

Memorandum Order
No. 97-07
August 27, 1997

SUBJECT : Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes

Pursuant to Section 8 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Act") and Section 6 of Department Administrative Order ("DAO") No. 96-40 known as the Revised Implementing Rules and Regulations of the Act (the "IRR"), the following guidelines in the implementation of the mandatory September 15, 1997 deadline for the filing of Mineral Agreement applications by holders of valid and existing mining claims and/or lease/quarry applications consistent with Section 113 of the Act and Section 273 of the IRR, the divestment or relinquishment requirement under Section 272 of the IRR and for other pertinent purposes, are hereby promulgated.

Section 1. Objectives

This Order is issued to attain the following objectives:

- a. To provide specific policies, procedures and mechanisms in the determination of which mining claims, lease or quarry applications are valid and existing in order to facilitate the acceptance and expeditious processing of Mining Agreement and other Mining Applications filed in connection with the deadline prescribed in Section 273 of the IRR.

- b. To provide guidelines and procedures for the implementation of the deadline prescribed under Section 272 of the IRR.

Sec. 2. Scope

This Order covers:

- a. policies on the status of mining claims and lease/quarry applications filed before the effectivity of the Act;
- b. the acceptance of Mineral Agreement applications that may be filed on or before September 15, 1997 by holders of valid and existing mining claims and lease/quarry applications pursuant to Section 113 of the Act and Section 273 of the IRR;
- c. the acceptance of Mining Applications, as hereafter defined, filed after September 15, 1997 over areas previously covered by mining claims and lease/quarry applications considered abandoned by the concerned claimants/applicants who failed to file the necessary Mineral Agreement applications in accordance with the immediately preceding subsection; and
- d. guidelines on the requirement under Section 272 of the IRR for divestment or relinquishment of areas by September 15, 1997 covered by FTAA applications filed under DAO No. 63, Series of 1990, that exceed the maximum Contract Area permitted under Section 34 of the Act and Section 51 of the IRR.

Sec. 3. Definitions and Interpretation

Consistent with Section 5 (bj) of the IRR, the term Mining Applications means any application for: (1) Exploration Permits; (2) Mineral Agreements, which refer specifically to Mineral Production Sharing Agreements, Joint Venture Agreements and Co-Production Agreements; (3) Financial or Technical Assistance Agreements (FTAA); and (4) Quarry, Sand and Gravel, and other permits under Section 5 (bh) of the IRR.

Other terms used in this Order shall have their meaning as defined in the Act, the IRR, Presidential Decree No. 463 as Amended and the Consolidated Mines Administrative Order (CMAO) as Amended.

Nothing in this order shall be construed as denying any right, preference or priority with respect to mining rights granted by applicable law or regulation or as validating any mining right that is invalid under applicable law or regulation.

Sec. 4. Date of Deadline Under Sections 272 and 273 of the IRR

Consistent with pertinent national policy, the September 13, 1997 deadline under Section 272 of the IRR and the September 14, 1997 deadline under Section 273 of the IRR, which fall on a Saturday and Sunday, respectively, shall be imposed on September 15, 1997.

All requirements related to such provisions must be complied with not later than 5:00 p.m. on such date; Provided, That all persons desiring to file proof of compliance who are present at the MGB Central/Regional Office at 5:00 p.m. on such dates shall have their proof of compliance accepted and processed effective as of such dates.

Sec. 5. Valid and Existing Mining Claims and Lease/Quarry Applications

For purposes of this Order, a mining claim shall be considered valid and existing if it has complied with the following requirements.

- a. For a mining claim which Declaration of Location (DOL) was filed within the period from July 19, 1987 to July 18, 1988, it must be covered by a timely and duly filed Application for Survey and Survey Returns (if a Survey Order was issued);

- b. For a mining claim which DOL was filed under the provisions of Presidential Decree No. 463 as amended, Presidential Decree No. 1214 and the CMAO as Amended but not later than July 18, 1987, it must be covered by a timely and duly filed Application for Mining Lease, Application for Survey and Survey Returns (if a Survey Order was issued);
- c. For a mining claim located/filed under the provisions of Commonwealth Act No. 137 and/or earlier laws, it must be covered by a timely and duly filed Application for Availment under Presidential Decree No. 463 as Amended, Application for Mining Lease, Application for Survey and Survey Returns (if a Survey Order was issued).

Provided, That the holder of a mining claim which DOL was filed between July 19, 1988 and January 4, 1991 with or without a Letter of Intent to file for a Mineral Agreement application, shall be given up to September 15, 1997 to file the necessary Mineral Agreement application.

For purposes of this Order, a mining lease application shall be considered valid and existing only if all mining claims contained in such lease application are valid and existing as defined in this section, while applications for Quarry Licenses and Quarry Permits filed prior to April 9, 1995 shall be considered valid and existing if the concerned applicant had timely and duly filed the Application for Survey and duly submitted the Survey Returns (if the Survey Order was issued).

Notwithstanding the preceding provisions of this section, a mining claim or lease/quarry application over which an order of rejection or cancellation has been issued shall not be considered valid and existing as of the date of issuance of such order.

Sec. 6. Notice of Abandonment of Mining Claims

The MGB Central/Regional Office shall cause the posting for two (2) consecutive weeks of a Notice identifying mining claims and lease/quarry applications that are determined not to be valid and existing pursuant to Section 5 hereof, on the Bulletin Board of the MGB Central Office and the concerned Regional Office. Any failure to post such Notice shall not render valid and existing any mining claim or lease/quarry application that would not otherwise be valid and existing under applicable laws and regulations.

The Notice must contain, among others, the complete name and address of the applicant, area location, date of filing of location, denomination of mining claims or lease/quarry applications and reason/cause and effectivity of abandonment.

Sec. 7. Status of Abandoned Mining Claims and Lease/Quarry Applications Covered by Other Mining Applications

Where a mining claim or lease/quarry application is not considered to be valid and existing as defined in Section 5 hereof and consequently abandoned, it shall be deemed to have become open to Mining Applications upon the effectivity of its abandonment as determined by the Bureau or concerned Regional Office; Provided, That where a Mining Application was filed over all or part of the area covered by an abandoned claim/application on or after the date of effectivity of its abandonment, such area shall automatically be considered as part of such Mining Application, subject however to pertinent requirements under the IRR if such have not been complied with including, *inter alia*, the necessity of obtaining the appropriate area clearance and undergoing the posting, publication and radio announcement process.

In the event that more than one Mining Application had been filed over such area, the rights of the respective applicants to such area shall be determined under applicable laws and regulations. Under any of the foregoing circumstances, an applicant may elect by filing a notice with the Regional Office not to have the area covered by the abandoned mining claim or lease/quarry application automatically included in its Mining Application.

Sec. 8. Claimants/Applicants Required to File Mineral Agreement Applications

Only holders of mining claims and lease/quarry applications filed prior to the effectivity of the Act which are valid and existing as defined in Section 5 hereof who have not filed any Mineral Agreement applications over areas covered by such mining claims and lease/quarry applications are required to file Mineral Agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997; *Provided*, that the holder of such a mining claim or lease/quarry application involved in a mining dispute/case shall instead file on or before said deadline a Letter of Intent to file the necessary Mineral Agreement application; **Provided, further**, That if the mining claim or lease/quarry application is not determined to be invalid in the dispute/case, the claimant or applicant shall have thirty (30) days from the final resolution of the dispute/case to file the necessary Mineral Agreement application; *Provided, finally*, that failure by the claimant or applicant to file the necessary Mineral Agreement application within said thirty (30)-day period shall result in the abandonment of such claim or application, after which, any area covered by the same shall be opened for Mining Applications.

Holders of such valid and existing mining claims and lease/quarry applications who had filed or been granted applications other than those for Mineral Agreements prior to September 15, 1997 shall have until such date to file/convert to Mineral Agreement applications, otherwise, such previously filed or granted applications shall be cancelled.

Sec. 9. Occupation Fees and Work Obligations

In case of any deficiency in the payment of occupation fees and/or the minimum work obligations required, no Mineral Agreement applications by holders of valid and existing mining claims and lease/quarry applications shall be accepted without proof of full payment of such deficiency or a Letter-Commitment to pay such amount within thirty days from the date of filing of the Mineral Agreement Application. Failure to present proof of full payment upon the filing of the Mineral Agreement application or within thirty days from filing of said Letter-Commitment shall result in the denial of the application, after which the area covered thereby shall be open for Mining Applications.

Sec. 10. Status of Valid and Existing Mining Claims and Lease/Quarry Applications Where Holders Fail to File Mineral Agreement Applications by September 15, 1997

Any valid and existing mining claim or lease/quarry application for which the concerned holder failed to file a Mineral Agreement application by September 15, 1997, shall be considered automatically abandoned and the area covered thereby rendered open to Mining Applications effective September 16, 1997; Provided that where such area is within the area subject of a valid and existing Mining Application, the concerned applicant may file a Letter of Inclusion (LOI) in lieu of the mandatory requirements for a Mining Application, which LOI shall contain the technical description of the mining claims/applications sought to be included with an attached amended sketch plan of the application.

Sec. 11. Acceptance of Mining Applications Over Areas Subject of Mining Claims and Lease/Quarry Applications Abandoned After September 15, 1997

Mining Applications filed after September 15, 1997 over areas opened pursuant to Section 10 hereof shall be accepted and considered in accordance with the pertinent provisions of the Act and the IRR. When there are two (2) or more applicants for the same area present at the MGB Central/Regional Office at the start of the office hours, which shall not be earlier than 8:00 A.M., their applications shall be received and the date/time stamped with the same time, which shall be the actual time that the office opened for business. All other applications shall be date/time stamped with the actual time that the application was filed. If simultaneous applications are filed over the same area, the MGB Central/Regional Office shall determine whether and by whom such area has been validly applied for on the basis of their compliance with the applicable mandatory requirements. If such simultaneously filed applications have equally complied with said mandatory requirements, these shall be further evaluated on the basis of the propriety of work program/s, financial and technical competence and track record in order to determine whether and by whom such area has been validly applied for.

The holder of a valid and existing mining claim or lease/quarry application who failed to file the necessary Mineral Agreement Application on or before September 15, 1997 shall be disqualified from thereafter filing a Mining Application over the same area covered by such abandoned claim or application.

Sec. 12. Divestment/Relinquishment of Areas in Excess of Maximum FTAA Contract Area

All FTAA applications filed prior to the effectivity of the Act which exceed the maximum contract area as set forth in Section 34 of the Act and Section 51 of the IRR must conform to said maximum on or before September 15, 1997. For this purpose, all applicants who have not otherwise relinquished or divested any areas held in excess of the allowable maximum by September 15, 1997 must relinquish/divest said areas on such date in favor of the Government by filing a Declaration of Areas Relinquished/Divested, containing the technical description of such area/s, with the Bureau/concerned Regional Office. The concerned applications shall be accordingly amended and areas relinquished/divested shall be open for Mining Applications.

Where an FTAA application covering an area in excess of the maximum contract area allowed therefor is involved in a mining dispute/case, the concerned applicant shall instead file on or before September 15, 1997 a Letter of Intent undertaking to relinquish/divest such excess within thirty (30) days from the final resolution of the dispute/case in the event that such application is determined thereby not to be invalid.

Failure to relinquish/divest areas in excess of the maximum contract area as provided for in this section will result in the denial or cancellation of the FTAA application after which, the areas covered thereby shall be open for Mining Applications.

Sec. 13. Status of Pending MPSA and FTAA Applications Filed Under DAO No. 57 and No. 63 with Insufficient Compliance with Mandatory Requirements Pursuant to the IRR

All holders of pending MPSA and FTAA applications filed under DAO No. 57 and No. 63 with insufficient compliance with the mandatory

requirements pursuant to the IRR shall submit on or before September 15, 1997, a Status Report on all such requirements specifically indicating those yet to be complied with and a Letter of Intent undertaking to complete compliance with all mandatory requirements within forty-five (45) calendar days, or until October 30, 1997; Provided, that failure of the concerned applicant to file said Status Report and Letter of Intent by September 15, 1997 or to submit all such mandatory requirements by October 30, 1997 shall cause the denial of the pertinent MPSA/FTAA applications; Provided, further, that in the case of the mandatory Certificate of Satisfactory Environmental Management and Community Relations Record, the submission of the pertinent and duly accomplished application forms may be accepted in lieu thereof.

Sec. 14. No Extension of Periods

The deadline set at September 15, 1997 pursuant to Section 4 hereof and all other periods prescribed herein shall not be subject to extension.

Sec. 15. Separability Clause

Should any provision of this Order or any part thereof be held or declared invalid by a competent court, the other provisions shall remain in full force and effect.

Sec. 16. Repealing Clause

All memorandum orders and circulars or parts thereof inconsistent with or contrary to the provisions of these guidelines are hereby repealed, amended or modified accordingly.

Sec. 17. Effectivity

This Order shall take effect immediately upon its publication in a newspaper of general circulation.

Quezon City, Philippines, 27 August 1997.

(Sgd.) VICTOR O. RAMOS
Secretary

Published at:

Manila Times, August 28, 1997, page 22