

DENR Memorandum Circular
No. 29
August 11, 1993

**SUBJECT : Guidelines and Procedures in the
Cancellation of Reforestation Contracts
and Recovery Proceedings**

Pursuant to Section 59 of DAO 31, series of 1991 pertaining to the revised guidelines in Contract Reforestation particularly on the grounds for cancellation of contract, the following guidelines and procedures governing the cancellation of reforestation contracts are hereby promulgated:

Section 1. Basic Policy

It shall be the policy of the government to strengthen the national program for forest development and conservation especially the National Forestation Program through the institution of measures which will ensure the faithful execution of reforestation contracts and other agreements thereafter.

Section 2. Objectives

- 2.1 To provide a uniform and orderly procedure for the cancellation of reforestation contracts and the institution of the corresponding civil action for rescission and recovery of damages; and,
- 2.2 To protect the government's investment in the implementation of the National Forestation Program.

Section 3. Definition of Terms

As used in this Circular, the following terms are construed thus:

- 3.1 OSF - refers to Office of the Solicitor General;
- 3.2 NFDO-SAU - refers to National Forestation Development Office - Special Action Unit;
- 3.3 RLO - refers to Regional Liaison Officer;
- 3.4 Director - refers to Director of the National Forestation Development Office;

- 3.5 Complaint - refers to the sworn written statement setting forth the cause/s of action of the DENR against the contractor for the recession of the contract and/or recovery of damages (see Annex A);
- 3.6 Notice of Delinquency - refers to the letter notifying the contractor of the latter's failure to perform its obligations under the contract and giving it the opportunity to explain why the same should not be terminated (see Annex B);
- 3.7 Cancellation Order - final order from the CENRO, PENRO, RED, Secretary, or his authorized representative cancelling the contract (see Annex C);
- 3.8 Reforestation Contracts - refers to all activity specific and comprehensive contracts entered into by the DENR and the contracts under the NFP.

Section 4. Grounds for Cancellation of Reforestation Contracts

After notice and opportunity to be heard, the contracts of reforestation entered into by the DENR may be cancelled on the following grounds:

- 4.1 Fraud, misrepresentation or omission by the contractor of material facts in obtaining the contract which would otherwise disqualify him therefrom;
- 4.2 Failure to start the project on the date specified in the contract without just cause;
- 4.3 Abandonment of the project area, or of the work stipulated in the contract for a period of at least one month from the date of discovery by DENR of such fact; or,
- 4.4 Violation of, or failure to comply with, the terms and conditions of the contract, the pertinent provisions of this guidelines, and other rules and regulations for contract reforestation without just cause.

Section 5. Authority to Cancel Contracts

- 5.1 The CENRO, PENRO and RED whoever, entered into the contract of reforestation pursuant to DAO 9, series of 1989 and DAO 116, series of 1989 shall have the authority to cancel the aforementioned contract; and,

- 5.2 the Secretary or his duly designated representative shall have the authority to cancel the contracts entered into by the aforementioned officials regardless of whether the funds were transferred/supervision delegated to the PENRO/Region.

Section 6. Steps in the Cancellation of Reforestation Contracts

6.1 Evaluation of Contract Reforestation Projects

Contracts entered into by the CENRO shall be evaluated by the PENRO while contract entered into by the PENRO shall be evaluated by the RED to determine whether or not grounds exist for cancellation.

However, all reforestation contract entered into by the RED or by the Secretary or his duly authorized representative shall be evaluated by the combined team of FMB, OSEC and NFDO staff.

6.2 Investigation of Contract Reforestation Projects

Finally, all investigating teams shall notify the Finance Unit of either the PENRO or the Regional Office which has financial control over the project for a representative to join the investigating team.

6.3 Conduct of Investigation

The joint investigation team shall forthwith conduct an on site inspection and evaluation of the project to determine the actual status and condition of the project area. The team shall take down the testimonies of witnesses, contractors, project managers and such other persons as may be deemed necessary.

Likewise, the team shall review the records and documents pertinent to the project including, but not limited to, the following:

- a. Contract or Memorandum of Agreement
- b. All vouchers/checks released by DENR to the contractor
- c. Accomplishment Reports with photographs
- d. Work and Financial Plan
- e. Schedule of Payments
- f. All undertakings executed by contractor
- g. Development Plan
- h. All relevant project inspection/evaluation reports submitted by DENR Monitoring and Evaluation teams and ICM reports.

Certified true copies of said documents along with pictures of the project site shall be attached to the report of the team;

6.4 Power of the investigating team

The investigating team are hereby authorized to:

- a. take the depositions of witnesses
- b. inspect all records, statements of accounts, vouchers, and checks pertaining to the contract.

All DENR employees are enjoined to provide full support and assistance to the investigation team who shall have the power to call on and require the presence and attendance of said employees;

6.5 Submission of Report

The report of the investigating team shall be signed and submitted within fifteen (15) days from the termination of the investigation to the CENRO or PENRO or RED whichever entered into the contract investigated, copy furnished the CENRO or PENRO and RED which has jurisdiction over the project site; **Provided that**, all reports on OSEC funded contracts shall be submitted to the NFDO Director.

6.6 Notice of Delinquency

Where grounds exist for cancelling the contract based on the findings of the investigating team, the CENRO, PENRO, RED or the Secretary or his duly designated representative, as the case may be, shall send to the contractor a Notice of Delinquency (see Annex B) requiring the latter to show cause within fifteen (15) days from receipt thereof, why the contract should not be terminated.

6.7 Transmittal to the Legal Division for evaluation or comment

Where the contractor fails to submit his explanation within the prescribed period or the same is not satisfactory, the CENRO, PENRO, RED, or Secretary or his duly authorized representative, as the case may be, shall prepare the Cancellation Order (see Annex C) and send it to the Legal Division of the Regional Office, together with the report of the investigating team and all the records and documents pertaining thereto. In case of OSEC funded contracts, said documents shall be sent to the NFDO-SAU:

6.8 Comment or Evaluation of the Cancellation Order

The Legal Division or NFDO-SAU shall review the records of the contract sought to be rescinded and return the Cancellation Order with their evaluation, comments and recommendations thereon within seven (7) days from receipt thereof.

6.9 Signing of the Cancellation Order

Where the legal division of the Regional Office or NFDO (if the project is awarded by the OSEC) recommends the cancellation of the contract, the Cancellation Order shall be signed by the CENRO, PENRO, RED or Secretary or his duly authorized representative which ever entered unto the contract and sent forthwith to the contractor.

The office cancelling the contract shall simultaneously notify the bonding company (see Annex D) of the cancellation of the contract attaching thereto a copy of the Cancellation Order and Notice of Delinquency. Same shall also move for the calling of the performance bond posted by the contractor.

Further, the said office shall blacklist all contractors, including the officers thereof, whose contracts have been cancelled. All persons blacklisted shall be barred from entering into any contracts and/or arrangements with DENR. The list shall be submitted to the Director, NFDO.

Where the cancellation of the contract is not recommended, the CENRO/PENRO/RED, may take such actions as may otherwise be recommended by the Regional Legal Division. However, the CENRO/PENRO/RED, may if not satisfied therewith, transmit the records of the case to the Office of the Secretary for further action.

6.10 Transmittal of records of the case to legal division

After the Order of Cancellation is sent to the contractor, the records of the contract together with the report of the investigating team and its attachments shall be transmitted to the Legal Division, copy furnished the Legal Services Division of Central Office, for the preparation of the complaint against the erring contractor.

After the cancellation order has become final in accordance with Section 6.12 hereof, the RED shall transmit the formal complaint with its annexes to the

OSG which shall prosecute the case or deputize the legal department to prosecute the same.

When an appeal has been taken from the Order of Cancellation in accordance with Section 6.12 hereof, the RED shall hold in abeyance the transmittal of the complaint until the appeal has been ruled upon by Secretary..

6.11 Monitoring of cases with Office of Solicitor General

The NFDO shall monitor the cases endorsed to the OSG and shall serve as DENR's liaison officer to the OSG.

6.12 Finality and appeal from the Order of Cancellation

The Order of Cancellation shall become final unless appealed to the Office of the Secretary within fifteen (15) days from receipt thereof. the CENRO, PENRO or RED concerned or the NFDO shall be notified by the contractor of the appeal within the prescribed period.

6.13 Service of the Notice of Delinquency and Order of Cancellation

The Notice of Delinquency and Order of Cancellation shall be served to the contractor personally or through registered mail. Where personal service is resorted to, the same shall be duly receipted and signed by the contractor or his representative. In case of registered mail, the registry receipt and registry return card shall be attached to the records;

Section 7. Local Government Units (LGU) Reforestation Contracts

7.1 LGU contracts shall undergo the same cancellation procedure in accordance with Section 6 of this guidelines.

7.2 After serving the cancellation order, copy furnished the NFDO, the office concern shall submit a letter complaint with the Secretary of Department of Interior and Local Government (DILG) for administrative or legal action.

Section 8. Status of Cref Project After Cancellation

8.1 The project site will be under the jurisdiction of the CENRO and all remaining seedlings and infrastructure paid for by the Department will be taken over by the CENRO and placed under his control.

The CENRO shall be responsible for the maintenance and protection of plantation established; and,

- 8.2 The remaining funds shall be treated as savings of DENR and utilization thereof shall be subject to guidelines and procedures to be set by the Secretary or his duly designated representatives.

Section 9. Repealing Clause

All memoranda, circular and orders not consistent herewith are hereby deemed repealed.

Section 10. Effectivity

This order shall take effect immediately.

ANGEL C. ALCALA
Secretary

Recommending Approval:

RICARDO M. UMALI
Senior Undersecretary
Natural Resources Management
and Field Operations