment and to restore or rehabilitate mined-out areas and other areas affected by mine waste/mill tailings and other forms of pollution or destruction in compliance with the requirements of the ECC and P.D. No. 984. This should be undertaken in coordination with the EMB/ Department Regional Office;
 - k. A stipulation that the Contractor shall furnish the Government an annual report of its mining operations and records of geologic, accounting and other relevant data, and that book of accounts and records shall be open for inspection by the Government;
 - l. A stipulation requiring the Contractor to dispose of the minerals and by-products produced at the highest market price and to negotiate for more advantageous terms and conditions subject to the right to enter into long-term sales or marketing contracts or foreign exchange and commodity hedging contracts which the Government acknowledges to be acceptable notwithstanding that the sale price of the minerals may from time to time be lower, or the terms and conditions of sales are less favorable, than that available elsewhere: *Provided*, That the Bureau is furnished a copy of the said Sales Agreement subject to confidentiality between the Bureau and the Contractor;
 - m. A stipulation providing for consultation and arbitration with respect to the interpretation and implementation of the terms and conditions of the Agreement;
 - n. A stipulation that the Contractor shall pay fees, taxes, royalties and other obligations in accordance with existing laws, rules and regulations;
 - o. A stipulation that alien employment shall be limited to technologies requiring highly specialized training and experience subject to the required approval under existing laws, rules and regulations;
 - p. A stipulation that in every case where foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken;
 - q. A stipulation that the Contractor shall conform with laws, rules and regulations regarding, among others, labor, safety and health standards;
 - r. A stipulation that the Contractor shall confine its mining operations to its contract/mining area and that it shall not interfere with the rights of other Contractors/Lessees/operators/Permittees/Permit Holders;
 - s. A stipulation that the Contractor shall recognize and respect the rights, customs and traditions of local communities, particularly Indigenous Cultural Communities;
 - t. A stipulation that the Contractor shall contribute to the development of the host and neighboring communities of the mining area, local geoscience and mining technology in accordance with Chapter XIV hereof;
 - u. A stipulation that the Contractor shall comply with its obligations under its Environmental Protection and Enhancement Program (EPEP) and its Annual EPEP, including the allocation of the prescribed annual environmental expense pursuant to Section 171 hereof;
 - v. A stipulation that the Contractor shall utilize the best available

- appropriate and efficient mining and processing technologies;
- w. A stipulation that the Contractor shall undertake exploration work on the area as specified in its Agreement based on an approved Work Program: *Provided*, That a negative variance of at least twenty percent (20%) in the Work Program and corresponding expenditures shall be subject to approval of the Director/Regional Director concerned;
 - x. A stipulation that the Contractor shall submit annually starting from the date of approval of the Agreement, progress reports of the exploration activities in the prescribed form. This shall be accompanied by raw geologic, geophysical and geochemical data plotted in a 1:50,000 scale map, at a minimum. A quarterly report containing activities and accomplishments for each quarter shall also be submitted. At the end of the exploration term, the Contractor shall submit the final report with the detailed list of activities with the corresponding expenditures. The final report shall be accompanied by a 1:50,000 geologic map of the contract area acceptable by international standards. All reports referred to herein shall be submitted to the Bureau/Regional Office concerned;
 - y. A stipulation that the Mineral Agreement shall be canceled, revoked or terminated for failure of the Contractor to comply with the terms and conditions thereof or for other grounds as provided for in Section 230 hereof;
 - z. A stipulation that *the* withdrawal by the Contractor from the Mineral Agreement shall not release it from any and all financial, environmental, legal and fiscal obligations under the Agreement;
 - aa. A stipulation that a financing institution that has granted a loan to the Contractor for the mining project shall have the authority to designate its assignee of the Mineral Agreement in case of the Contractor's default from such loan: *Provided*, That the assignee is a Qualified Person and the assignment shall be subject to approval by the Secretary; and
 - ab. Such other terms and conditions not inconsistent with the Constitution, the Act and these implementing rules and regulations, as well as those which the Secretary may deem to be for the national interest and public welfare.

The Department shall formulate and promulgate such other rules, regulations and guidelines necessary to ensure compliance with the terms and conditions herein.

Section 52. Term of an FTAA

An FTAA shall have a term not exceeding twenty-five (25) years from the date of execution thereof, and renewable for another term not exceeding twenty-five (25) years under such terms and conditions as may be provided for by law and mutually agreed upon by the parties. The activities of each phase of mining operations must be completed within the following periods:

- a. Exploration - up to two (2) years from date of FTAA execution, extendible for another two (2) years subject to the following requirements:
 1. Justification of renewal;
 2. Comprehensive technical reports on the outcome of the two (2)-year Exploration and Environmental Work Programs, signed by a licensed Mining Engineer or Geologist and an Environmental Officer, respectively;
 3. Audited financial statements covering the term of the Exploration Period;
 4. Two (2)-year Exploration Work Program (MGB Form No. 5-4)

- duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
5. Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A);
 6. Relinquishment report; and
 7. Other supporting papers as the Department/Bureau/Regional Office concerned may require.

In case the Contractor opts for a renewal of its Exploration Period, it shall file prior to the expiration of the Exploration Period a renewal application to the Bureau, copy furnished the Regional Office concerned, accompanied by the above requirements.

- b. Pre-feasibility study, if warranted - up to two (2) years from expiration of the exploration period;
- c. Feasibility study - up to two (2) years from the expiration of the exploration/pre-feasibility study period or from declaration of mining project feasibility; and
- d. Development, construction and utilization - remaining years of FTAA.

Any two (2) or more of the above periods may be simultaneously undertaken in one approved contract area, as the need of the Contractor may arise, subject to the pertinent provisions of Section 59 hereof.

In the evaluation of the pertinent Mining Project Feasibility Study, the expected life of mine, grade management, mining sequence, conservation measures and the capability of the project to pay the Government Share and absorb the environmental and social costs shall be strictly taken into consideration. There shall be a provision guaranteeing the payment of the Government Share notwithstanding the grant of any incentives by other Government agency(ies). The mine should have a profitable operating life of more than ten (10) years, to ensure the collection of the Government Share, given a maximum five (5)-year cost recovery period.

Section 53. Filing of FTAA Applications/ Mandatory Requirements


The FTAA application (MGB Form No. 7-1) shall be filed with the Bureau for areas inside Mineral Reservations or with the concerned Regional Office for areas outside Mineral Reservations. The proposed contract area shall be closed to other mining applications for minerals mentioned in Section 50 hereof, but shall be open for quarry resources mining applications upon the written consent of the FTAA applicant and verification by the Bureau/concerned Regional Office, except for sand and gravel applications which shall require no consent thereof: *Provided*, That if consent is unreasonably withheld, the case shall be resolved by the Panel of Arbitrators.

Any application that transcends into two (2) or more regions shall be filed with the Regional Office which has the largest area covered by the application, copy furnished the other concerned Regional Office(s) by the applicant.

Upon payment of the required fees (Annex 5-A), an FTAA applicant shall file eight (8) sets of the FTAA proposal accompanied by the following mandatory requirements:

- a. Upon filing of the proposal -
 1. Duly certified Certificate of Registration issued by the Securities and Exchange Commission or concerned authorized Government agency;
 2. Duly certified Articles of Incorporation and By-Laws;



3. Location map/sketch plan of the proposed contract area showing its geographic coordinates/meridional block(s) and boundaries in relation to major environmental features and other projects using NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
 4. Two-year Exploration Work Program (MGB Form No. 5-4) or three-year Development/Utilization Work Program (MGB Form No. 6-2), as deemed applicable, duly prepared, signed and sealed by a licensed Mining Engineer, Geologist or Metallurgical Engineer;
 5. An application (MGB Form No. 16-04) for or a Certificate of Environmental Management and Community Relations Record (CEMCRR);
 6. Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A) during the exploration period as provided for in Section 168 hereof or Environmental Compliance Certificate prior to development, construction and/or utilization and Environmental Protection and Enhancement Program (MGB Form No. 16-2) as provided for in Section 169 hereof;
 7. Proof of technical competence including, among others, curricula vitae and track records in mining operations and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Exploration/Development/Utilization Work Program and Environmental Work/Environmental Protection and Enhancement Program, as deemed applicable;
 8. Certified copies, if any, of Exploration Permits/contracts, operating contracts, Mining Agreements, leases, permits, transfers, assignments or similar agreements it has entered into with any local or foreign juridical and natural persons;
 9. Proof of financial capability to undertake the activities pursuant to Exploration/ Development/Utilization Work Program and Environmental Work/Environmental Protection and Enhancement Program, as deemed applicable, such as latest Audited Financial Statement and where applicable, Annual Report for the preceding year, credit lines, bank guarantees and/or similar negotiable instruments;
 10. Declaration of the total area covered by approved/pending FTAA(s)/application(s); and
 11. Other supporting papers as the Department/Bureau/concerned Regional Office may require or the applicant may submit.
- b. Before the approval of the FTAA - Posting of financial guarantee/performance bond and letter of credit or other forms of negotiable instruments from any Government-accredited bonding company or financial institution, in favor of the Government upon notification by the Secretary, which shall be in any foreign currency negotiable with the Bangko Sentral ng Pilipinas or in Philippine Peso in such amount equivalent to the expenditure obligations of the applicant for any year;
- c. After the approval of the FTAA but prior to registration of the same - An authorized capital of at least Four Million U.S. Dollars (US\$4,000,000.00) or its Philippine Peso equivalent;
- d. Prior to construction, development and/or utilization -
1. Mining Project Feasibility Study;
 2. Development/Construction/Utilization Work Program;
 3. Approved Survey Plan of the mining area;
 4. Environmental Compliance Certificate; and
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Provided, That any application with incomplete mandatory requirements shall not be accepted.

If the applicant conducts or has conducted mining operations in a foreign country(ies), the Department shall verify the relevant requirements through the Philippine Embassy(ies) or Consulate(s) based in such country(ies).

The Regional Office shall regularly provide the Bureau with a list, consolidated map and status report of FTAA applications filed in its jurisdiction.

Section 111. Processing/Registration/Issuance of a Mineral Processing Permit

The Secretary may approve an application for Mineral Processing Permit (MPP) with a project cost of more than Five Hundred Million Pesos: *Provided*, That the Secretary, through the Director, may approve an application for MPP whose project cost ranges from more than Two Hundred Million Pesos to Five Hundred Million Pesos: *Provided, further*, That for an application for MPP whose project cost is Two Hundred Million Pesos or less, the Secretary, through the Regional Director concerned, may approve said application. ***In the case of the latter, the MPP application need not be forwarded to the Bureau and, instead, a copy of the issued MPP shall be submitted to the Bureau together with a copy of each of all the requirements.***

In the Feasibility Study, there shall be a provision guaranteeing the payment of the Government Share, notwithstanding the grant of any incentives by other Government agency(ies).

Upon approval of the application, the Secretary through the Director/Regional Director concerned, ***as the case may be***, shall notify the Permit Holder to cause the registration of the same within fifteen (15) working days from receipt of the written notice. Registration is effected only upon payment of the required fees (Annex 5-A). The Director/Regional Director concerned shall officially release the Permit to the Permit Holder after registration.

Failure of the Permit Holder to cause the registration of its Permit within the prescribed period shall be a sufficient ground for cancellation of the same.

CHAPTER XIV DEVELOPMENT OF MINING COMMUNITIES, SCIENCES AND MINING TECHNOLOGY

Section 134. Development of *Mining Community and Mining Technology and Geosciences and Institutionalization of Public Awareness and Education on Mining and Geosciences*

- a. The Contractor/Permit Holder/Lessee shall assist in the development of the host and neighboring communities in accordance with its Social Development and Management Program (SDMP) duly approved by the ***Regional Office concerned*** as provided for under Section ***136-B*** hereof to promote the general welfare of the inhabitants living therein;
- b. ***The Contractor/Permit Holder/Lessee shall assist in institutionalizing public awareness and education on mining and geosciences; and***
- c. The Contractor/Permit Holder/Lessee shall allot annually a minimum of one percent (1%) of the direct mining and milling costs necessary to implement Paragraphs (a) and (b) of this Section: *Provided*, That ninety percent (90%) of the one percent (1%) of the direct mining and milling

costs shall be apportioned to implement the SDMP in Paragraph (a) hereof and the remaining ten percent (10%) to implement Paragraph (b) hereof: *Provided, further,* That the Contractor/**Permit Holder**/Lessee shall submit to the Bureau and the Regional Office concerned a sworn statement of their direct mining and milling costs within sixty (60) days after the end of each calendar year: *Provided, finally,* That the royalty payment of one percent (1%) of the gross output for the Indigenous Cultural Communities, pursuant to Section 16 of DAO No. 96-40, may include the aforementioned allotment to implement Paragraphs (a) and (b) hereof.

Section 135. Credited Activities or Expenditures

The following activities shall be considered in enhancing the development of the host and neighboring communities:

- a. Establishment/construction, development and maintenance of infrastructure (i.e., community schools, hospitals, churches, recreational facilities, access roads, bridges, piers, wharves, communication, waterworks, electric power and sewerage systems, community housing projects, and training facilities for manpower development);
- b. Establishment of livelihood industries **and other income-generating activities**;
- c. Using facilities within the mine camp, such as hospitals, schools, and others, by members of host and neighboring communities, the expenditures of which shall be pro-rated according to the number of people from said communities accommodated in such facilities; and,
- d. Other activities as may be considered by the Director.

Provided, That expenditures for the above-mentioned activities shall be credited to the 90% of the 1% of the direct mining and milling costs allotted to implement the SDMP.

Provided, further, That expenditures for programs/projects/activities for the mine camp accruing to the Contractors'/Permit Holders'/Lessees' employees and their families shall not be included in the computation of the cost of the SDMP.

The following activities or expenditures shall be considered towards the **institutionalization of public awareness and education on mining and geosciences, and the** development of mining, geosciences and processing technology and the corresponding manpower training and development:

- a. **Establishment/enhancement/maintenance of information and publicity centers where stakeholders can access information on the performance of a mining project;**
- b. **Publication of Information, Education and Communication materials on social, environmental and other issues/concern in a mineral resource development project, including plans for effective management and mitigation;**
- c. **Expenditures for public consultation, radio broadcast and newspaper publication on mining related information, issues and concerns, both local and national;**
- d. Advanced studies conducted in the mining area such as, but not limited to, institutional and manpower development and basic and applied research;
- e. Advanced studies, including the cost of publication thereof in referred technical journals or monographs accessible to the local scientific community, related to mining which are conducted by qualified

- researchers, as construed by the practices at the Department of Science and Technology, who are not employees of the mine;
- f. Expenditures for scholars, fellows and trainees on mining, geoscience and processing technology and related subjects such as community development and planning, mineral and environmental economics;
 - g. Expenditures on equipment and capital outlay as assistance **to the institutionalization of public awareness and education on mining and geosciences, and** for developing research and educational institutions which serve as a venue for developing mining, geoscience and processing technology and the corresponding manpower training and development; and,
 - h. Other activities that the Director may consider appropriate.**

Provided. That expenditures for the above-mentioned activities shall be credited to the 10% of the 1% of the direct mining and milling costs.

Section 136. Development of Host and Neighboring Communities

The Contractor/Permit Holder/Lessee shall perform the following:

- a. Coordinate with proper authorities in providing development plans for the host and neighboring communities;
- b. Help create self-sustaining income generating activities, such as but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income generating activities are identified to be present within the host and/or neighboring communities, the Contractor/Permit Holder/Lessee shall work with such communities towards the preservation and/or enhancement of such activities; and,
- c. Give preference to qualified Filipino citizens in the hiring of personnel for its mining operation, the majority of which shall originate according to priority from the host and neighboring communities, the host municipality and province where mine is located: *Provided.* That the Contractor/Permit Holder/Lessee shall organize, at its own expense, skills enhancement programs in the absence of the needed skills: *Provided, further.* That it shall give its firm commitment to skills re-formation and entrepreneurship development for people in the mining communities as an integral part of the mine decommissioning process.

Section 136-A. Social Development and Management Program

A Social Development and Management Program (SDMP) shall be, in consultation and in partnership with the host and neighboring communities, actively promoted and shall cover and include all plans, projects, and activities of the Contractor/Permit Holder/Lessee towards enhancing the development of the host and neighboring communities in accordance with Sections **135** and **136** hereof.

To meet the changing needs and demands of the communities, the Contractor/Permit Holder/Lessee shall submit every five (5) years an SDMP to the Regional Office concerned for approval as provided for in Section **136-B** hereof.

Detailed guidelines in the implementation of this Section shall be prescribed by the Director.

Section 136-B. Processing and Approval of the SDMP

The Contractor/Permit Holder/Lessee shall submit six (6) copies and a



complete electronic file of the SDMP to the Regional Office concerned for initial review as to its substance, clarity and completeness. The Regional Office concerned may require additional documents which are deemed necessary to supplement the SDMP. The Regional Office concerned may also provide copies to credible experts to assist in the review and evaluation of an SDMP.

A technical conference shall then be held among the Contractor/Permit Holder/Lessee, Regional Office concerned and credible experts for the final evaluation of the SDMP. During the technical conference, the Contractor/Permit Holder/Lessee shall present the highlights of their SDMP, while the Regional Office concerned and the credible experts shall present its comments on the evaluation of the SDMP. If the proposed SDMP conforms to the standards, it shall be approved by the Regional Office concerned. If the SDMP, however, requires revision/additional information, the Contractor/Permit Holder/Lessee shall be required to comply with the deficiencies within fifteen (15) days: Provided, That applications for SDMP not complied within the prescribed period shall be returned to the Contractor/Permit Holder/Lessee for revision: Provided, further, That the Contractor/Permit Holder/Lessee shall shoulder all reasonable expenses attendant to the conduct of the technical conference.

The Regional Office concerned shall furnish the Bureau with a copy of the approved SDMP, within seven (7) days from its approval for affirmation without prejudice to additional conditions that may be imposed.

The Contractor/Permit Holder/Lessee shall provide each of the concerned Local Government Units with a copy of the approved SDMP not later than thirty (30) days prior to the intended date of commencement of mining operation or of effecting the SDMP.

To effectively implement the approved SDMP, an Annual SDMP shall be submitted to the Regional Office concerned, **copy furnished the Bureau**, at least thirty (30) calendar days prior to the beginning of every calendar year. Such program shall be based on the approved SDMP and shall be implemented during the year for which it shall be submitted.

Section 136-C. Designation of Community Relations Officer

The Contractor/Permit Holder/Lessee shall incorporate in its mine organization structure a Community Relations Officer (CRO) to establish linkages among the host and neighboring communities in the implementation of its SDMP. To be reporting directly to the Resident/Plant Manager, the CRO must be a graduate of any social science course, or any person with experience and training on community development work.

Section 136-D. Monitoring and Auditing of SDMP

The concerned Regional Office shall **quarterly** monitor the implementation of the approved SDMP and submit its monitoring report(s) to the Bureau as basis for **annual** audit.

Monthly internal monitoring shall likewise be done jointly by the CRO and representatives of the host and neighboring communities to determine whether the ongoing projects/programs/activities are being implemented in accordance with the approved SDMP. The CRO shall **quarterly** provide the Regional Office concerned with the results of the internal monitoring conducted, copy furnished the Bureau.

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Section 136-E. Penalties

Contractor/Permit Holder/Lessee found operating without an approved SDMP shall, on the first offense, be liable to a fine not exceeding Five Thousand Pesos (P 5,000.00) and shall, on the succeeding offense, be sufficient ground to suspend its mining/milling operations in the areas under contracts, in addition to a fine not exceeding Five Thousand Pesos (P 5,000.00).

Section 137. Development of Mining Technology and Geosciences

The Contractor/Permit Holder/Lessee shall, among others, perform the following:

- a. In the course of its operations, produce geological, geophysical, geochemical and other types of maps and reports that are appropriate in scale and which in format and substance are consistent with the internationally accepted standards and practices. Such maps shall be made available to the scientific community in the most convenient and cost effective forms, subject to the condition that the Contractor/Permit Holder/Lessee may delay release of the said information for a reasonable period of time which shall not exceed three (3) years;
- b. Systematically keep the data generated from the contract/mining area such as cores, assays and other related information, including economic and financial, and may make them accessible to students, researchers and other persons responsible for developing mining, geosciences and processing technology subject to the condition that the Contractor/Permit Holder/Lessee may delay release of data to the science and technology community within a reasonable period of time which shall not exceed three (3) years; and
- c. Replicate the data, maps and reports cited in Paragraphs (a) and (b) and furnish the Bureau for archiving and systematic safekeeping which shall be made available to the science and technology community for conducting research and for undertaking other activities which contribute to the development of mining, geosciences and processing technology and the corresponding manpower training and development. *Provided*, That the release of data, maps and the like shall be similarly constrained in accordance with Paragraphs (a) and (b) above.

Section 138. Use of Indigenous Goods, Services and Technologies

To the maximum extent compatible with efficient mining operations, the Contractor/Permit Holder/Lessee shall give preference to products, services and technologies produced and offered in the Philippines of comparable quality. In particular, the Contractor/Permit Holder/Lessee shall give preference to Filipino construction enterprises, construct buildings utilizing materials and skills available in the Philippines, employ Filipino subcontractors for road construction and transportation, and purchase Philippine household equipment, furniture and food.

Section 139. Donations/Transfer of Facilities

The Contractor/Permit Holder/Lessee shall, within one (1) year from the abandonment, cancellation or termination of the Agreement/ Permit/Lease, remove all improvements deemed no longer socially usable after consultation with concerned Local Government Unit(s)/ community(ies), on the mining premises found on public land(s). Otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper Government authorities, national or local, to ensure that said infrastructure and facilities are continuously maintained



and utilized by the host and neighboring communities.

Section 140. Hiring of Foreigners for Technical and Specialized Work During Mining Operations

All holders or applicants for Mineral Agreement/FTAA/Exploration Permit/Mineral Processing Permit shall give preference to Filipino citizens in all types of mining employment within the country insofar as such citizens are qualified to perform the corresponding work with reasonable efficiency and without hazard to the safety of the operations. They, however, shall not be hindered from hiring employees of their own selection, subject to the provisions of Commonwealth Act No. 613, as amended, for technical and specialized work which, in their judgment and with the approval of the Director, requires highly-specialized training or experience in exploration, development or utilization of mineral resources: *Provided*, That in no case shall each employment exceed five (5) years or the payback period of the project as stated in the approved original feasibility study, whichever is longer: *Provided, further*, That each foreigner employed as mine manager, vice president for operations or in an equivalent managerial position in charge of mining, milling, quarrying or drilling operations shall be subject to the provision of Section 141 hereof: *Provided, finally*, That each foreigner employed in a position lower than the managerial level shall be hired on a consultancy basis.

Section 141. Requirements for the Employment of Foreigners in Mining Operations

Foreigners that may be employed in mining operations shall:

- a. Present evidence of his/her qualifications and work experience related to his/her position; or
- b. Pass the appropriate Government licensure examination; or
- c. In special cases, may be permitted to work by the Director for a period not exceeding one (1) year: *Provided*, That if reciprocal privileges are extended to Filipino nationals in the country of domicile, the Director may grant waivers or exemptions;
- d. Secure working permits/visa from other concerned Government agency(ies); and
- e. Submit other supporting papers deemed necessary by the Secretary/Director/ concerned Regional Director.

CHAPTER XV MINE SAFETY AND HEALTH

Section 142. Responsibilities of a Contractor/Permittee/Lessee/Permit Holder and Service Contractor

All Contractors, Permittees, Lessees, Permit Holders and Service Contractors shall strictly comply with all the rules and regulations embodied under **DAO No. 2000-98, otherwise known as the "Mine Safety and Health Standards."**

For new technologies/equipment in mining and milling operations that are not covered under the provisions of **DAO No. 2000-98**, the Bureau shall formulate the appropriate rules and regulations to govern the same after due consultation with all concerned parties.



Section 143. Accreditation of Service Contractors is hereby repealed.

All Certificates of Accreditation issued to Service Contractors by the Bureau and its Regional Offices are hereby revoked: Provided, That all Service Contractors may provide services in mining operations without undergoing the accreditation process, subject to compliance with applicable laws, rules and regulations.

Section 144. Submission of Safety and Health Program

The **Regional** Director shall require a Contractor/Permittee/Lessee/Permit Holder to submit a Safety and Health Program covering its area of operations within fifteen (15) working days before the start of every calendar year with the following terms and conditions:

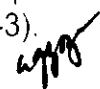
- a. The safety and health program shall include, but shall not be limited to, the following:
 1. **Leadership and Administration;**
 2. **Organizational Rules;**
 3. Management and Employee Training;
 4. Good Housekeeping;
 5. Health Control and Services;
 6. Provision for Personal Protective Equipment;
 7. Monitoring and Reporting;
 8. Environmental Risk Management including an Emergency Response Program; and
 9. Occupational Health and Safety Management
- b. For the entire duration of the **mining** contract **or permit**, the Contractor/Permittee/Lessee/Permit Holder shall **require its Service Contractor to submit to the former a Safety and Health Program: Provided, That the former shall** be responsible in the **strict** monitoring of the Safety and Health Program **and** ensuring the compliance with existing rules and regulations **of the latter. Provided, further, That the former shall likewise be held liable for violations of existing safety and health rules and regulations committed by the latter: Provided, finally, That** the safety records of the Service Contractor shall be included in a separate form in the safety record of the Contractor/Permittee/Lessee/Permit Holder.

Section 145. Mine/Quarry Safety Inspection and Audit

The Regional Director or his/her duly authorized representative shall have exclusive jurisdiction over the conduct of safety inspection of all installations, surface or underground, in mining/quarrying operations and monitoring of the safety and health program in a manner that will not impede or obstruct work in progress of a Contractor/Permittee/Lessee/Permit Holder and shall submit to the Director a quarterly report on their inspection and/or monitoring activities: *Provided*, That the Director shall undertake safety audit annually or as may be necessary to assess the effectiveness of the safety and health program.

Section 146. Registration of Safety Engineer and Safety Inspector

All Safety Engineers and Safety Inspectors of mining/quarrying operations shall be duly registered with the Regional Office and the corresponding permit shall be issued for this purpose (MGB Form Nos. 15-1, 15-2 and 15-3).



Section 147. Qualifications for Registration as Safety Engineer or Safety Inspector

- a. For Registration as Safety Engineer:
 1. For Permanent Registration -
 - i. A duly registered and currently licensed Mining Engineer with at least one (1) year supervisory experience in mining/quarrying operations and/or mine safety work; or
 - ii. A duly registered and currently licensed Engineer, Geologist or Chemist with at least five (5) years experience in mining/quarrying operations and/or mine safety work.
 2. For Temporary Registration -
Any duly registered and currently licensed Engineer, Geologist or Chemist with at least two (2) years experience as Safety Inspector preferably in the employ of the company.
- b. For Registration as Safety Inspector:
 1. For Permanent Registration -
 - i. A graduate in any Engineering, Geology or Chemistry course with at least one (1) year experience in safety work or two (2) years experience in mining operations; or
 - ii. A college undergraduate in any Engineering, Geology or Chemistry course with at least two (2) years experience in safety work or three (3) years experience in mining operations; or
 - iii. At least high school graduate with four (4) years experience in safety work or five (5) years experience in mining operations.
 2. For Temporary Registration as Safety Inspector -
 - i. A graduate in any Engineering, Geology or Chemistry course with one (1) year experience in mining operation; or
 - ii. A college graduate in any Engineering, Geology or Chemistry course with at least one (1) year experience in safety work or two (2) years experience in mining operation; or
 - iii. At least high school graduate with two (2) years experience in safety work or three (3) years experience in mining operation.

Section 148. Mandatory Requirements for the Issuance of Safety Engineer/Inspector Permit

Three (3) copies of the following requirements shall be submitted before the issuance of Safety Engineer/Inspector Permit:

- a. Duly filled-up application form;
- b. Certified photocopy of college diploma or high school diploma, or pertinent credentials, as the case may be;
- c. Certificate of employment (present and previous), signed under oath;
- d. Latest photograph, 2 in. x 2 in.; and
- e. Registration fees in the amount specified under Annex 5-A.

Section 149. Term of Temporary Safety Engineer/Inspector Permit

A Temporary Safety Engineer/Inspector Permit shall have a term of one (1) year from the date of issuance thereof, renewable every year.

Section 150. Permit for Electrical/Mechanical Installations

No electrical and/or mechanical installation shall be undertaken inside a mining/quarrying operation compound without a permit issued for the purpose by the concerned Regional Director.

Section 151. Applications and Plans for Electrical/Mechanical Installations

- a. Application for such installation shall be filed by the Contractor/Permit Holder or his/her authorized representative with the concerned Regional Office accompanied by plans and specifications;
- b. Plans shall be prepared in accordance with the provisions of Electrical Engineering Law with respect to electrical installation and Mechanical Engineering Law with respect to mechanical installation, and such plans must conform to the rules and regulations which have been or may be formulated in pursuance of the above-mentioned laws;
- c. Application for alteration and/or addition of any electrical or mechanical installations shall be filed in the same manner as for a new installation; and
- d. Authority to install shall be issued only after the plans have been cleared and certified to conform with the rules and regulations of the above-mentioned laws

Section 152. Conditions of an Electrical/ Mechanical Installations Permit

- a. Upon completion of installation but prior to regular operation, an inspection shall be conducted by the concerned Regional Director or his/her duly authorized representative;
- b. If upon inspection by the engineers of the concerned Regional Office, the installation is found to be in accordance with the plans and specifications, a written permit good for a period of one (1) year shall be issued; and
- c. Application for renewal of an Electrical/Mechanical Permit shall be filed by the Contractor/Permit Holder or his/her authorized representative with the concerned Regional Office at least thirty (30) calendar days before the expiration date of said Permit.

Section 153. Charges

The applicant shall bear all expenses in the field inspection including the cost of transportation of the field inspectors from their official station to the mine/quarry and back. In addition, an inspection fee **as provided for by applicable laws, rules and regulations** shall be charged to the applicant.

Section 154. Power to Issue Orders

- a. As the need arises, the concerned Regional Director shall require the Contractor/Permittee/ Lessee/Permit Holder and Service Contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with the provisions of **DAO No. 2000-98**; and
- b. The same may summarily suspend, wholly or partially, any activity related to mining/quarrying operations, in case of imminent danger to life or property, until the danger is removed, or until appropriate measures are taken by the Contractor/Permittee/Lessee/Permit Holder/Service Contractor.



Section 155. Report of Accidents

- a. In case of any incident or accident, causing or creating the danger of loss of life or serious physical injuries, the person in charge of the operations shall report the same to the concerned Regional Office where the operations are situated within twenty-four (24) hours, copy furnished the Bureau. Failure to report the same without justifiable reason shall be cause for the imposition of administrative sanctions prescribed under **DAO No. 2000-98**; and
- b. The Contractor/Permittee/Lessee/Permit Holder/ Service Contractor shall furnish the Bureau/ concerned Regional Office with the following:
 1. Monthly Contractor's/Permittee's/Lessee's/ Permit Holder's/Service Contractor's Report of Accident or Sickness (MGB Form No. 15-4);
 2. Monthly General Accident Report (MGB Form No. 15-5); and
 3. Minutes of the Central Safety Committee meetings.

Section 156. Right to Possess and Use Explosives

A Contractor/Permittee/Lessee/Permit Holder/Service Contractor shall have the right to possess and use explosives within its contract/ permit/lease area as may be necessary for its mining/quarrying operations upon approval of an application by the Philippine National Police through the recommendation by the concerned Regional Office.

Section 157. Requirements in the Application for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for Mining/Quarrying Purposes

No application for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for mining/quarrying purposes (MGB Form No. 15-6) shall be accepted for filing with the Regional Office unless accompanied by a processing/application fee in accordance with the schedule in Annex 5-A and accompanied by four (4) copies of supporting documents prescribed in Annex 15-A.

Section 158. Field Inspection of Proposed Storage Facilities (Magazines) and Verification of Blasting Scheme

Immediately after the filing of application for Purchaser's License, the concerned Regional Director shall authorize the conduct of field inspection of storage facilities to determine whether or not the location and specifications of magazines are in accordance with those prescribed under **DAO No. 2000-98** and to verify the proposed blasting scheme(s). The applicant shall bear all expenses in the field verification and the cost of transportation of the field investigators from their Official Station to the mine/quarry site and return.

Section 159. Approval of the Applications for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for Mining/Quarrying Purposes

Upon satisfaction of all the requirements stated in Section 157 hereof, the application for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for mining/ quarrying purposes shall be endorsed by the concerned Regional Office to the Philippine National Police for consideration/ approval.

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Section 160. Filing of Application for Amendment and Renewal of Purchaser's License

Application for amendment of Purchaser's License shall be filed and acted upon in the same manner as for a new Purchaser's License.

Application for renewal of Purchaser's License shall be filed by the holder with the concerned Regional Office at least thirty (30) calendar days before the expiration date of such License.

Section 161. Right of Inspection

The Director reserves the right to inspect the mine/quarry explosives magazines and audit records of explosive transactions at the expense of the Purchaser's License holder and at specified rates as may be deemed necessary: *Provided*, That failure to immediately implement, without justifiable reasons, the recommendation(s) to ensure the proper safekeeping and maintenance of explosives and its magazines shall cause for the imposition of administrative sanctions as provided for in **DAO No. 2000-98**.

Section 162. Submission of Reports by Purchaser's License Holders

Holders of Purchaser's Licenses shall be required to keep records of daily explosive transactions and submit to the Director reports of their explosive transactions (MGB Form No. 15-7) and explosives and accessories consumption reports (MGB Form No. 15-8) within fifteen (15) working days after every calendar month.

Section 163. Mine Labor

No person under sixteen (16) years of age shall be employed in any phase of mining operations and no person under eighteen (18) years of age shall be employed in an underground mine.

The Bureau shall coordinate with the Department of Labor and Employment in the determination of hazardous operations, processes and/or activities in mining industry in relation to the employment of minors.

Section 164. Mine Supervision

All mining and quarrying operations that employ more than fifty (50) workers shall have at least one (1) licensed Mining Engineer with at least five (5) years of experience in mining operations and one (1) registered foreman.

Section 165. Coverage of the Magna Carta for Public Health Workers

All personnel of the Bureau, its Regional Offices and other Department Bureaus/Offices, particularly the Environmental Management Bureau, involved in the actual implementation of mines safety, health and environmental laws, rules and regulations shall be covered and entitled to the allowances and other benefits under R.A. No. 7305, otherwise known as the "Magna Carta of the Public Health Workers". As such, funding for this purpose shall be automatically included in the regular budget of the Bureau/Department.



CHAPTER XVIII
CONTINGENT LIABILITY AND REHABILITATION FUND

Section 180. Contingent Liability and Rehabilitation Fund

Cognizant of the need to ensure just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse effect a mining operation or activity may cause, the Department through the Bureau shall institutionalize an environmental guarantee fund mechanism to be known collectively as the Contingent Liability and Rehabilitation Fund (CLRF).

The CLRF shall be in the form of the Mine Rehabilitation Fund and the Mine Waste and Tailings Fees as stipulated in the Act and shall be administered by the CLRF Steering Committee as provided for in Section 193 hereof.

Section 181. Mine Rehabilitation Fund

A Mine Rehabilitation Fund (MRF) shall be established and maintained by each operating Contractor/Permit Holder as a reasonable environmental deposit to ensure availability of funds for the satisfactory compliance with the commitments and performance of the activities stipulated in the EPEP/AEPEP during specific project phase. The MRF shall be deposited as a Trust Fund in a Government depository bank and shall be used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation.

The MRF shall be in two forms, namely:

- a. Monitoring Trust Fund (MTF). This Fund shall be initiated by the Contractor/Permit Holder and shall be deposited in a mutually acceptable Government depository bank for the exclusive use in the monitoring program approved by the MRF Committee

The MTF shall be in cash and in an amount to be determined by the MRF Committee which shall not be less than the amount of Fifty Thousand Pesos (₱50,000.00) to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work and other reasonable expenses incurred by the monitoring team: *Provided*, That the Secretary shall be authorized to increase the said amount when national interest and public welfare so require, upon the recommendation of the Director. The Contractor/Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

Authorization for the disbursement from the MTF shall only be given by the designated representatives of both the MRF Committee and the Contractor/Permit Holder. Replenishment of this amount shall be done monthly to correspond to the expenses incurred by the monitoring team for the month.

- b. Rehabilitation Cash Fund. The Contractor/ Permit Holder shall set up a Rehabilitation Cash Fund (RCF) for a designated amount to ensure compliance with the approved rehabilitation activities and schedules for specific mining project phase, including research programs as defined in the EPEP/AEPEP. The RCF shall be equivalent to ten percent (10%) of the total amount needed to implement the EPEP or Five Million Pesos (₱5,000,000.00), whichever is lower. The RCF shall be

deposited as a Trust Fund in a mutually agreed Government depository bank: *Provided*, That said amount shall be deposited in four (4) equal quarterly deposits within fifteen (15) calendar days from the beginning of each quarter of the first year following the approval of the EPEP.

A request for withdrawal and disbursement from said amount(s) by the Contractor/Permit Holder shall be based on its EPEP/AEPEP and shall be submitted to the MRF Committee for consideration and approval. copy furnished the CLRF Steering Committee.

In the event of withdrawals from the RCF, the Contractor shall annually replenish the RCF so as to maintain the minimum required amount thereof.

For the succeeding years up to the end of the post-decommissioning period of ten (10) years, the MRF shall continue as a Trust Fund as earlier described. Any interests or earnings of the MRF shall be made part thereof to comprise and satisfy the above-mentioned amount required. The Contractor/Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

Section 182. The Mine Rehabilitation Fund Committee

A Mine Rehabilitation Fund (MRF) Committee shall be created in each Region where active mining operations exist and shall have the following duties and responsibilities:

- a. Conducts preliminary evaluation on the submitted EPEP and consults with credible experts, as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures: *Provided*, That the MRF Committee shall evaluate and approve/disapprove the submitted EPEP for Industrial Sand and Gravel Permit and Quarry Permit.
- b. Manages, operates, monitors and looks after the safety of the MRFs that shall be established and deposited in a Government depository bank in accordance with the provisions of these implementing rules and regulations;
- c. Resolves issues involving the progressive mine rehabilitation programs that shall be implemented;
- d. Hires credible experts to do independent studies and researches on the environmental, engineering and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- e. Ensures that the approved EPEPs/AEPEPs shall be strictly implemented by the Contractors/Permit Holders;
- f. Deputizes a Multipartite Monitoring Team (MMT) to serve as its monitoring arm with the Regional Office concerned taking the lead role;
- g. Monitors and evaluates the performance of the MMTs and reports its assessments to the CLRF Steering Committee;
- h. Ensures that the MTFs and RCFs shall be kept separate and distinct from one another and maintains independent and specific books of records for all transactions of the said funds of each Contractor/Permit Holder;
- i. In the absence of fraud, bad faith or gross negligence on the part of the MRF Committee or any person acting on its behalf, the said Committee shall not be liable for any loss or impairment of the MRFs arising out or in connection with any act done or performed or caused to be done or performed by the said Committee pursuant to the provisions of these implementing rules and regulations;



- j. Prepares and submits to the Secretary/Director, within thirty (30) calendar days after the end of each year, an annual report of accomplishments, including audited financial statements and such periodic reports of activities as may be required; and
- k. Performs other functions as may be assigned by the Secretary/Director.

Section 183. Composition of the MRF Committee

The Mine Rehabilitation Fund Committee shall be composed of the following:

- a. Regional Director as Chair;
- b. Regional Executive Director (RED) of the Department as Co-Chair;
- c. **Regional Director of the Environmental Management Bureau (EMB) as Member;**
- d. Representative of the Autonomous Regional Government, where this is applicable, as Member;
- e. Representative from the Local Government Unit as Member;
- f. Representative from the local NGOs and community organizations, including People's Organizations, church or civic organizations, as Member; and
- g. Representative of the Contractor/Permit Holder as Member.

In case the Regional Director and/or the Regional Executive Director could not personally attend a meeting or function of the MRF Committee, he/she shall designate or appoint a representative who shall be duly authorized in writing to have full power and authority to act in his/her behalf.

The Regional Office shall provide the technical, secretariat and administrative supports, as may be deemed necessary, to the Committee.

Section 184. Meetings of the MRF Committee

The Committee shall hold **monthly** meetings: *Provided*, That any member of the Committee may call a special meeting as he/she may deem necessary: *Provided, further*, That notices of the meetings stating the date, time, place and agenda therefor shall be sent by the Committee Chair or Co-Chair to all members at least ten (10) working days before the intended date of the meetings.

In all meetings, the presence of at least four (4) members shall constitute a quorum to conduct business. The meetings shall be presided by the Chair or, in his/her absence, by the Co-Chair. In the absence of the Chair and the Co-Chair, the meetings shall be presided by either of their representatives. Unless otherwise provided herein, a majority vote of the members present in the meeting shall be required to give effect to any resolutions or decisions of the Committee. The presiding officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie.

The Committee shall provide the CLRF Steering Committee with a copy of the minutes of its meetings within seven (7) working days after each meeting.

Section 185. The Multipartite Monitoring Team

A Multipartite Monitoring Team (MMT) shall be deputized by the MRF Committee, as provided for in Section 182 hereof, to serve as the monitoring arm of said Committee and shall be composed of the following:

- a. Representative from **MGB** Regional Office as Head: 

- b. Representative from Department Regional Office as Member;
- c. **Representative from the EMB Regional Office as Member;**
- d. Representative of the Contractor/Permit Holder as Member.
- e. Representative from the affected community(ies) as Member;
- f. Representative from the affected Indigenous Cultural Community(ies), if any, as Member; and
- g. Representative from an environmental NGO.

The MMT may request the MRF Committee for technical assistance when deemed necessary. The Head of the MMT shall submit to the MRF Committee, at least five (5) working days before the scheduled regular meetings of the latter, a report on the status and/or result of its monitoring activities as provided for in Section 174 hereof, copy furnished the CLRF Steering Committee.

Section 186. Disbursements from the MRF

Withdrawal from the MRF shall be made by the Contractor/Permit Holder only with the written instruction to the bank issued by the MRF Committee authorizing the Contractor/Permit Holder to withdraw the amount from the MRF. The amount to be withdrawn shall be in accordance with the AEPEP and shall be approved by the MRF Committee, copy furnished the CLRF Steering Committee.

Any one of the following shall be authorized to issue the instruction to the bank on behalf of the MRF Committee:

- a. The Chair.
- b. The Co-Chair or
- c. The designated representative of either (a) or (b).

In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of thirty (30) calendar days from the time the written request for instruction is received by them, the Contractor/Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.

Section 187. Final Mine Rehabilitation/ Decommissioning Plan

Five (5) years before the final decommissioning of the contract/mining area, the Contractors/Permit Holders shall submit to the MRF Committee through the Regional Office and to the CLRF Steering Committee through the Bureau its final mine rehabilitation and/or decommissioning plan(s), including its financial requirements up to post-decommissioning over a ten-year period for monitoring purposes. The plan shall be subject to pre-evaluation by the MRF Committee and to final approval by the CLRF Steering Committee.

Detailed guidelines regarding the implementation of this Section shall be formulated by the Secretary through the Director.

Section 188. Penalties

Failure of the Contractor/Permit Holder to establish a Mine Rehabilitation Fund shall be sufficient ground to suspend or cancel the mining operations in the areas under contracts.

Section 189. Mine Waste and Tailings Fees Reserve Fund

Mine waste and tailings fees shall be collected semiannually from each



operating Contractor/Lessee/Permit Holder based on the amounts of mine waste and mill tailings it generated for the said period. The amount of fees collected shall accrue to a Mine Waste and Tailings (MWT) Reserve Fund and shall be deposited in a Government depository bank to be used for payment of compensation for damages caused by any mining operations. The MWT Reserve Fund shall also be utilized for research projects duly approved by the CLRF Steering Committee which are deemed necessary for the promotion and furtherance of its objectives.

Section 190. Mine Waste and Tailings Fees (MWTF)

The basic fees that shall accrue to the MWT Reserve Fund shall be ₱ 0.05/MT of mine waste produced and ₱ 0.10/MT of mill tailings generated from the mining operations except where such mine waste and mill tailings were utilized in the following manner:

- a. Filling materials for underground mine openings;
- b. Filling materials for surface mine openings: *Provided*, That such materials shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
- c. Filling materials for engineered tailings dams, roads and housing areas: *Provided*, That such areas shall not affect natural drainage systems as may be so determined by the Committee or his/her duly authorized representative: *Provided, further*, That those with tailings impoundment/disposal system that were found to have discharged and/or to be discharging solid fractions of tailings into areas other than the approved tailings disposal area shall pay ₱50.00/MT without prejudice to other penalties and liabilities the Contractor/Lessee/Permit Holder shall be subject to under other existing laws, rules and regulations: *Provided, finally*, That said amount shall accrue to the MWT Reserve Fund;
- d. Concreting and manufacture of concrete products; and
- e. Mine waste impounded for future use: *Provided*, That a two-year work program on the utilization of the said materials shall be submitted together with the semiannual report: *Provided, further*, That said materials shall be utilized for its beneficial use within a period of two (2) years. Mine waste materials, which are not utilized within the two-year period, shall be charged the corresponding fee of ₱ 0.05/MT. Non-submission of the work program shall mean disqualification from exemption from payment of fees.

Mining companies utilizing engineered and well-maintained mine waste and tailings disposal systems with zero-discharge of materials/effluent and/or with wastewater treatment plants which consistently meet Department standards shall also be exempted from payment of mine waste and tailings fees.

The Secretary, upon the recommendation of the Director, is authorized to increase the said fees when national interest and public welfare so require.

Section 191. Payment of Mine Waste and Tailings Fees Due

Mine waste and tailings fees shall be payable to the Bureau within forty-five (45) calendar days after the end of each semester. They shall be based on the sworn semiannual report (MGB Form No. 18-1) that shall be submitted to the Bureau, copy furnished the concerned Regional Office, by each operating Contractor/Lessee/Permit Holder stating, among others, the following:

- a. The amounts of mine waste and/or mill tailings produced, contained/stored/impounded and/or utilized; and

- b. The manner by which the mine waste and/or mill tailings produced were utilized.

Contractors/Lessees/Permit Holders with no mine waste nor mill tailings generated shall likewise submit sworn semiannual reports stating that for the said period no such materials were generated from their operations.

Section 192. Penalties

Non-submission of semiannual reports shall mean non-availment of the exemption from payment of mine waste and tailings fees and a penalty of ₱ 5,000.00

Failure to comply with payments of the mine waste and tailings fees provided under Sections 190 and 191 hereof shall mean a ten percent (10%) surcharge on the principal amount for every month of delay.

The Contractor/Lessee/Permit Holder shall be duty bound to pay for damages incurred due to previously exempted mine waste and tailings as described in Section 190 hereof.

Payments for the mine waste and tailings generated, which were previously requested for exemption from payment of fees but were denied based on the verification report, shall be remitted to the Bureau within sixty (60) calendar days upon receipt of notice. Failure to comply with the said provision shall mean a ten percent (10%) surcharge on the principal amount for every month of delay.

Section 193. The Contingent Liability and Rehabilitation Fund Steering Committee

An Interagency Contingent Liability and Rehabilitation Fund (CLRF) Steering Committee shall be created and shall have the following duties and responsibilities:

- a. Evaluates and approves/disapproves the submitted EPEP and consults with credible experts and advisory body(ies), as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures;
- b. Monitors the MRFs that shall be established and deposited in a Government depository bank in accordance with the provisions of these implementing rules and regulations;
- c. Resolves issues involving the final mine rehabilitation and decommissioning that shall be implemented;
- d. Hires credible experts to do independent studies and researches on the environmental, engineering and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- e. Monitors and evaluates the performance of the MRF Committees;
- f. Administers the Mine Waste and Tailings Fees Reserve Fund;
- g. Evaluates and decides on all applications for compensation for damages and awards compensations therefor;
- h. Prescribes documentary requirements for applications for compensation for damages;
- i. Appoints and/or designates members of the Technical Working Group to serve as the technical staff of the Committee and Regional Investigation and Assessment Teams, as provided for in Sections 196 and 198 hereof, to assist the Committee in the investigation and assessment of the claims for compensation for damages. *Provided*, That the Committee shall exercise general supervision over them;
- j. Provides appropriate funds from the MRFs and MWT Reserve Fund for

- the development and implementation of research and other special projects, which are deemed necessary in promoting the environmental objectives of these implementing rules and regulations;
- k. Implements duly approved guidelines, rules and regulations;
 - l. Formulates policy recommendations to strengthen the environmental provisions of these implementing rules and regulations for consideration of the Secretary;
 - m. Recommends to the Secretary the granting of allowances to officials and personnel performing functions and duties relative to the effective implementation of these implementing rules and regulations;
 - n. Prepares and submits to the Secretary, within thirty (30) calendar days after the end of each year, an annual report of accomplishments and such periodic reports of activities, as may be required; and
 - o. Performs other functions as may be assigned by the Secretary.

Section 194. Composition of the CLRF Steering Committee

The CLRF Steering Committee shall be composed of the following officials or their duly authorized representatives:

- a. Director as Chair;
- b. Director of Environmental Management Bureau as Vice-Chair;
- c. Director of Lands Management Bureau as Member;
- d. Director of Forest Management Bureau as Member;
- e. Director of Bureau of Soils and Water Management as Member;
- f. Director of Bureau of Plant Industry as Member;
- g. Director of Bureau of Fisheries and Aquatic Resources as Member;
- h. Administrator of the National Irrigation Administration as Member; and
- i. Assistant Director of the Bureau as Committee Coordinator.

In case the Chair and/or the Vice-Chair can not personally attend a meeting or function of the CLRF Steering Committee, he/she shall designate or appoint a representative, who shall be duly authorized in writing to have full power and authority to act in his/her behalf.

The Bureau shall provide the secretariat and administrative supports, as may be deemed necessary, to the CLRF Steering Committee.

Section 195. Meetings of the CLRF Steering Committee

The Committee shall hold **monthly** meetings: *Provided*, That any member of the Committee may call a special meeting as he/she may deem necessary; *Provided, further*, That notices of the meetings stating the date, time, place and agenda therefor shall be sent by the Committee Chair or Vice-Chair to all members at least ten (10) working days before the intended date of the meetings.

In all meetings, the presence of at least five (5) members shall constitute a quorum to conduct business. The meetings shall be presided by the Chair or, in his/her absence, by the Vice-Chair. In the absence of the Chair and the Vice-Chair, the meetings shall be presided by either of their representatives. Unless otherwise provided herein, a majority vote of the members present in the meeting shall be required to give effect to any resolutions or decisions of the Committee. The presiding officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie.

Section 196. The Technical Working Group

To assist the CLRF Steering Committee, a Technical Working Group (TWG)

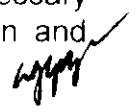
shall be created in the Bureau and shall have the following functions:

- a. Acts as technical staff to the CLRF Steering Committee;
- b. Receives, processes and evaluates the submitted EPEP as to its form and substance, imposes additional requirements and documentation deemed necessary and consults with credible experts, including the Director of the Philippine Social Science Council, Director of the National Museum, Offices of the Northern and Southern Cultural Communities, as well as other advisory body(ies) that may be required to clarify proposals and to discuss the adequacy of control and rehabilitation measures;
- c. Conducts annual environmental audit to ensure that the approved EPEPs/AEPEPs shall be strictly implemented by the Contractors/Permit Holders;
- d. Conducts continuing studies and research on policy options, strategies and approaches to effective implementation of environmental protection and enhancement programs and recommends such measures as may be required to address therefor to the Committee;
- e. Verifies the amounts of mine waste and mill tailings generated by Contractors/Lessees/ Permit Holders;
- f. Computes and collects the mine waste and tailings fees to be paid by Contractors/ Lessees/Permit Holders;
- g. Receives, processes, evaluates and conducts preliminary investigations, if necessary, of claims for damages and submits appropriate recommendations to the CLRF Committee;
- h. Assists in the investigation and assessment of claims for damages and submits appropriate recommendations to the CLRF Steering Committee;
- i. Develops, packages and recommends research and other special projects concerning mining and the environment;
- j. Determines/estimates/prepares the cost of rehabilitating damaged industrial, commercial, residential, agricultural and forest lands, marine and aquatic resources and placer and lode small-scale mining areas caused primarily by mining operations;
- k. Coordinates and monitors the activities of the Regional Investigation and Assessment Teams (RIAT) as provided for in Section 193 hereof;
- l. Drafts guidelines, rules, regulations, resolutions and other documents in connection with the environmental provisions of these implementing rules and regulations; and
- m. Performs other functions as may be assigned by the CLRF Steering Committee.

Section 197. Contingent Liability and Rehabilitation Steering Committee Administrative Fund

The Director shall ensure that adequate budget shall be allocated every year from its regular appropriation for the CLRF Steering Committee and shall include sufficient maintenance and operating budgets for actual field and travel expenses needed during mine site inspections, cost of in-house and external training, monthly honoraria for members of said Committee, cost of supplies and materials, cost of communication services and adequate capital outlay for the purchase of required photocopying machines, computers, microfiche machines and other support equipment.

The Director shall likewise allocate adequate financial support from the MRFs for the cost of consultancy and other expenses that are deemed necessary in carrying out the functions of the Committee related to EPEP evaluation and



monitoring.

Section 198. The Regional Investigation and Assessment Teams (RIAT)

To assist the CLRF Steering Committee in the investigation and assessment of the claims for compensation for damages, there shall be Regional Investigation and Assessment Teams (RIAT), which shall be composed of representatives from the Regional Offices and other member agencies whose services are deemed needed. The RIAT shall be headed by the Regional Director and shall have the following functions:

- a. Provides advice to interested parties on matters related to claims for compensation for damages under these implementing rules and regulations;
- b. Provides applications and other related forms to prospective claimants for damages;
- c. Receives applications for compensation for damages under these implementing rules and regulations;
- d. Conducts field investigations and assessments of claims for damages (MGB Form No. 18-3) and submits reports to the CLRF Steering Committee through the TWG;
- e. Creates, whenever and wherever deemed necessary, Local Task Forces to assist the RIAT in carrying out its functions; and
- f. Performs other functions that may be assigned by the Director.

Section 199. Application for Compensation for Damages

Compensable damages are those damages caused by any mining operations on lives and personal safety; lands, agricultural crops and forest products, marine life and aquatic resources, cultural and human resources; and infrastructure and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing.

The following are qualified to apply for compensation for damages:

- a. Any individual, in the event of loss or damage to his/her life, personal safety or property;
- b. Any private owners of damaged infrastructures, forest products, marine, aquatic and inland resources;
- c. Any applicant or successor-in-interest for damage to private lands who holds title or any evidence of ownership;
- d. Any applicant or successor-in-interest for damage to alienable and disposable lands;
- e. Any agricultural lessors, lessees and share tenants for damage to crops; and
- f. Any Indigenous Cultural Community in case of damage to burial grounds and cultural resources.

Provided, That any damage caused to the property of a surface owner, occupant or concessionaire, as provided for in Chapter X on Surface Rights, shall be governed by the pertinent provisions of said chapter.

Application for compensation for damages under these implementing rules and regulations shall be filed in a prescribed application forms (MGB Form No. 18-2) with the Regional Investigation and Assessment Teams within thirty (30) calendar days from the occurrence of the damage.

Applications should be supported by the following documents:



- a. Proof of ownership, such as tax declaration, perfected land titles, homestead and free patent. It should be understood, however, that tax declarations shall be honored as proof of ownership only for the purposes of compensation under these implementing rules and regulations;
- b. Receipt of expenditures for improvements made in the affected property(ies); and
- c. Other requirements that may be required by the CLRF Committee.

Section 200. Evaluation of and Compensation for Claims for Damages

The following guidelines shall apply in the evaluation of claims for damages under these implementing rules and regulations:

- a. Amounts paid as compensation for claims for damages shall be drawn from the mine waste and tailings fees collected from Contractor(s)/ Lessee(s)/Permit Holder(s), as may be determined by the CLRF Steering Committee: *Provided*, That in case the assessed amount of damage exceeds the mine waste and tailings fees paid for, the concerned Contractor(s)/Lessee(s)/ Permit Holder(s) shall be duty bound to pay for the remaining balance;
- b. Damages to lives and personal safety shall be compensated at an amount as provided for in other pertinent laws;
- c. Damages caused to agricultural lands, which render such lands useless for the traditional purpose for which they were intended for, may be compensated at an amount equivalent to either one of the following, whichever is lower:
 - 1. The fair market value of the lands as per tax declaration; or
 - 2. The cost of rehabilitation of the land;
- d. Damages to agricultural lands resulting in partial loss of productivity may be compensated at an amount equivalent to the costs of rehabilitation;
- e. Damages to industrial and residential lands may be compensated at an amount equivalent to the costs of rehabilitation;
- f. Damages resulting in total or partial loss of agricultural crops, forest products and/or inland aquatic resources may be compensated at an amount equivalent to the loss of projected net income therefrom;
- g. Damages to infrastructures may be compensated at an amount equivalent to the costs of rehabilitation to be determined by the CLRF Steering Committee;
- h. The amount of compensation for damages shall be based on the amount claimed or the amount assessed, whichever is lower;
- i. In case of private leased lands, compensation under these implementing rules and regulations shall be paid in accordance with the sharing agreement between the private landowner(s) and the lessee(s). In the absence of such an agreement, seventy-five percent (75%) of the compensation shall be paid to the lessee and twenty-five percent (25%) shall be paid to the landowner;
- j. Damages compensated by the operating mining company(ies) shall no longer be considered compensable under these implementing rules and regulations: *Provided*, That written approval has been secured from the CLRF Steering Committee. Such payment shall be credited to the concerned Contractor/Lessee/Permit Holder for the next paying period. A waiver signed as a condition for payment of such compensation by the Contractor/Lessee/Permit Holder shall also be considered as a waiver under these implementing rules and regulations;
- k. Any damage to burial grounds and cultural resources of an Indigenous

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Cultural Community shall be compensated in an amount to be determined by said Community, the concerned Local Government Unit and/or the National Museum; and

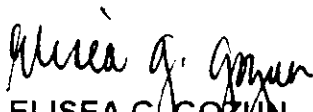

- I. The decision of the CLRF Committee shall be final and executory unless appealed to the Secretary within thirty (30) calendar days from receipt of the decision."

Section 2. Repealing Clause

The provisions of DAO No. 96-40, as amended, and all existing orders, rules and regulations, memorandum circulars, directives or part(s) thereof that are contrary or inconsistent with the provisions of this Administrative Order are hereby repealed, amended and/or modified accordingly.

Section 3. Effectivity

This Administrative Order shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation and fifteen (15) days after registration with the Office of the National Administrative Register.


ELISEA G. GOZUN
Secretary


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SEPTEMBER 8, 2024