



DEPARTMENT OF
ENVIRONMENT AND
NATURAL RESOURCES

November 20, 1991

DENR SPECIAL ORDER)
No. 1128 :
Series of 1991)

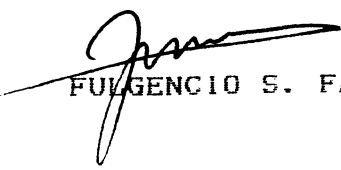
SUBJECT : Designation of OIC, Director Rodrigo U. Fuentes of the Environmental Management Bureau as Chairman of the Evaluation Committee under Presidential Decree No. 1251.

In the interest of the service and for the smooth implementation of Presidential Decree No. 1251, OIC, Director Rodrigo U. Fuentes of the Environmental Management Bureau (EMB) is hereby designated as Chairman of the Evaluation Committee created under the Decree, as amended, in view of his assignment as Director of EMB.

Director Fuentes shall assume the duties and responsibilities stated under the Decree, as amended, and in DENR Administrative Order No. 85, Series of 1990.

All orders inconsistent herewith are hereby revoked/repealed accordingly.

This Order shall take effect immediately.


FULGENCIO S. FACTORAN

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DEPARTMENT OF
ENVIRONMENT AND
NATURAL RESOURCES

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DENR ADMINISTRATIVE ORDER
NO. 85
Series of 1990

SUBJECT: REVISED RULES AND REGULATIONS IMPLEMENTING PRESIDENTIAL DECREE NO. 1251, AS AMENDED, IMPOSING FEES ON OPERATING MINING COMPANIES TO BE KNOWN AS "MINE WASTE AND TAILINGS FEES" TO COMPENSATE FOR DAMAGES TO PRIVATE LANDOWNERS AND FOR OTHER PURPOSES

Pursuant to the provisions of Section 4 of Presidential Decree No. 1251 mandating the Secretary of the Department of Environment and Natural Resources (DENR) to promulgate rules and regulations implementing the aforesaid decree, the following are hereby issued for the information and guidance of all concerned:

Chapter I

DEFINITIONS

Section 1.0. **Definition of Terms** - As used in and for the purpose of these regulations, the following terms and phrases shall have the corresponding meaning herein below stated:

- a. **Agricultural Crops** shall mean crops grown for commercial and industrial purposes or home consumption.
- b. **Committee Chairman** shall mean the Director of Environmental Management Bureau.
- c. **Costs of Rehabilitation** shall mean the money value of all inputs necessary to approximate the original condition or use of a damaged property.
- d. **Damages** shall mean the monetary value of destruction caused on land, agricultural crops, forest products, marine life and aquatic resources; on infrastructures; and the cost of rehabilitation of silted farm lands and other areas devoted to agriculture and fishing caused by pollution due to mine waste and tailings as a result of the operations of mining companies. Such damages are "actual or compensatory damages" under Article 2199 of the New Civil Code of the Philippines.

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Visayas Avenue, Diliman, Quezon City

- e. **Director** shall mean the Director of Mines and Geosciences Bureau (MGB).
- f. **Disturbance Fee** shall mean the average value of the goods produced by the qualified claimants as provided for under Section 7.1 hereof, for the last three (3) years multiplied by five (5) years.
- g. **Evaluation Committee or Committee** shall mean the Evaluation Committee created under Presidential Decree No. 1251, as amended.
- h. **Forest Products** shall mean timber, pulpwood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, rattan, or other forest growth such as grass, shrub and flowering plant, the associated water, fish and/or game, scenic, historical, recreational and geologic resources in forest lands.
- i. **Infrastructures** shall mean all civil works such as, but not limited to, roads, bridges, dams and buildings.
- j. **Inland Aquatic Resources** shall mean all fresh water and brackish water plants and animals.
- k. **Loss of Projected Net Income** shall mean estimated unrealized net income as a result of damages based on the average production for the past three (3) years on the same location.
- l. **Marine Life and Aquatic Resources** shall mean all aquatic plants and animals found in marine environment.
- m. **Mine Waste** shall mean soil and rock materials from surface or underground mining operations with no economic value to the generator of the same.
- n. **Mine Waste and Tailings Fees** shall mean fees imposed on all operating mining companies in accordance with Presidential Decree No. 1251, as amended.
- o. **Operating Mining Companies** shall mean partnerships, cooperatives, associations or corporations except small-scale miners legally engaged in or responsible for the conduct of mining activities such as but not limited to, exploration, development, extraction, milling, concentrating, transport and marketing of mineral resources which produce mine waste and tailings as defined in these rules and regulations.
- p. **Reserve Fund** shall mean the accrued mine wastes and tailings fees to be used for payment of damages on lands, agricultural crops and forest products, marine life and aquatic resources, the destruction of infrastructure, and the revegetation and rehabilitation

Section 2.1. **Functions of the Committee** - The Committee shall have the following functions:

- a. Evaluates and decides on all applications for compensation for damages and awards compensations therefor;
- b. Implements duly approved guidelines, rules and regulations;
- c. Prescribes documentary requirements for applications for compensation for damages;
- d. Formulates policy recommendations to strengthen the provisions of this Order for consideration of the Secretary;
- e. Appoints and/or designates members of the Technical Working Group and Regional Investigation and Assessment Teams for the effective implementation of this Order and exercise general supervision over them;
- f. Provides appropriate funds for the development and implementation of research and other special projects which it deems necessary in promoting the objectives of this Order;
- g. Recommends to the Secretary the granting of allowances to officials and personnel performing functions and duties relative to the effective implementation of this Order; and,
- h. Performs other functions as may be assigned by the Secretary.

Section 2.2. **Committee Meeting** - The Committee shall hold regular monthly meetings. Special meetings may be called by the Committee Chairman as the need arises.

Section 3.0. **Technical Working Group** - There shall be created a Technical Working Group to assist the Committee in the performance of its functions. It shall be composed of the representative/s from each of the member agencies of the Committee, duly designated by the Committee Chairman, upon recommendation of corresponding Committee Member. The Technical Working Group shall be headed by a Chairman to be appointed by the Committee Chairman.

Under the Technical Working Group there shall be a Technical Secretariat and Administrative Staff to assist the Committee and shall be composed of Mines and Geosciences Bureau (MGB) personnel duly designated by the Committee Chairman upon the recommendation of the Director.

Section 3.1. **Functions of the Technical Working Group** - The Technical Working Group shall have the following functions:

- a. Receives, processes, evaluates and conducts preliminary investigation if necessary, of claims for damages and submits appropriate recommendations to the Committee;
- b. Develops, packages and recommends research and other special projects;
- c. Prepares costings for the rehabilitation of damaged commercial agricultural, industrial and residential lands;
- d. Determines/estimates the cost of rehabilitating damaged industrial, commercial, residential and agricultural lands caused primarily by mine waste and tailings;
- e. Acts as secretariat to the Committee;
- f. Coordinates and monitors the activities of all Regional Investigation and Assessment Teams, and other personnel involved in the implementation of this Order;
- g. Verifies the amount of mine waste and tailings generated by operating mining companies;
- h. Computes and collects the mine waste and tailings fees to be paid by operating mining companies;
- i. Drafts guidelines, orders, resolutions and other documents in connection with the implementation of this Order;
- j. Assists in the investigation and assessment of claims for damages and submits appropriate recommendation to the Committee;
- k. Handles administrative functions especially on finance and budget; and,
- l. Performs other functions as may be assigned by the Committee.

Section 3.2. **Technical Working Group Meeting** - The Technical Working Group shall hold monthly regular meetings. Special meetings may be called by the Technical Working Group Chairman, subject to prior notice.

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Section 4.0. Regional Investigation and Assessment Teams - Regional Investigation and Assessment Teams may be organized to assist the Committee and the Technical Working Group. The team shall be headed by the concerned DENR Regional Executive Director or his duly authorized representative. The members may be composed of representatives from the agencies/sectors mentioned in Section 2.0 of this Order when their services are needed depending on the nature of the claim. In all investigations, the mining company/ies concerned and the affected party/ies shall be duly represented.

Section 4.1. Functions of the Regional Investigation and Assessment Team - The Regional Investigation and Assessment Teams shall have the following functions:

- a. Provides advice to interested parties on matters relating to the implementation of this Order;
- b. Provides application and other related forms to prospective claimants for damages;
- c. Receives applications for compensation for damages under this Order;
- d. Conducts field investigations and assessments of claims for damages and submits reports to the Committee, thru the Technical Working Group; and
- e. Performs other functions as may be assigned by the Committee Chairman.

Section 4.2. - Jurisdiction of Regional Investigation and Assessment Team - For purposes of these rules and regulations and unless otherwise amended, the jurisdiction of the Regional Investigation and Assessment Teams shall follow the present geographical jurisdiction of the country.

Section 4.3. Meetings of the Regional Investigation and Assessment Teams - The Regional Executive Director of the DENR, as Chairman, shall call meetings of the Team as often as necessary.

Chapter III

MINE WASTE AND TAILINGS FEES

Section 5.0. Mine Waste and Tailings Fees - A semi-annual fee to be known as "Mine Waste and Tailings Fees" shall be imposed by the Secretary on all operating mining companies, upon recommendation of the Evaluation Committee. Such fee shall accrue to the Reserve Fund.

semester. They shall be based on a semi-annual report under oath to be submitted by each operating mining company stating among others the following:

- 1) the amount of mine waste and tailings produced, stored/impounded or the amount of materials that are exempted from the payment of the fees; and
- 2) the manner for which these materials are being utilized.

Chapter IV

ADMINISTRATION OF RESERVE FUND

Section 6.0. Administration of Mine Waste and Tailings Fees -- Funds collected from the mine waste and tailings fee shall be disbursed only for the following purposes:

- a) compensation of claims for damages duly processed, evaluated, approved and ordered for payment by the Committee Chairman; and
- b) Payment of expenses incurred by the Committee and its Staff representing actual field and travel expenses and monthly allowances in an amount not exceeding P300,000.00 annually to be taken from the Reserve Fund: PROVIDED that all payments shall be signed by the Committee Chairman and countersigned by the Committee Vice-Chairman.

Section 6.1. Actual Field and Travel Expenses - Actual field and travel expenses shall refer to the costs incurred by the Committee and its Staff while on official travel in connection with their respective functions identified in this Order.

Section 6.2. Monthly Allowances - Pursuant to Section 2.1.g. hereof, the members of the Evaluation Committee and its Staff shall be granted allowable monthly allowances in an amount specified by appropriate accounting rules and regulations and as recommended by the Chairman of the Evaluation Committee to be approved by the Secretary.

Chapter V

APPLICATION FOR COMPENSATION

Section 7.0. Compensable Damages - All damages on private property/ies, the proximate cause of which is pollution due to mine waste and tailings, are compensable which include, among

Section 5.1. Basic Fees - Pursuant to Section 1 of PD 1251, all operating mining companies shall pay the following basic fees without prejudice to penalties and other conditions that may be imposed by pertinent Offices:

- a. Five Centavos (P0.05) per metric ton of mine waste produced;
- b. Ten Centavos (P0.10) per metric ton of tailings for companies discharging into tailings impoundment/disposal system duly approved by the concerned DENR Regional Office;
- c. Ten Centavos (P0.10) per metric ton of tailings for companies discharging tailings directly into the sea by means of pipelines, launders and/or tunnels.

Section 5.2. Exemption from Fees - Mine waste and tailings utilized for the following purposes shall be exempted from payment of fees :

- a. filling materials for underground mine openings;
- b. filling materials for surface mine openings provided that such material shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
- c. filling materials for civil structures such as engineered tailings dams, roads, housing areas, and similar structures, provided that such areas shall not affect natural drainage systems as may be so determined by the Committee or his duly authorized representative;
- d. concreting and manufacture of concrete products; and
- e. mine waste impounded for future use provided, however, that said materials shall be utilized for its beneficial use within a period of two (2) years. Mine wastes which are not utilized within the two-year period shall be charged the corresponding fee as stipulated in Section 5.1 hereof.

PROVIDED, that the utilization of mine waste and tailings for the foregoing purposes shall have prior approval of the Committee: PROVIDED further, that the actual utilization of such materials shall be subject to verification by the Committee or its duly authorized representative/s.

Section 5.3. Payment of Fees - The fees herein imposed shall be payable to the Committee through the Technical Working Group within forty-five (45) calendar days after the end of each

others, the areas mentioned in the succeeding section.

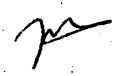
Section 7.1. **Qualified Applicants.** The following are qualified to apply for compensation in accordance with the damages incurred:

- A. Private owners of damaged infrastructures, forest products, marine, aquatic and inland resources;
- B. For damages to private lands:
 - 1. Any applicant/claimant or his successor-in-interest who holds title to or any evidence of ownership as provided for in Section 7.2.A hereof; and
 - 2. Any applicant/claimant of alienable and disposable lands;
- C. For damages to crops:
 - 1. Agricultural lessors or lessees;
 - 2. Share tenants.

If the applicant is both owner and tiller of the land, then he may apply for both land and crop damages.

Section 7.2. **Application Procedure** - Applications for compensation for damages under this Order shall be filed in prescribed application forms with the Regional Investigation and Assessment Teams within thirty (30) working days from the occurrence of the damage.

All applications shall 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 declaration shall be honored as proof of ownership only for the purposes of compensation under this Order;
 - b. Receipt of expenditures for improvements made in the affected property/ies; and
 - c. Other requirements that may be required by the Committee.
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EVALUATION AND COMPENSATION OF CLAIMS FOR DAMAGES

Section 8.0. The following guidelines shall apply in the evaluation of claims for damages under this Order:

- a. Damages caused to agricultural lands which render such lands useless for the traditional purpose for which it was intended, may be compensated at an amount equivalent to either one of the following:
 - 1. the fair market value of the lands as per latest tax declaration; PROVIDED however, that a quitclaim/waiver to any future claims for compensation shall be executed by the claimant/owner before payment which shall be valid only for the duration of the disturbance equivalent to 5 years; or
 - 2. the costs of rehabilitation of the lands.
- b. Damages to agricultural lands resulting in partial loss of productivity may be compensated at an amount equivalent to the costs of rehabilitation.
- c. Damages to industrial and residential lands may be compensated at an amount equivalent to the costs of rehabilitation.
- d. 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 either one of the following:
 - 1. the loss of projected net income therefrom; or
 - 2. the disturbance fee as provided for in Section 1.f hereof; PROVIDED however, that a quitclaim/waiver to any future claims for compensation shall be executed by the claimant/owner before payment which shall be valid only for the duration of the disturbance equivalent to 5 years.
- e. All quitclaims/waivers signed by the claimant/s shall be binding on the heirs and/or successors-in-interest within the period of the disturbance equivalent to 5 years.
- f. Damages to infrastructures may be compensated at an amount equivalent to the costs of rehabilitation to be

determined by the Committee.

- g. The amount of compensation for damages shall be based on the amount claimed or the amount assessed, whichever is lower.
- h. The budget for compensation for claims for damages under the Decree shall be drawn from the aggregate total of the mine wastes and tailings fee collected from operating mining companies accruing in a Reserved Fund without prejudice as to what company caused the damages.
- i. In case of private leased lands, compensation under this Order shall be paid in accordance with the sharing agreement between the private landowner and the lessee(s). In the absence of such an agreement, compensations shall be divided on the following sharing scheme:
 - a) 75% for tenants and 25% for landowners for rice and corn; and
 - b) 50% for tenants and 50% for landowners for crops other than rice and corn.
- j. Damages compensated by the operating mining company/ies shall no longer be considered compensable under this Order, provided that written approval has been secured from the Committee and such payment shall be credited to the concerned mining company/ies for the next paying period. Waiver signed as a condition of payment for such compensation by operating mining company/ies shall also be considered as waiver under this Order.
- k. The decision of the Committee shall be final and executory unless appealed to the Secretary within thirty (30) days from receipt of the decision.

Chapter VII

FINAL PROVISIONS

Section 9.0. **Penalty Clause** - Failure to comply with the provisions aforestated herein, without justifiable reasons shall subject the mining company to payment of basic fees plus ten percent (10 %) surcharge on the principal amount for every month of delay. In addition, the operator shall be disqualified to avail of the exemptions as provided for under Section 5.2.

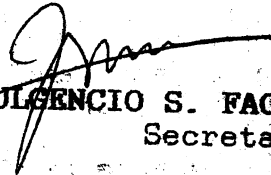
FURTHERMORE, those with duly approved tailings impoundment/disposal systems found to have discharged tailings in natural drainage systems, shall be subject to suspension of the mining operations as may be recommended by the Committee to the

Pollution Adjudication Board (PAB).

Section 10.0. Separability Clause - Any provision herein which may be declared null and void by a competent court, repealed or modified shall not affect other provisions unless such provision specifically provides otherwise.

Section 11.0. Repealing Clause - All other rules and regulations inconsistent herewith are hereby revoked, repealed or modified accordingly.

Section 12.0. Effectivity. This Order takes effect fifteen (15) days after publication in a newspaper of general circulation.


FULGENCIO S. FACTORAN, JR.
Secretary