

DENR ADMINISTRATIVE ORDER
No. 140

SUBJECT: Guidelines Governing the Distribution, Disposition and Utilization of Marble Deposits within the Biak-Na-Bato Mineral Reservation Established Under Proclamation No. 401.

Pursuant to the provision of Section 3 of Presidential Decree No. 1385 and Presidential Decree No. 1899 and in relation to Proclamation No. 401, the following guidelines are hereby promulgated:

ARTICLE 1

TITLE, POLICIES AND OBJECTIVES

SECTION 1.0 *Title*: This Administrative Order shall be known as the "Guidelines for Biak-na-Bato Mineral Reservation".

SECTION 2.0 *Policies and Objectives*: The policies and objectives of the Government on the Biak-na-Bato Mineral Reservation shall be:

- (a) To rationalize small-scale marble quarry operations;
- (b) To develop marble ancillary industries;
- (c) To provide environmental control mechanisms; and
- (d) To upgrade marble production technology.

ARTICLE 2

DEFINITIONS

SECTION 3. *Definition of Terms* – As used in and for the purpose of these guidelines, the following terms and phrases shall have the following meaning:

- 3.1 "Government" – the Government of the Republic of the Philippines;
- 3.2 "Secretary" – the Secretary of the Department of Environment and Natural Resources (DENR);
- 3.3 "Director" – the Director of the Mines and Geo-Sciences Bureau (MGB);
- 3.4 "Regional Executive Director" – the Regional Executive Director (RED) of the Department of Environment and Natural Resources, Region III;

- 3.5 **“Regional Technical Director”** – the **Regional Technical Director (RTD)** for Mines Sector of the Department of Environment and Natural Resources, Region III;
- 3.6 **“PENRO”** – the **Provincial Environment and Natural Resource Officer** of Bulacan;
- 3.7 **“CENRO”** – the **Community Environment and Natural Resource Officer** of Baliuag;
- 3.8 **“Reservation”** – area established as mineral reservation under Proclamation No. 401;
- 3.9 **“Qualified Person”** – A natural-born Filipino citizen, of legal age, and with capacity to contract, a corporation or partnership, the objectives of which is in accordance with the provisions of Section 2, Article XII of the 1987 Constitution;
- 3.10 **“Cooperative”** – An association of Filipino citizens with minimum membership of 25 individuals, all of legal age and duly registered with the appropriate government agency;
- 3.11 **“People’s Organization”** – a community-based bonafide association of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure and capable to engage in small scale quarry operations;
- 3.12 **“People’s Mining Blocks”** – subdivided blocks of five (5) to twenty (20) hectares, or fractions thereof, as identified in the **Mineral Reservation Map** which is subject to small-scale quarry operation;
- 3.13 **“Production Sharing Blocks”** – subdivided blocks of twenty (20) hectares, or a fraction thereof, as identified in the **Mineral Reservation Map** which is subject to Proclamation Sharing Agreement (PSA);
- 3.14 **“Permittee”** – means the cooperative or people’s organization given a small-scale quarry permit;
- 3.15 **“Contractor”** – means the qualified person who is awarded the **Production Sharing Agreement**;
- 3.16 **“Agreement”** – means the **Production Sharing Agreement** entered into pursuant to Executive Order No. 279 and this **Administrative Order**;
- 3.17 **“Mineral Reservation Map”** – the map duly approved by the Regional Executive Director showing the subdivided people’s mining blocks and production sharing blocks of the reservation created by Proclamation No. 401 dated April 11, 1989.

ARTICLE 3

SMALL-SCALE QUARRY PERMITS

SECTION 4. *Area Subject of Application.* The subdivided blocks designated as People's Mining Blocks in the Mineral Reservation Map which is an integral part of these guidelines shall be opened to small-scale quarry operations.

SECTION 5. *Who May Qualify for the Issuance of Small-Scale Quarry Permit.* A cooperative or people's organization may qualify provided that:

- 5.1 The members of which shall have not committed any violation of environment and natural resources laws, rules and regulations;
- 5.2 A proof of the capability to develop and operate a quarry resource shall be submitted.

SECTION 6. *Form and Contents of the Application for Small-Scale Quarry Permit.*
An application for a permit shall be accomplished and filed in five (5) copies in the form prescribed for the purpose, duly subscribed and sworn to by the applicant or his duly authorized agent before a Notary Public or any official authorized by law to administer oaths and stating particularly, among others, with sufficient fullness and clarity, the following:

- 6.1 Full name and post office or business address of the cooperative or people's organization;
- 6.2 List of names and addresses of the officers and members of the cooperative or people's organization;
- 6.3 Certificate of registration of the cooperative or people's organization;
- 6.4 Block No. of the area applied for based on the Mineral Reservation Map;

SECTION 7. *Where, When and How to File Application.*

- 7.1 Within thirty (30) days from the publication of this Order, the PENRO shall announce the date/s of application by posting notices in the Provincial and Municipal Offices as well as the PENRO and CENRO Offices which have jurisdiction over the area;
- 7.2 An application for a permit shall be filed with the PENRO together with the supporting papers required in the preceding Section and application fees specified under Section 6 below;
- 7.3 The cooperative or people's organization may apply for no more than four (4) People's Mining Blocks but not to exceed twenty (20) hectares.

- 7.4 A small Scale Quarry Application Committee composed of the Governor of Bulacan as Chairman, the PENRO, the representative of the Director, the representative of the RTD, the representative of the 3rd Congressional District of Bulacan, the representative of a locally-based non-government organization (NGO) to be selected by the other six members, shall oversee the evaluation of the applications for small scale quarry permit.

SECTION 8. *Application Fee.* A non-refundable application fee of One Thousand Pesos (₱ 1,000.00) shall accompany the application for a permit for each 5-ha block or fraction thereof. The same fee shall be required in case of application for renewal. Failure on the part of the applicant to pay the aforesaid fees shall be a ground not to accept the application. The date appearing in the Official Receipt evidencing payment of the application fee shall be considered as the official date of the filing of the application.

SECTION 9. *Size of Area.* The area that may be covered by Small-Scale Quarry Permit shall be as follows:

- 9.1 1/16 of one (1) subdivided meridional block of 7.5 seconds of latitude and 7.5 seconds of longitude containing an area of five (5) hectares, more or less or a fraction thereof as appearing in the Mineral Reservation Map; and
- 9.2 1/4 of one (1) meridional block of 15 seconds of latitude and 15 seconds of longitude containing an area of twenty (20) hectares, more or less or a fraction thereof as appearing in the Mineral Reservation Map.

SECTION 10. *Award of Area Block Applied For.* In the event that there are two or more qualified applicants for a mining block, the Secretary or his duly authorized representative shall conduct a raffle to select the awardee.

SECTION 11. *Limitation of Number of Permit.* An applicant may be awarded not more than one (1) permit covering one block as specified in the preceding Section.

SECTION 12. *Duration of the Permit.* The term of the permit shall be for a period of five (5) years from date of issuance, renewable for the like period but not to exceed twenty five (25) years.

SECTION 13. *Commercial Operation.* The permittee shall within twelve (12) months from the date of issuance of the permit, place the area into actual commercial production and shall submit verified quarterly production reports in the prescribed form within ten (10) days after the end of each quarter; Provided, that failure to place the area in actual production within the period aforementioned without justification shall be sufficient cause for the cancellation of the permit.

ARTICLE 4

FISCAL AND REGULATORY PROVISIONS FOR SMALL-SCALE QUARRY PERMITS

SECTION 14. *Payment of Tax.* The permittee shall pay the excise tax on quarry resources in accordance with the provisions of the National Internal Revenue Code.

SECTION 15. *Duties of Permittee.* Before any quarry resources or materials are removed, transported or disposed of from the locality where same are mined or quarried, it shall be the duty of the permittee to first notify the CENRO concerned on a form prescribed for the purpose and to apply for a Certificate of Origin of Mineral Ores (COMO) covering the quarry resources to be removed, transported or disposed of.

The permittee shall likewise abide by the terms and conditions enumerated in Article 7 of this Order.

SECTION 16. *Requisites for Issuance of COMO.* No COMO shall be issued for the removal, transport and disposition of quarry resources unless the same have been inspected by the CENRO and the proper excise tax due thereon shall have been paid beforehand, the official receipt of which shall be indicated on the COMO. Any quarry resources removed, transported or disposed of without compliance with these requisites shall be confiscated in favor of the Government.

SECTION 17. *Occupation Fee.* Upon the grant of the permit, the permittee shall pay to the Municipal Treasurer concerned an occupation fee covering his permit area in the amount of One Hundred Pesos (₱ 100.00) per hectare or a fraction thereof per calendar year. Subsequent payments shall be due within thirty (30) days of the succeeding years during the term of the permit.

ARTICLE 5

PRODUCTION SHARING AGREEMENT

SECTION 18. *Area for Mineral Production Sharing Agreement.* The Production Sharing Blocks as defined in the Mineral Reservation Map shall be opened to Production Sharing Agreement.

SECTION 19. *Application for Production Sharing Agreement.* Any corporation or partnership may apply for a Production Sharing Agreement in accordance with Executive Order No. 279 and its implementing guidelines.

SECTION 20. *Where, When and How to File.*

20.1 Application for a Production Sharing Agreement shall be filed with the Regional Executive Director.

20.2 Within thirty (30) days from the publication of this Order, the Regional Executive Director shall announce the date/s of application and bidding by publishing a notice in a newspaper of national circulation which date/s shall not be earlier than thirty (30) days from the date of publication of said notice.

20.3 Corporations may apply for no more than five (5) Production Sharing Blocks to contain an aggregate area not exceeding one hundred (100) hectares.

SECTION 21. *Application Fee.* The applicant shall pay a non-refundable application fee of Five Thousand Pesos (₱ 5,000.00) upon filing of the application for Production Sharing Agreement.

SECTION 22. *Maximum Area that May be Awarded.* The applicant may be awarded an area not exceeding five (5) subdivided blocks of twenty (20) hectares each or a maximum of one hundred hectares (100) provided that these blocks shall be won by bidding. In case of failure by bidding, the area shall be awarded through negotiation.

SECTION 23. *Mode and Means of Bidding.*

23.1 All prospective bidders shall undergo a pre-qualification process to determine their technical and financial capability to develop and utilize the quarry resources. A committee to be headed by the Regional Technical Director shall oversee the pre-qualification process;

23.2 Bidding shall be conducted on a block by block basis. The winning bid shall be the proposal submitting the highest result based on the following formula:

Winning Bid = BS (in %) x GMAPO (in cu. m.) x P (in ₱/cu.m.)

where:

BS	=	Proposed basic share of the government expressed in percentage
GMAPO	=	Guaranteed Minimum Annual Production Output, in cu.m.
P	=	Average price of raw marble block in ₱/cu. m. in Manila fixed by the MGB

23.3 A PSA Bids and Negotiations Committee composed of the RED as Chairman, the Director, the RTD, a representative each from 3rd Congressional District of Bulacan, the Department of Trade and Industry, Department of Finance, and the Governor of Bulacan as members, shall oversee the bidding or negotiation. The Committee shall determine, among others, the technical and financial capability of the applicants, the moral standing and business integrity of the members of the company's incorporators.

23.4 The opening of sealed bids and the announcement of winning bidders shall be conducted by the PSA Bids and Negotiations Committee.

ARTICLE 6

FISCAL AND REGULATORY PROVISIONS
FOR PRODUCTION SHARING AGREEMENTS

SECTION 24. *Payment of Tax.* The Contractor shall pay the excise tax on quarry resources in accordance with the provisions of the National Internal Revenue Code.

SECTION 25. *Government Share.* In addition to the tax mentioned above, the Contractor shall pay to the DENR thru the PENRO the government share from the quarry resources or materials actually produced or removed from the quarry area computed as follows:

$$GS = BS (\text{ in } \%) \times APO (\text{ in cu. m. }) \times P (\text{ in } \text{P} \text{ cu. m.})$$

where:

- GS = Government share in Peso
- BS = Basic share expressed in percentage initially fixed in the bid proposal
- AP0 = Actual Production Output, in cubic meters
- P = Price of raw marble block/cubic meter initially fixed in the bid proposal of the winning contractor or the price subsequently fixed or adjusted by the DENR and the Contractor as provided below.

For purposes of determining the fair market price of the raw marble produced or removed from the quarry area on which the government share shall be computed, the price fixed in the winning bid shall be updated and adjusted by the PENRO and the Contractor within six (6) months from the signing of the Agreement and every six (6) months thereafter, provided, that if no agreement is reached on a common price, the government has the option to receive its share in kind.

SECTION 26. *Time and Manner of Payment of the Government Share.* The government share shall be due and payable on the actual production output of the quarry upon removal of the quarry resources or materials from the locality where they were mined or quarried.

SECTION 27. *Duties of the Contractor.* Before any quarry resources or materials are removed, transported or disposed of, it shall be the duty of the Contractor to do the following:

- a) Notify the CENRO concerned on a form to be prescribed for the purpose;
- b) Pay the tax due to the Bureau of Internal Revenue and the government share to the PENRO;
- c) Apply for a COMO covering the quarry materials to be removed, transported or disposed of.

The Contractor shall likewise abide by the terms and conditions enumerated in Article 7 of this Order.

SECTION 28. *Requisites for Issuance of COMO.* No COMO shall be issued by the CENRO unless the quarry materials or resources have been inspected and the proper tax and government share shall have been paid beforehand, the official receipts of which shall be indicated on the COMO. Any quarry resources or materials removed, transported or disposed of without compliance with these requisites shall be confiscated.

SECTION 29. *Guaranteed Minimum Annual Production Input.* To ensure optimum production, it shall be mandatory for the contractor to pay the government share based on the guaranteed minimum annual production output fixed by the Secretary irrespective of whether said minimum production was attained during the year. It shall be the duty of the CENRO to determine and compare the actual production of the Contractor during a given year against the guaranteed minimum production output and to make a report thereon to the PENRO within fifteen (15) days after the end of the year to enable the latter to determine if the Contractor is still liable for any deficiency in the government share. At the beginning of each year, no COMO shall be further issued to the Contractor unless any deficiency in the government share shall have been properly paid by the concerned Contractor.

SECTION 30. *Occupation Fee.* The contractor shall pay to the Municipal Treasurer concerned an annual occupation fee of One Hundred Pesos (P 100.00) per hectare or fraction thereof upon signing of the agreement. Subsequent payments shall be due within the first thirty (30) days of the succeeding years during the term of the agreement.

ARTICLE 7 GENERAL PROVISIONS

SECTION 31. *Conditions Under Which Permits/Agreements Are Issued.* Permits/agreements issued under these guidelines shall be subject, among others, to the following terms and conditions:

- 31.1 The permit/agreement shall be for the exclusive use of the permittee/contractor and is non-transferable and non-negotiable;
- 31.2 The permit/agreement may be suspended or cancelled at any time by the Secretary or his duly authorized representative when public interest, welfare, ecological, mine safety, health and sanitation reasons and peace and order conditions so requires or demands or upon failure of the permittee/contractor to comply with the other terms and conditions stated in the permit/agreement;
- 31.3 The statements made in the application and those made later in support thereof shall be considered as conditions and essential parts of the permit/agreement and any misrepresentation contained therein shall be a cause for the suspension or cancellation of the permit/agreement;

- 31.4 The removal or extraction of quarry materials under the permit/agreement shall be confined within the area specified therein, the boundaries of which, according to the application, are established on the ground with prominent marks;
- 31.5 The permit/agreement shall not include the destruction or cutting of trees;
- 31.6 The permittee/contractor shall comply with pertinent rules and regulations on environmental protection and conservation;
- 31.7 The permittee/contractor shall abide with whatever provisions the Department of Environment and Natural Resources and the Provincial Government of Bulacan may adopt for the development of the mineral reservation;
- 31.8 The permittee/contractor shall file under oath at the end of each quarter a detailed production and financial report to the Regional Executive Director;
- 31.9 The permittee/contractor shall pay all taxes, fees, and excise taxes due the government or any such taxes or fees as any hereafter be provided by law;
- 31.10 The permittee/contractor shall compensate the owners or occupants of private lands, if any there be, an amount to be agreed upon by the landowner and the permittee/contractor. In case of disagreement, the RTD shall determine the just and reasonable compensation due the landowner; and
- 31.11 The permittee/contractor shall abide by the Mines Safety Rules and Regulations.

SECTION 32. *Approval of the Permit/Agreement.* Upon compliance with all the requirements under these guidelines, a permit/agreement containing the principal rights and obligations of the parties shall be issued by the Secretary upon recommendation of the Regional Executive Director.

SECTION 33. *Rights Acquired Under the Permit/Agreement.* A permit/agreement duly approved and granted under the provisions of these guidelines confers upon the permittee/contractor from the grant thereof and during its terms and renewal, if any, the exclusive privilege to explore, develop and utilize the mineral commodity for which the permit/agreement was granted.

SECTION 34. *Easement Rights.* When quarry area block/s are so situated that for purposes of more convenient exploration, development and utilization thereof by any permittee/contractor, it is necessary to build, construct or install on the quarry area blocks occupied or under a small scale quarry permit/mineral production sharing agreement, roads, transways, electric transmission, telephone or telegraph lines, aerial transportation thereto or therefrom, dams and their normal flooded areas, ditches, canals, pipelines, flumes, cuts, shafts or tunnels to drain or convey water, ore, and wastes therefrom, which are hereby declared to be for a general purpose, use or benefit, the concerned permittee/contractor upon payment of just compensation to the affected entity shall be entitled to the right to enter and occupy/use the said portion of quarry area blocks.

The rights provided by this provision shall be consistent with the conceptualized development plan of the reservation which shall also conform to the actual development plan of the area which the DENR and the Provincial Government of Bulacan may continually adopt for the overall development of the reservation.

SECTION 35. *Inspection of Operations.* The Secretary, Director, Regional Executive Director, Regional Technical Director, PENRO, CENRO or their duly authorized representatives shall have the authority to inspect any operation of the permittee/contractor at all reasonable times and to examine the records including books of accounts of said operations and to carry out any other inspection authorized by law or regulations. The permittee/contractor shall furnish such officers or representatives with all technical and actual data specified in these guidelines and shall give them ample facilities and assistance to discharge their duties as such. For this purpose, the permittee/contractor shall be under obligation to keep the permit area open at all reasonable times for such inspection.

ARTICLE 8

PENAL PROVISIONS

SECTION 36. *Theft of Minerals.* Any person who, without a permit/agreement granted under existing laws, rules and regulations, extract, remove or dispose of minerals within the reservation or from the area covered by the applications/permits/agreements held or owned by other persons, shall be deemed to have stolen the said minerals. He shall, upon conviction, be penalized in accordance with applicable provisions of existing laws, besides paying compensation for the minerals removed, extracted and disposed of the royalty and the damages caused thereby

SECTION 37. *Ground for the Cancellation of the Permit/Agreement.* The permit/agreement may be cancelled by the Secretary on any of the following grounds:

- 37.1 For public interest;
- 37.2 Non-payment of royalty and/or occupation fee within the prescribed period;
- 37.3 Non-submission of the required reports within the prescribed period; and
- 37.4 Violation of any of the terms and conditions of the permit/agreement.

SECTION 38. *Effectivity.* This Administrative Order shall take effect fifteen (15) days after its publication in a newspaper of national circulation.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on December 28, 1989.

(Small Scale Quarry Permit Form Omitted)
(Production Sharing Agreement Form Omitted)