

DENR ADMINISTRATIVE ORDER
NO. 57

**SUBJECT: Guidelines on Mineral Production Sharing Agreement
Under Executive Order No. 279.**

Pursuant to Executive Order No. 279 of 25 July 1987 and in line with the policy of the Government of harnessing the country's mineral resources to hasten economic recovery and promote sustainable national development in order to raise the quality of life of the people, the following rules and regulations governing the exploration, development and utilization of mineral resources are hereby promulgated:

ARTICLE 1

TITLE, POLICIES AND OBJECTIVES

- 1.1 *Title.* This Administrative Order shall be known as the "*Guidelines on Mineral Production Sharing Agreement (MPSA)*".
- 1.2 *Policies and Objectives.* The policies and objectives of the Government on Mineral Resources shall be:
 - (a) To promote equitable access to, economically efficient development of, and fair sharing of benefits and costs derived from the exploration, development and utilization of minerals;
 - (b) To enhance the contribution of mineral resources to economic recovery and sustained national development particularly in developing host rural communities as well as local science and technology resources;
 - (c) To promote the national development and conservation of mineral resources under full control and supervision of the State; and
 - (d) To enable the government to recover full economic rent and/or its equitable share in the production and utilization of minerals.

ARTICLE 2

DEFINITIONS

The terms included in this Article shall have their meaning as follows:

- “*Agreement*” means a Production Sharing Agreement entered into pursuant to Executive Order No. 279 and these Guidelines.
- 2.2 “*Associated Minerals*” means ore minerals which occur together with the principal ore mineral.
- 2.3 “*Calendar Year*” means the period consisting of twelve (12) consecutive months starting with the first of January, while “*Calendar Quarter*” means a period consisting of three (3) consecutive months starting with the first day of January.
- 2.4 “*Commercial Production*” means production of sufficient quantity of minerals to sustain economic viability of mining operations as specified in the approved Medium Term Work Program.
- 2.5 “*Contract Area*” means the area within the jurisdiction of the Republic of the Philippines which is the subject of the Production Sharing Agreement, as diminished pursuant to the relinquishment obligations of the Contractor in proper case, delimited by longitude and latitude.
- 2.6 “*Contractor*” means the qualified person who is awarded the Production Sharing Agreement.
- 2.7 “*Declaration of Mining Feasibility*” means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods, including the Mine Development plan for a period of three (3) years in the case of Integrated Agreements.
- 2.8 “*Department*” means the Department of Environment and Natural Resources
- 2.9 “*Environment*” means physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odors, tastes and biological factors of animals and plants and the social factors of aesthetics.
- 2.10 “*Exploration*” means the examination and investigation of lands and offshore areas supposed to contain valuable minerals by drilling, trenching, shaft sinking, tunneling, test pitting and other means for the purpose of probing the presence of mineral deposits and the extent thereof.
- 2.11 “*Foreign Currency*” means any currency other than the Philippine peso.

- 2.12 *“Government”* means the Government of the Republic of the Philippines or any of its agencies or instrumentalities.
- 2.13 *“Gross Output”* means the actual market value of minerals or mineral products derived from mining operations as defined under the National Internal Revenue Code (Presidential Decree No. 1158, as amended)
- 2.14 *“Mine Development”* refers to steps necessarily taken to reach an orebody or mineral deposit so that it can be mined.
- 2.15 *“Minerals”* means all naturally occurring inorganic substances in solid, liquid, gas or any intermediate state.
- 2.16 *“Mineral Products”* means things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing.
- 2.17 *“Mining”* means to extract and remove minerals including operations necessary for the purpose.
- 2.18 *“Mining Area”* means a portion of the Contract Area selected for mining development and production, delimited by longitude and latitude.
- 2.19 *“Mining Operations”* means mineral exploration, development, production and all other operations necessary to discover, develop, and extract minerals.
- 2.20 *“Ore”* means minerals of rock extracted for profit.
- 2.21 *“Ore Mineral”* means a mineral that can be extracted from ore and contributes to the value of the ore.
- 2.22 *“Peso”* means the currency that constitutes legal tender in the Philippines.
- 2.23 *“Pollution”* means any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the Environment by discharging, emitting, or depositing wastes so as to materially affect any beneficial use adversely, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants, and “pollute” has a corresponding meaning.

- 2.24 “*Qualified Person*” means any Filipino individual, of legal age, or partnership, corporation, cooperative, government corporation, association or juridically distinct entity at least sixty percent (60%) of whose capital is owned by Filipino citizens.
- 2.25 “*Secretary*” means the Secretary of the Department of Environment and Natural Resources.
- 2.26 “*Work Program*” means a document which presents the plan of major mining activities and the corresponding expenditures and budget of a Contractor in its Contract Area during a given period of time, including the plan and expenditures for environmental protection and rehabilitation, development of host and neighboring communities and of local geoscience and mineral technology.

ARTICLE 3

NATURE, TYPES AND AWARD OF PRODUCTION SHARING AGREEMENT

3.1 *Nature of Production Sharing Agreement*

- a. It is an agreement wherein the Government grants the Contractor the exclusive right to conduct mining operations within, but not title over, the Contract Area and shares in the production whether in kind or in value as owner of the minerals therein. The Contractor provides all the necessary financing, technology management and personnel.
- b. The term of the Production Sharing Agreement shall be for a period of twenty five (25) years starting from execution and renewable for another twenty five (25) years.

3.2 *Types of Production Sharing Agreements*

Production Sharing Agreements shall be classified on the basis of the integration of activities and size. Such classification shall determine the application of specific rules and the authority for awarding contracts and estimates of Government share in production.

- a. *Integration of Activities.* There are two types under this category:
 - i. *Integrated Agreement.* Such agreement embraces all activities from Exploration through Production.
 - ii. *Simple Agreement.* This agreement embraces all mining activities after the Exploration Period.
- b. *Size.* Agreements classified on this basis are:

- i. **Large.** These agreements shall cover mining areas with projected investments of at least One Hundred Million Pesos (P100 million) in 1988 base price. Negotiation of terms for these Contracts shall be done by the Negotiating Panel.
- ii. **Medium Scale.** These agreements shall cover mining areas with projected investments of less than One Hundred Million Pesos (P100 million). Negotiation for these types shall be done by a Subcommittee of the Negotiating Panel created by the Secretary.

3.3 **Available Areas** — The following areas are available for Production Sharing Agreements:

- a. Lands of the public domain and alienable and disposable lands not covered by valid and existing Mining Lease and similar Agreements;
- b. Civil and other reservations where the Department retains jurisdiction;
- c. Lands covered by expired/cancelled Mining Lease Agreements;
- d. Private lands; and
- e. Offshore Areas within the Philippine Exclusive Economic Zone.

3.4 **Maximum Onshore Area Allowed**

The maximum area for Production Sharing Agreements shall be:

- i. In any one province:
 - a) To individuals: Five Hundred (500) hectares;
 - b) To mining partnerships, corporations, and juridical entities: Five Thousand (5,000) hectares.
- ii. In the entire Philippines:
 - a) To individuals: One Thousand (1,000) hectares;
 - b) To partnerships, corporations and juridical entities: Ten Thousand (10,000) hectares.

The foregoing provisions, notwithstanding, the Secretary may allow an area not exceeding Ten Thousand (10,000) hectares in any one province depending upon the nature of the deposit, the kind of minerals located, and other circumstances inherent in the mining operations justifying the grant.

3.5 *Award of Production Sharing Agreement*

The award of production sharing agreement shall be by bidding in areas previously explored and determined to be economically viable for Mining Operations. In all other cases and in case of failure of bidding, the award shall be by negotiation.

- a. *Bidding* – Prospective bidders shall be invited to pre-qualify to bid over the subject area by way of public announcement in at least two (2) newspapers of general circulation. The Notice of Invitation for pre-qualification shall run once a week for three (3) consecutive weeks for new bids and once a week for two (2) consecutive weeks in the case of re-bidding. In addition, a copy of the Notice shall be posted at the Department and its Regional, Provincial and Community offices where the area being advertised is located.

The Notice shall specify, among others, the location, area, and the date, time and place of submission of pre-qualification requirements. Pre-qualified prospective bidders shall, upon payment of the required fees, be provided with instructions to bidders, the terms and conditions of the Agreement and other documents to guide and inform them in detail of the requirements, terms and conditions of the bidding.

- b. *Negotiation* – Proposals for a negotiated Agreement shall be submitted to the Office of the Secretary, DENR, through the appropriate Regional Office. The proposal shall specify the location and area of the proposed Contract Area; the Mineral or Minerals to be explored, developed and produced; the justification for the negotiation; the proposed Exploration Work Program and Budget; proposed share of the Government; and such other matters as may guide the Secretary in the appreciation and evaluation of the proposal as expressed in Article 7 hereof.

Minimum Requirements

Regardless of whether the Agreement shall be awarded by bidding or negotiation, the following minimum requirements shall be submitted by prospective bidders and proponents:

- a. *For Individuals*
 - i. **Certified photo copies of Income Tax Returns for the immediately preceeding three (3) years;**
 - ii. **Proof of sufficient capital and credit lines;**
 - iii. **Sworn statement that bidder or proponent is not a dummy of any person or entity;**
 - iv. **Authorization to the Secretary or his representatives to verify submitted information.**

- b. *For corporations, partnerships, and associations:*
- i. Certified photo copy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) or the concerned authorized government agency;
 - ii. Certified photo copy of the Articles of Incorporation, Partnership/Association and By-Laws;
 - iii. Personal data sheets of the current directors and officers, including their nationalities, bio-data, and relevant experiences, or annual report;
 - iv. Audited Financial Statements for the immediately preceding three (3) years, if applicable;
 - v. Proof of sufficient capital and credit lines;
 - vi. Authorizations to the Secretary or his representative to verify submitted information.

ARTICLE 4

STAGES OF MINING OPERATIONS

Exploration, development and utilization consist of the following physically identifiable periods: Exploration, Development and Construction and Operation and Production. Description and requirements under each of these periods are set down below.

4.1 *Exploration Period*

For Integrated Mineral Production Sharing Agreement, the Exploration Period shall commence upon effectivity of the Contract, and actual activities in the Contract Area shall commence not later than three (3) months after signing the Contract. The Exploration Period shall be for at most two (2) years, renewable for another two (2) years, subject to faithful compliance with the terms of the Contract in the previous years and reasonable expectation of success during the Extension.

4.1.1 The requirements during this period are:

- a. As basis for negotiation, the prospective Contractor must submit to the appropriate panel or sub-committee for examination, evaluation and approval, a sufficiently detailed Exploration Work Program which indicates clearly the schedule of activities including the objectives, specific targets and outputs expected, and the budget. Such Exploration Work Program shall cover the entire duration of the Exploration Period, excluding extension. Any request for extension must be accompanied by a separate Exploration Work Program.

- b. The Contractor shall submit Annual Reports which shall include information on the technical aspects of the operations as well as financial expenditures on various items of activities to serve as basis for evaluation of performance and compliance by the Contractor.
- c. The Contractor shall submit a final report at the end of the Exploration Period which shall in the form and substance comparable to published professional reports of respected international institutions and shall incorporate all the findings in the Contract Area, including locations of samples, assays, chemical analysis, and assessment of the mineral potential. Such report shall also include complete, detailed expenditures incurred during the Exploration Period.
- d. The Contractor must spend the amount necessary to accomplish the annual Work Program.

4.1.2 *Mining Feasibility*

During the Exploration Period, the contractor shall conduct feasibility studies for any part of the Contract Area as warranted. Within this period, the Contractor shall submit a Declaration of Mining Feasibility with a Work Program for development for the next succeeding three (3) years indicating therein the Mining Area. Areas not delineated as part of the Mining Area shall be deemed relinquished in favor of the Government.

Failure of the Contractor to submit a Declaration of Mining Feasibility during the Exploration Period, shall be considered a substantial breach of the Agreement.

4.2 *Development and Construction Period*

Upon submission of the Declaration of Mining Feasibility for an Integrated Agreement or upon signing of the Agreement in case of a Simple Agreement the Contractor shall complete the development of the mine including construction of production facilities within thirty six (36) months, subject to such extension based on justifiable reasons as the Secretary may approve.

4.3 *Operating Period*

Upon completion of the construction of the facilities, the Contractor shall within thirty (30) days thereafter submit a Medium Term Work Program for a period of three (3) years. The Contractor shall commence Commercial Production immediately upon the approval of the said Medium Term Work Program. Failure of the Contractor to commence Commercial Production within the period shall be considered a substantial breach of the Agreement.

Minimum requirements under this Period are:

- a. The Contractor shall submit to the Government Medium Term Work Program covering a period of three (3) years each which shall be submitted not later than thirty (30) days before the expiration of the period covered by the previous Medium Term Work Program.
- b. The Contractor shall conduct Mining operations and other activities for the duration of the Operating Period in accordance with the duly approved Medium Term Programs and any modification thereof approved by the Secretary.

The Contractor shall submit to the Secretary the following reports:

- i. *Quarterly Report*, beginning with the first quarter following commencement of the Operating Period, which shall include:

The tonnage of production in terms of ores, concentrates, and their corresponding grades and other types of products; value and destination of sales or exports and to whom sold; terms of sales, and expenditures.

- ii. *Annual Report*, beginning with the year when the Operating Period commenced which shall include:

(A) The total tonnage of ore reserves whether proven, probable, or inferred; the total tonnage of ores, kind-by-kind, broken down between tonnages mined, tonnages transported from the mines and their corresponding destination, tonnages stockpiled in the mine and elsewhere in the Philippines, tonnages sold or committed for export (whether actually shipped from the Philippines or not), tonnages actually shipped from the Philippines (with full details as to purchaser, destination and terms of sale), and if known to the Contractor, tonnages refined, processed or manufactured in the Philippines with full specifications as to the intermediate products, or final products and of the terms at which they were disposed;

(B) Work accomplished and work in progress at the end of the year in question with respect to all of the installations and facilities related to the exploitation program, including the investments actually made or committed.

(C) Profile of Work Force, including Management and Staff, stating particularly their nationalities, and for Filipinos their place of origin (e.g. barangay, town, province, region).

- (D) Ownership of operating Company or Contractor, particularly with respect to nationality.

All reports shall be submitted in triplicate, thirty (30) days after the end of each quarter, and sixty (60) days after the end of each year, respectively.

- d. The Contractor may make expansions, modifications, improvements and replacements of the mining facilities and may add new facilities, as the Contractor shall consider necessary for the operations, provided such plans shall be embodied in appropriate Work Program approved by the Secretary.

4.4. *Regulatory Fees*

There shall be due the Government for regulatory purposes the following fees during the exploration period:

First Year – Ten Pesos (P10.00) per hectare per year

Second and subsequent years -- the amount per hectare per year for the initial year plus a yearly increment of Five Pesos (P5.00).

ARTICLE 5

SHARING IN MINERAL PRODUCTION

5.1 *Government Share in the Production*

The share of the Government shall be composed of a basic share on production or gross output plus a share in windfall profits which shall be determined through negotiations taking into account the following considerations: a) capital investment; b) risks involved; c) contribution to the economy; d) and such other factors as will help in determining a sharing that is fair and equitable to both parties. The basic share shall be expressed as percent of production or gross output.

5.2 *Government Share in Windfall Profits*

The Government share in windfall profits, expressed in money terms shall be calculated according to the following formula:

$$R_w = \text{NIAT} (W1 - W) F$$

where R_w is Government share in windfall profits;

NIAT is net income after deducting income tax, as determined on the basis of generally acceptable accounting principles practiced in the industry;

W1 is the actual return on investment for the period computed as the ratio of net income after tax to total investments.

W is the reference return on investment to be negotiated.

F is the proportionate share of the government in the windfall profit to be negotiated.

- 5.3 The Contractor shall insure that any mining, and/or treatment of ore prior to shipment shall be conducted in accordance with generally accepted international standards which are economically and technically feasible, and in accordance with such standards the Contractor shall use all reasonable efforts to optimize the mining recovery of ore from proven reserves and metallurgical recovery of minerals from the ore provided it is economically and technically, feasible to do so, and shall submit evidence to the Department of compliance with this undertaking. Failure of Contractor to optimize recovery may be cause for Government to recover previous losses and to demand for the use of such optimal method.
- 5.4 The Government shall have the right to review and evaluate any or all documents, data and other types of information about the production, sales and transportation of the minerals covered by the Agreement for purposes of determining its proper share in production including taxes and related fees and demand payments or reimbursements for amounts which should have been paid but not paid for whatever reasons, within five years.
- 5.5 In cases where bidding applies, the same formula in computing the share in windfall profit shall apply.
- 5.6 The share of the associated minerals shall be added to the value of the principal minerals in computing the share of the Government.
- 5.7 The Contractor shall endeavor to obtain the best achievable price for its production and pay the lowest available marketing commissions and related fees. Contractor shall seek to strike a balance between long-term and short-term sales comparable to policies followed by independent producers in the international mining industry. Insofar as Contractor's Affiliates are concerned, prices shall be at arm's-length standard.
- 5.8 The share of the Government on the Minerals produced under the agreement shall be computed periodically and shall be due and payable at such intervals as may be agreed upon between the government and the contractor.

ARTICLE 6

RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

The Contractor shall have the following rights and obligations:

RIGHTS :

- 6.1. To conduct mining operations on the Contract Area in accordance with the terms and conditions of the Agreement;
- 6.2. Exclusive possession of the Contract Area subject to surface an easement rights.
- 6.3 To use and have access to all declassified geological, geophysical, drilling, production and other information held by the Government or any agency or enterprise thereof now or in the future relating to the Contract Area;
- 6.4 To sell, assign, transfer, convey, encumber or otherwise dispose of all its rights, interests and obligations. under the Agreement subject to the approval of the Government;
- 6.5. Subject to applicable laws and regulations, to employ or bring into the Philippines foreign technical and specialized personnel (including the immediate members of their families), as may be required in the operations of the Contractor, provided, that if the employment connection of such foreign persons with the Contractor ceases, the applicable laws and regulations on immigration shall apply to them and their immediate families;
- 6.6 Enjoy, subject to pertinent laws, rules and regulations and the rights of third parties, the use of timber, water and other natural resources in the Contract Area;
- 6.7 To repatriate capital and remit profits, dividends and interest on loans, subject to existing laws, rules and regulations;
- 6.8 To import, when necessary, all equipment, spare parts and raw materials required in the operations in accordance with existing rules and regulations.

OBLIGATIONS:

- 6.9 Perform all Mining Operations in the Contract Area in accordance with the most efficient and internationally-accepted mining and engineering practices providing all the necessary services, technology and financing in connection therewith;
- 6.10 Perform all activities within the periods expressed in the Production Sharing Agreement, Plans and Work Programs
- 6.11 Keep accurate technical records about the operations as well as financial and marketing accounts and make them available to Government representatives authorized by the Secretary for purposes of assessing performance and compliance of the Contractor with the terms of the Contract; however, authorized representatives of other Government agencies may also have access to such accounts in accordance with existing laws, rules and regulations;

- 6.12 Hold the Government free and harmless from claims of all kinds, as well as demands and actions arising out of accidents or injuries to persons or property caused by the Mining Operations of the Contractor and indemnify the Government for any expenses or costs incurred by the Government by reason of any such claims, demands or actions;
- 6.13 Recognize and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands.
- 6.14 Pay taxes or obligations in accordance with existing laws, rules and regulations.
- 6.15 Relinquish to the Government after the Exploration Period, any portion of the Contract Area which shall not be necessary for Mining Operations and not covered by any Declaration of Mining Feasibility.
- 6.16 Furnish all materials, labor, equipment and other installations that may be required for carrying on all Mining Operations. To the maximum extent compatible with efficient operations, the Contractor shall give preference to products and services produced and offered in the Philippines of comparative quality. In particular, the Contractor shall give preference to Filipino construction enterprises and use building which can be constructed by using materials and skills available in the Philippines, employ Filipino subcontractors for road construction and transportation, and purchase Philippine household equipment, furniture and food.
- 6.17 Contribute to national development by helping develop the host and neighboring communities of the Contract Area, local geoscience, and mining technology, and mitigating adverse environmental effects of mining operations;

Development of Host and Neighboring Communities

- a. The Contractor shall coordinate with proper authorities in providing development plan for the host and neighboring communities.
- b. The Contractor shall help create self-sustaining, income generating activities, such as, but not limited to, reforestation and production of goods and services needed by the mine.
- c. The Contractor shall give preference to Filipino citizens, particularly residents of its host and neighboring communities, in hiring personnel for its operations. If the necessary skills and expertise are currently not available, the Contractor must prepare and undertake a training and recruitment program within the first year of commercial production at its expense.

Development of Geoscience and Mineral Technology

- d. The Contractor, in the course of its operations, shall produce geological, geo-physical, chemical and other types of maps and reports in scale, format

and nomenclature consistent with internationally accepted practices and standards.

- e. The Contractor shall systematically keep the data generated from the Contract Area such as cores, assays and other related information, including economic and financial and shall make them accessible to students, researchers, and other persons responsible for developing geoscience and mineral technology after declassification.

Environmental Protection and Industrial Safety

- f. The Contractor shall prepare a plan of mining so that its damage to the environment will be minimal. To the extent possible, control of pollution and the transformation of the mined out areas or materials into alternative economically and socially productive forms must be done simultaneously with mining. An appropriate Environmental Impact Statement (EIS) must be made according to the form prescribed by property government authorities and shall be a required component of the Feasibility Study of the mine. These activities must be reflected clearly in the appropriate Work Program.
- g. The Contractor shall conform to laws and regulations regarding, among others, labor, safety, demarcation of the Contract Area, and non-interference with the rights of other mining operators.

ARTICLE 7

GOVERNMENT CONTROL AND SUPERVISION

7.1 General Principle

The Government shall award mineral resources to parties which it deems most capable of conferring optimal benefits to the Filipino people, which includes, among others, the determination of technical and financial competence of the Contractors, the terms and conditions of the Agreement, particularly those that relate to the economic, social, scientific and technological development of the country or any of its constituency, and the Area to be subject to the Agreement. The Government shall exercise its control and supervision function through specialized agencies and instruments.

- 7.2 The Secretary shall be assisted in managing mining agreements by the following bodies:

(a) *Negotiating Panel*

A body constituted by virtue of Presidential Administrative Order No. 68 of 1988, chaired by the Secretary, consisting of representatives from DENR, Mines and Geosciences Bureau, NEDA, Dept. of Finance, Central Bank and

the Dept. of Trade and Industry, and assisted by high level consultants in various aspects of mining such as mining law, finance, mineral economics, geology and mining. It is tasked to screen prospective Contractors, conduct negotiations and recommend awards to successful Contractors for approval of the President.

For negotiating contracts involving investments of less than One Hundred Million Pesos (P100 million), the Secretary shall constitute a Subcommittee chaired by him and with members drawn from the members of the Panel or from other units under the Department.

When bidding is necessary, the Secretary shall constitute a Bidding Committee and designate the members from competent officials on the Government.

b. *Technical and Administrative Review Committee*

The Secretary shall constitute a Technical and Administrative Review Committee chaired by the Director of the Mines and GeoSciences Bureau and shall designate its members from the Department, the academe and the private sector. It shall have the following functions:

- i. Review and evaluate every twelve (12) months or as the need arises, the performance and compliance of each Contractor.
- ii. Deliberate on problems related to or arising from the operation of mining contracts, and to recommend specific course of actions to the Secretary or President.
- iii. Monitor and evaluate local and international developments likely to affect the behavior and performance of the local mining operations and Contractors.
- iv. Determine the proper amounts due the Government in the form of share in production and other fees or charges provided in the Contract. It shall also determine if the minimum investments required of each Contractor are complied with, and recommend when to release bond deposits.
- v. Review, analyze and evaluate the report of the Regional Monitoring Group.
- vi. Undertake or contract in-depth researches to support the needs of the Secretary and the Negotiating Panel with data and related information relevant to the operations of mining contracts or about developments in local and world mineral commodity markets, particularly supply, demand, prices, market organizations, technology and trends in policies.

c. *Regional Monitoring Group*

The Regional Monitoring Group, shall consist of the Regional Executive Directors of each region with members to be designated by the Secretary. It shall be tasked to undertake the following:

- i. Provide interested parties with information on areas open for disposal, information on various phases or aspects of mining, including the requirements in acquiring various types of mining rights as well as the forms and other documentary requirements, disapprovals.
- ii. To classify, collate, analyze and evaluate documents on hand to determine performance and compliance of Contractors with the terms of the Contract. It shall refer to the Secretary or other higher authorities documents for approval or disapproval, stating clearly the course of action recommended and the reasons therefor, such as Work Programs.
- iii. It shall keep track of the start and termination of the different phases of mining in any Contract Area, including areas relinquished and what requirements are already fulfilled or are still to be fulfilled; and what areas are put into Mining Production.
- iv. Conduct inspections of mining areas or operations when authorized by the Secretary, to determine performance of the Mining Operations and compliance with the terms of the Contract by the Contractor.
- v. Recommend to the Technical and Administrative Review Committee or to the Secretary for appropriate action specific problems or issues regarding poor performance which may be improved, noncompliance or violation of certain terms of the Contracts. Such recommendation must be clear and provided with the necessary information to make decisions.
- vi. Prepare or contract to prepare a systematic data base and cartographic system so that all existing contracts, including such information as location, contractor, mineral deposits and expiration date, among others, can be made available to the public at cost and can be updated as frequently as quarterly or semestrally.

7.3 Work Programs

All Work Programs including changes thereof which entail a variance of at least Twenty Per centum (20%) of the budget are subject to the approval by the Government. Work Programs shall set down, among others, the following:

Plans and budgets for all activities essential to the pursuit of efficient exploration, development, mining, marketing, transporting and the like. Plans, bud-

gets and activities for developing science and technology; environmental management and developing host and neighboring communities.

The Work Programs shall be acted upon within sixty (60) days upon submission; failure to act within this period by the Government shall result in automatic approval.

7.4 Reporting Requirements

The Contractor shall submit the following reports concerning its mining operations to provide the necessary information for monitoring and evaluating performance and compliance with the terms of the Contract:

- a. **Quarterly Reports.** These reports shall contain the following:
 - i. In the Production Period, details about mineral production, inventory, sales and expenditures, and such other information needed to determine the financial obligations of the Contractor. These reports shall be due within thirty (30) days from the end of each Calendar Quarter.
- b. **Annual Report.** The Contractor, during any stage, shall submit an annual report within sixty (60) days after December 31 of each year which states the major activities, achievements and expenditures during the year covered, including maps, assays, rock and mineral analyses and progress geological and similar reports during the exploration and development phases, and sales, levels of production, staffing pattern, ownership, profits, contracts during the Production Period and such other details which are material to evaluating the performance of the Operation as well as the Contractor's compliance with the terms of the Contract.
- c. **Final Report.** At the end of the Exploration and Development Periods, a Final Report must be submitted by the Contractor to the Government. Such report shall integrate all information in maps of appropriate scale and quality as well as in monographs or reports in accordance with international standards. This report must be due within six (6) months after the end of the exploration or development stages. Report at the end of the exploration is essentially geological and engineering in nature, whereas report at the end of Development essentially relates to technical and economic feasibility. A final report shall also be required in case of termination of a contract.
- d. **Confidentiality of Reports and other Information.** In general, reports data and other information provided by the Contractor (Government) shall be treated confidentially by the Government (Contractor) within five (5) years after submission, or after being declassified, whichever comes first. Provided that, release of such information may be done earlier than five years or before declassification upon issuance of a written authority by the Contractor (Government).

ARTICLE 8

FORCE MAJEURE, ARBITRATION AND TERMINATION

8.1 *Force Majeure*

Any failure by the Contractor or the Government to carry out any of its obligations under the Agreement shall not be taken as breach of contract or default if such failure is caused by force majeure, that party having taken all appropriate precautions, due care and reasonable alternative measure with the objectives of avoiding such failures and of carrying out its obligations under the Agreement.

For purposes of the Agreement, *force majeure* shall include among other things: war, insurrection, civil disturbance, blockade, sabotage, embargo, strike and other labor conflict, riot, epidemic, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, lighting, adverse order or direction of any Government *de jure or de facto* or any instrumentality or subdivision thereof, act of God or the public enemy, breakdown of machinery having a major effect on the operations and any cause (whether or not of the kind hereinbefore described) over which the affected party has no reasonable control and which is of such a nature as to delay, curtail or prevent timely action by the party affected.

8.2 *Consultation and Arbitration*

- a. The Government and the Contractor shall consult with each other in good faith and shall exhaust all available administrative and other similar remedies to settle any disagreement or dispute before resorting to arbitration.
- b. Any disagreement or dispute arising from the Agreement between the Government and the Contractor which can not be solved amicably shall be settled by a tribunal of three arbitrators, one to be appointed by the Contractor, another to be appointed by the Government, and the Third by the two arbitrators so appointed. The first two appointed arbitrators shall continue to consider names of qualified persons until agreement on a mutually acceptable Chairman of the tribunal is reached. Such arbitration shall be initiated and conducted pursuant to Republic Act No. 876 otherwise known as the Arbitration Act. Where substantial foreign interests are involved Arbitration in Manila under the rules of the International Chamber of Commerce or under the UNCITRAL and based on the laws of the Republic of the Philippines may be allowed.
- c. The costs of the Arbitration, proceedings shall be borne equally by the Contractor and the Government.

8.3 *Termination of Agreement*

An Agreement may be terminated for any of the following reasons:

- a. If, in the opinion of the Contractor, the mining project is not workable, after having used all reasonable diligence in its endeavor to conduct its activities under the Agreement upon prior notice to the government;
- b. Expiration of the Agreement;
- c. Default or breach of Contract by either Party which makes mining operations unworkable;
- d. Abandonment of the Mining Operations by the Contractor.

8.4 *Disposal of Property*

All sales, removals or disposals of the Contractor's property pursuant to termination of the Agreement shall be effected according to the prevailing laws and regulations.

ARTICLE 9

TRANSITORY PROVISION

- 9.1 All existing mining leases or agreements which were granted after the effectivity of the 1986 Constitution pursuant to Executive Order No. 211, except small scale mining leases and those pertaining to sand and gravel and quarry resources covering an areas of twenty (20) hectares or less shall be subject to these guidelines. All such leases or agreements shall be converted into production sharing agreement within one (1) year from the effectivity of these guidelines. However, any mining firm which has established mining rights under Presidential Decree 463 or other laws may avail of the provisions of EO 279 by following the procedures set down in this document.

ARTICLE 10

EFFECTIVITY

- 10.1 Effectivity. This Administrative Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on June 23, 1989