

**Administrative Order
No. 20
April 25, 1991**

**SUBJECT: Guidelines on the Confiscation, Seizure,
and Disposition of Illegally-Sourced
Minerals/Mineral Products**

Pursuant to the provisions of Presidential Decree No. 1281, Presidential Decree No. 463, Executive Order No. 192, and other pertinent laws, rules, and regulations, the following guidelines and procedures in the arrest of offender(s) and confiscation, seizure, and disposition of minerals/mineral products extracted, removed or disposed of without any authority are hereby issued for the information, guidance and compliance of all concerned:

Section 1. Definition. For purposes of this Order, minerals/mineral products shall mean all naturally occurring inorganic substances in solid, liquid, or any intermediate state. Soil which supports organic life, sand and gravel, guano, petroleum, geothermal energy and natural gas are included in this term but are governed by special laws. Minerals/mineral products such as ores, aggregates, sand and ceramic raw materials are also included.

Illegally-sourced minerals/mineral products are those which are mined, extracted, removed, and or disposed of without authority or permit under existing mining laws, rules and regulations.

Section 2. Documents Required in the Transport of Minerals/Mineral Products. The transport of all minerals by a permittee/licensee/lessee, production sharing agreement holder (heretofore stated as contractor, non-permittee/licensee/lessee/ contractor) must be accompanied by the following documents:

- a) For non-metallics - Delivery Receipts;
- b) For metallics - Certificate of Origin of Mineral Ore (COMO)- ANNEX "A"

Prior to the issuance of Delivery Receipts, transporters must first secure accreditation certificate with the concerned DENR Regional Office. Guidelines therefore are contained in DENR Administrative Order No. 21, Series of 1991.

Section 3. Basis of Arrests and Confiscations - Absence of any of the foregoing documents shall be considered as **prima facie** evidence of illegal mining and

this shall cause the seizure of the minerals/mineral products and the tools and equipment including conveyance used in the commission of the offense in favor of the government pursuant to PD 1281, subject to further investigation. If it is found that the minerals/mineral products seized have been mined, extracted or removed without any permit or authority under existing mining laws, rules and regulations, final confiscation can be effected to be followed by the filing of the complaint. DENR officers which include the Regional Executive Director (RED), Regional Technical Director (RTD), Provincial and Community Environment and Natural Resources Officers (PENROs/CENROs), and other DENR personnel duly authorized by the Secretary or his duly authorized representatives shall have authority to arrest offenders and seize/confiscate illegally-sourced minerals/mineral products and the tools, equipment and conveyances used in the commission of offense.

Section 4. Execution of Sworn Statements - Immediately after seizure of the minerals/mineral products together with the tools, conveyance/s and equipment used in the commission of the offense, the apprehending DENR officer shall execute his sworn statement/affidavit surrounding the facts of the case in the form hereto attached as Annex "B". He shall also take the affidavits or statements of witnesses, if any, in the form hereto attached as Annex "C".

Section 5. Assessment and Issuance of Seizure Receipt - The kind, volume or quantity of the seized minerals/mineral products shall be determined immediately and the assessment thereof shall be based on the gross volume or weight without benefit of deduction for natural defects, after which the corresponding seizure receipt shall be issued by the signing DENR officer duly acknowledged by the apprehended person/s or party/ies. In case the apprehended person/s or party/ies refuse to acknowledge, the local authority may attest as to the veracity of the seizure receipt.

Section 6. Custody of the Seized Minerals/Mineral Products, Tools, Conveyances, and Equipment - This shall be made in accordance with the following procedures:

- a) In cases of apprehension by the DENR field officer, the mineral products, tools, equipment and conveyance/s used shall be deposited with the nearest CENRO/PENRO/RED office, as the case may be and wherever it is most convenient, for safekeeping. If the transfer of the seized products to the aforesaid offices is not immediately feasible, the same shall be placed under the custody of any licensed mine operator or the nearest local public official such as the Barangay Captain, Municipal/City Mayor, Provincial Governor or the Philippine National Police (PNP), at the discretion of the confiscating officer taking into account the safety of the confiscated items. The apprehending officer is authorized to seek assistance from licensed mine operators to provide

transportation facilities for the transfer of the confiscated items from the place of apprehension to the place of custody. In any event, the custody shall be duly acknowledged and received by the official taking custody thereof. **PROVIDED**, however, that in the case of seizure/confiscation by the DENR Central Office, the case shall be referred to the CENRO/PENRO/RED concerned for further investigation and disposition.

In cases of apprehension by the PNP, Economic Intelligence and Investigation Bureau (EIIB), Coast Guard, and other government law enforcement agencies, the apprehending agency shall notify the nearest DENR Office and turn over the seized items to the CENRO/PENRO/RED as the case may be for proper investigation and disposition.

For confiscated gold and other precious metals, the CENRO/PENRO/RED, as the case may be, shall first determine if they conform with Central Bank (CB) specifications or requirements for acceptance (see Annex "E" hereof). If the confiscated gold satisfies the minimum weight requirements but it does not conform with the physical requirements, the said metal shall be delivered by accountable officer escorted by security officers to the nearest DENR Metallurgy Office for processing. In cases where the weight requirement is not satisfied, the Chief Cashier/Accountant of the CENRO/PENRO/RED office concerned shall store the confiscated metal in a safe deposit box of the nearest reputable banking institution duly accredited by the DENR Regional Office. Once the inventory of metals reaches the minimum CB weight specifications, the Chief Cashier/Accountant shall turn over the confiscated gold to the Metallurgy Office. The latter shall turn over immediately after processing into saleable forms the metals to the Chief Cashier/Accountant. In each turnover, accountability is transferred through Memorandum Receipts.

Section 7. Filing of Complaint - The CENRO/PENRO/RED, as the case may be, shall file the complaint with the proper court for violation of Sec. 78 of P.D. No. 463, as amended in the form hereto attached as Annex "D".

The following documents should be attached to the complaint:

- a) Sworn statement of the apprehending/arresting officer (Annex "B");
- b) Affidavits of witnesses, if any (Annex "C");
- c) Copy of the seizure receipt;

- d) Photographs showing the minerals/mineral products seized including the tools, equipment, and conveyances used in the commission of the offense.

Section 8. Referral of Complaint - Immediately after the complaint is filed, the CENRO/PENRO shall transmit copy of the complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for Legal Affairs.

Section 9. Disposition of Confiscated Minerals/Mineral Products
- The disposition of confiscated minerals/mineral products shall be handled in accordance with the following procedure:

- a) The CENRO/PENRO/RED, as the case may be, or his duly authorized representative(s) shall expeditiously sell at public auction and/or dispose in accordance with existing laws and regulations all confiscated minerals/mineral products except the following:
 - i) Those subject of judicial proceedings where ownership of the minerals is at issue until proper authority is obtained for their disposition from the court where the case is pending;
 - ii) Those earmarked for donation to other government agencies;
 - iii) Those determined by the DENR for its own needs.
- b) For confiscated gold and precious metals, there shall be no bidding as the same shall be sold directly to the Central Bank. The sale shall be made as follows:
 - i) If confiscated metals conform with CB specifications, the CENRO/PENRO/RTD/RED concerned shall prepare a letter of intent or advice to sell confiscated precious metals addressed to the nearest CB Buying Station Director or Administrator.
 - ii) The Accountable Officer escorted by security officers shall finally deliver said metals together with the letter/advice to the Central Bank Buying Station and receive payment therefor.
- c) Confiscated minerals/mineral products except gold and other precious metals shall be disposed of through a Committee on Bids and Awards on Confiscated Mineral Products which, in all cases, shall be composed of the Head of DENR field office responsible for or having custody over the confiscated minerals or his duly authorized representative as Chairman and Local Government and accredited

non-government organization (NGOs) representatives and COA representative as members.

In cases of confiscated minerals/mineral products that are the subject of court cases, especially those that easily deteriorate like pumice and clay, representations with the proper court shall be made for the immediate disposition thereof through public auction. The proceeds of the sale shall be deposited as the court directs and the same shall be awarded by the latter based on the final court decision. The procedures in handling the sale of confiscated minerals/mineral products through public auction are as follows:

- i) **Invitation to Bid** - The Chairman of the Committee on Bids and Awards on Confiscated Mineral Products shall issue an invitation to bid in the prescribed format, attached as Annex "F" hereof containing the following:
 - a. Invitation number;
 - b. Place, date, and time of opening of bids;
 - c. Quantity of minerals/mineral products;
 - d. Accurate description and specification of mineral products;
 - e. Terms and conditions including the floor price;
 - f. Bond requirements;
 - g. Government's right to accept and reject bids;
 - h. Instruction to bidders, and
 - i. Bid proposals.

The assessment of the current market value of the minerals/mineral products shall be made by the Committee based on updated price indices.

- ii) **Posting and Publication** - The Invitation to Bid (Annex "F") shall be posted in at least three conspicuous places in the concerned DENR office, municipal buildings and other public places. In cases where the value of the minerals/mineral products is at least P50,000.00, the Invitation shall be published in at least two (2) newspapers of general circulation for three (3) consecutive days, the last publication of which shall be fifteen (15) days before the opening of the bids. In cases where the value is less than P50,000.00, the posting of notices at least thirty (30) days before the opening of the bids shall be sufficient. In addition, a letter of invitation to bid shall be sent to prospective bidders such as legitimate mining/quarry licensees, permittees, lessees, operators, dealers, traders, and operators of mineral processing/beneficiation plants.

In case of rebidding, the Invitation to Rebid shall be published in the same newspaper of general circulation at least once every week for three (3) consecutive weeks, the last publication of which shall be one (1) week before the scheduled rebidding.

If after a rebid, no qualified bids are submitted, negotiated bids may be authorized by the DENR Secretary.

The Secretary may also authorize negotiated bidding in cases when social equity is involved.

The Regional Executive Director, upon prior clarification with the Undersecretary for Field Operations, may segregate the bidding into small lots. It is understood that the cost of bidding shall be deducted from the bidding price.

iii) **Accreditation of Bidders** - The Committee, meeting on quorum, shall not honor the offer or proposal of any bidder unless he has formally submitted an application therefor under oath containing, among others: name and address, citizenship, nature of business, and statement that he has not committed any of the following grounds for disqualification:

- a. Involvement in a crime related to business, commerce, and trade, as well as for hoarding and profiteering; and
- b. Deliberate error or omission in the bid tender.

In addition to the foregoing requirements, the prospective bidder shall submit proofs that he is either a legitimate mining/quarry licensee, permittee, lessee, operator, dealer, trader, or operator of a mineral processing/beneficiation plant.

In no case shall the person from whom the minerals/mineral products were confiscated qualify as a bidder.

The DENR Officers concerned shall develop and implement an ID Card system for buyers and agents to safeguard against misrepresentation.

- iv) **Pre-Bid Conference** - If necessary, the Committee may hold a pre-bid conference to clarify or explain doubts or ambiguities on the specifications or conditions in the Invitation to Bid. The pre-bid conference shall not be used as an occasion for amending, modifying, or revising advertised specifications and conditions.

- v) **Deposit** - All bidders shall be required to deposit an amount equivalent to ten (10) percent of the amount of bid in either cashier's or manager's check in the name of the DENR Secretary, which deposit shall be returned to the losing bidder after the award is announced. In the case of the awardee, the deposit shall be automatically converted into partial payment. Failure of the awardee to remit/pay the balance of the amount of bid on or before 2:00 in the afternoon of the third working day from the date of the sale will render the award to him as null and void, and the deposit shall be forfeited in favor of the government. In such an eventuality, the second highest complying bidder shall be considered for the award provided that his bid is at least 75% of the highest bid but in no case less than the floor price for minerals/mineral products. These rules shall apply to the third highest bidder in case of refusal on the part of the second highest bidder, and so on.

- vi) **Opening of Bids**
 - a. **Sealed Bids** - All sealed bids shall be submitted to and received by the Chairman, Committee on Bids and Awards on Confiscated Minerals/Mineral Products only on the date, time, and place for opening of the bids as indicated in the Invitation to bid. Bidders or authorized representatives may witness the proceedings. After the bid tenders are opened, all copies shall be properly identified and initialed by the Committee members and shall be recorded in the appropriate record book by the Secretariat of the Committee.

 - b. **Postponement** - No opening of any bid shall be postponed by the Committee. However, in case there is only one (1) bidder, the bidding shall be postponed and rescheduled by the Committee. Moreover, if there is more than one (1) bidder and the date set for the opening of the bids falls on a declared legal holiday, the bids shall be opened on the following working day at the same time and place specified in the invitation to bid.

- c. **Late Bids** - Bids submitted after the scheduled time of opening shall not be accepted by the Committee Chairman.
 - d. **Correctness of Bids** - After the bids are opened, no bidder shall be allowed to make any correction, alteration, or improvement on his bid.
 - e. **Abstract of Bids** - The offers submitted by the bidders shall be abstracted in the prescribed form which shall be certified as to its correctness and authenticity by the Committee. The abstract shall serve as the guide in the evaluation of the offers by the Committee.
- vii) **Appreciation of Bids** - Bids submitted which are not signed nor covered by the required bond or does not meet all the requirements shall be declared as "NO BID" to be signed by the Committee members.
 - viii) **Bases of Award** - Award shall be given to the most advantageous offer. In case of a tie, the bidders shall submit another sealed bid immediately after the Committee declares a tie and the bids shall likewise be opened, after which the Committee shall prepare the abstract of quotations and its order of award.
- A certificate of disposal of the minerals/mineral products seized indicating the quantity, type, and amount of specific taxes and penalties due thereon, together with five (5) copies of the auxiliary invoice shall be prepared furnishing a set of copies thereof to the following: Undersecretary for Field Operations, Regional Executive Director, PENRO, CENRO, and representatives of the local government concerned and COA.
- ix) **Notification of Awards** - The Committee shall prepare and send the award order or notification to the winning bidder. The award order shall serve as the permit of the awardee to remove, transport, and dispose the minerals/mineral products subject of said award.

Section 10. Expenses in the Transfer of the Seized Minerals/Mineral Products from the Place of Apprehension to a Depository Area - All expenses to be incurred in the hauling and transport of the seized minerals/mineral products from the place of apprehension to a depository area shall be added to the value of the minerals/mineral products to be bidden and included in the

minimum bid price. These expenses shall be reimbursed as administrative costs not to exceed the equivalent of ten percent (10%) of the total proceeds of the sale.

In cases of minerals/mineral products that are subject of court cases and sold/disposed at public auction upon proper representations with the court, the expenses to be incurred in the bidding and transport of the seized minerals/mineral products from the place of apprehension to a depository area shall likewise be added to the value of minerals/mineral products to be auctioned and included in the minimum bid price.

For minerals/mineral products that are subject of donation to other government agencies as referred to in Item (ii), letter (a) of Section 9 hereof, the expenses to be incurred in the hauling and transport of the seized minerals/mineral products shall be shouldered by the concerned donee/s.

Section 11. Remittance of Proceeds of Sale - The proceeds of sale of confiscated minerals/mineral products, after deducting all administrative costs related to the confiscation of the minerals/mineral products and their disposition shall be remitted by the Chairman of the CBACMP to the DENR Secretary either in the form of Cashier's or Manager's check immediately upon receipt of the full payment of the bidded mineral products.

Section 12. Reporting

a) Individual Cases/Report.

Confiscation/seizure/impounding shall be reported immediately by the apprehending officer to the CENRO/PENRO/RED within twenty-four (24) hours who shall then send a report to the next higher officer. A detailed report by the apprehending officer must be submitted within three (3) days from the date of seizure indicating actions taken thereon. If the confiscation/seizure is made with personnel from the Regional Office, the same procedure shall be followed by a report of the Regional Executive Director concerned to the Undersecretary for Field Operations.

b) Monthly Report

i) A monthly confiscation report shall be submitted by the CENRO/PENRO to the RED together with the status of the confiscated minerals/mineral products.

ii) The RED shall consolidate the monthly confiscation reports of all the CENROs/PENROs under his region and in turn forward the same to the Undersecretary for Field Operations.

c) Quarterly Report

The RED shall submit to the DENR Secretary through the Undersecretary for Field Operations a quarterly report of confiscated minerals/mineral products within the region.

Section 14. Repealing Clause - All policies, memoranda, rules and regulations which are inconsistent with this Order are hereby repealed and/or amended accordingly.

Section 15. Penalty Clause - Violation of any of the provisions of this Order, shall be penalized in accordance with Section 78 of PD 463 and other existing rules and regulations pertinent thereto.

Section 16. Effectivity - This Order takes effect fifteen (15) days after publication in a newspaper of general circulation.

FULGENCIO S. FACTORAN, JR.
Secretary

NOTE: Annexes Omitted