

DENR Administrative Order

No. 2000 - 39

May 03, 2000

SUBJECT : Rules and Regulations in the Issuance of Onshore Special Minerals Extraction Permits (SMEP) to Qualified Government Entities/Instrumentalities for Government Projects

Pursuant to Section 4 of Executive Order No. 200, the following rules and regulations in the issuance of onshore Special Minerals Extraction Permits (SMEP) for Government Projects to Qualified Government Entities/ Instrumentalities are hereby promulgated for the guidance and compliance of all concerned.

Section 1. Title. The title of this Administrative Order shall be "Rules and Regulations in the Issuance of Onshore Special Minerals Extraction Permits (SMEP) to Qualified Government Entities/Instrumentalities for Government Projects."

Section 2. Scope. This Administrative Order provides policies in the issuance of onshore SMEP over areas exceeding two (2) hectares by the Department of Environment and Natural Resources (DENR) to the Natural Resources Development Corporation (NRDC) or any Qualified Government Entity/Instrumentality involving the exploration, development, utilization and/or disposition of quarry resources, sand, gravel, clay and other related materials required for the construction/implementation of Government Projects.

Section 3. Definition of Terms. As used in and for the purpose of this Administrative Order, the following terms shall mean:

- a. *Special Minerals Extraction Permit (SMEP)* - refers to the permit granted to a Qualified Government Entity/ Instrumentality over onshore areas exceeding two (2) hectares for the exploration, development, extraction and/or disposition of quarry resources, sand, gravel, clay and other related materials to serve the purposes of Government Project(s).
- b. *Permit Holder* - refers to the holder/grantee of an SMEP.
- c. *Qualified Government Entity/Instrumentality*- refers to the NRDC or any entity/instrumentality of the Government of the Republic of the Philippines duly created in accordance with law, including government-owned and -controlled corporations, duly authorized under its charter to explore, develop, utilize and/or dispose mineral resources.
- d. *Government Project* - refers to all priority infrastructure projects/activities and/or other civil works, including but not, limited to dam, flood control and reclamation projects, of Government.

All other terms which are not defined herein shall have their meaning as used in Republic Act (R.A.) No. 7942 and its Revised Implementing Rules and Regulations (DENR A. O. No. 96-40, as amended).

Section 4. Areas Open for SMEP Application. Areas open to SMEP applications are:

- a. Public or private lands not covered by valid and existing mining rights,
- b. Areas covered by applications for mining permits/contracts;
- c. Lands covered by expired/abandoned/cancelled mining/ quarrying rights;
- d. Mineral Reservations; and
- e. Timber or forest lands as defined in existing laws:

Provided, That the concerned mining applicant shall be duly notified by the concerned Mines and Geosciences Bureau Regional

Office (MGB RO) about the acceptance and/or approval of the SMEP application.

Section 5. Areas Closed to SMEP Application. The following areas are closed to SMEP applications:

- a. Protected Areas as defined under R.A. No. 7586 and DENR A.O. No. 25, Series of 1992;
- b. Areas covered by valid and existing mining rights and SMEPs, unless a prior, written consent is obtained from the concerned mining contractors/ permittees/permit holders; and
- c. Other areas expressly prohibited under R.A. No. 7942, proclamations, executive orders and other existing laws, and their respective implementing rules and regulations.

Section 6. Eligibility of an SMEP Applicant. Any Qualified Government Entity/Instrumentality shall be allowed to apply for an SMEP.

Section 7. Maximum Area Allowed Under an SMEP. The maximum area that a Qualified Government Entity/instrumentality may apply for or hold at any one time under an SMEP shall be based on the nature and volume of materials required for the specific Government Project, as indicated in the feasibility study report of the said project, and with due consideration to environmental aspects.

Section 8. Term of an SMEP. The SMEP shall have a term coterminous with the construction/development period of the Government Project based on the approved feasibility study thereof, subject to verification by the concerned MGB RO.

Section 9. Mandatory Requirement for an SMEP Application. The applicant shall submit to the concerned MGB RO at least five (5) copies of the following mandatory requirements:

- a. Duly certified copy of the charter;
- b. The approved Feasibility Study Report of the Government Project;
- c. Sketch Plan of the proposed Permit Area showing its geographic coordinates and meridional blocks in relation to a major environmental features and other projects, using a NAMRIA topographic map in a scale of 1:50,000 or any other appropriate scale, duly prepared, signed and scaled by a Bureau-deputized Geodetic Engineer;
- d. Exploration Work Program (MGB Form No. 5-4) or Development/ Utilization/Operation Work Program (MGB Form No. 6-2), whichever is applicable, duly prepared, signed and sealed by a licensed Geologist in the case of the Exploration Work Program or a licensed Mining Engineer for the Development/Utilization Work Program, or the appropriate and authorized technical staff for the Operation Work Program; and
- e. Environmental Work Program (MGB Form No. 16-1), in case where an Exploration Work Program is to be pursued:

Provided, That an Environmental Compliance Certificate (ECC), Environmental Protection and Enhancement Program (EPEP), and Area Status and Clearance from the concerned government agencies/entities shall be required prior to the approval of the SMEP.

Section 10. Filing and Acceptance of an SMEP Application. The duly accomplished Application Form together with the mandatory requirements provided in the preceding section shall be filed by the applicant, or through its duly authorized representative, with the concerned MGB RO. Such application shall be accepted only upon payment of a Filing Fee or PhP 10.00 per hectare plus PhP 20.00 pursuant to the Presidential Decree (P.D.) No. 1856: Provided, That the Filing Fee shall not be less than PhP5,000.00,

Section 11. Evaluation of an SMEP Application. Within fifteen (15) days upon the date of acceptance of the SMEP application, the concerned MGB RO shall evaluate the same, and if found in order,

such application shall be indorsed by the said Office to the Secretary; through the Mines and Geosciences (Bureau) Office for consideration and approval.

Section 12. Approval and Registration of the SMEP. Upon approval of the SMEP by the Secretary, the same shall be forwarded to the Bureau for numbering and, thereafter, to the concerned MGB RO for registration. The concerned Regional Director shall notify the Permit Holder to cause the registration of its SMEP with the concerned MGB RO within fifteen (15) working days from receipt of written notice. Registration is effected only upon payment of a Registration Fee of PhP1,000.00 per permit plus PhP20.00 pursuant to P.D. No. 1856.

Failure of the Permit Holder to cause the registration of its SMEP within the prescribed period shall be a sufficient ground for cancellation of the same.

Section 13. Terms and Conditions of an SMEP. The terms and conditions of an SMEP shall include the following:

- a. The Permit Holder shall undertake its mining operations in accordance with the approved Environmental Work Program, Exploration/ Development/Utilization/Operation Work Program and EPEP, and that any negative variance of at least twenty percent (-20%) therefrom shall be subject to the approval of the concerned Regional Director;
- b. The Permit Holder may relinquish any portion of the Permit Area at any stage of its SMEP operations;
- c. The SMEP operations shall be conducted in consonance with the pertinent provisions of R.A. No. 7942, DENR A.O. No. 96-40, as amended, Mines Administrative Order No. MRD-51 and other applicable laws, rules and regulations,
- d. The Permit shall not be assigned to another entity, either government or private;

- e. The Permit may be cancelled, revoked or terminated for failure of the Permit Holder to comply with the terms and conditions thereof, and
- f. The cancellation, revocation, termination or withdrawal of the Permit shall not release the Permit Holder from any and all financial, fiscal, environmental and legal obligations under the Permit.

Section 14. Interim SMEP. Pending the approval of the SMEP, application and provided that the applicant has secured the Area Status and Clearance, and ECC of the Government Project concerned, the SMEP applicant may file with the concerned MGB RO an application for an Interim SMEP.

The Interim SMEP may be issued by the Secretary, through the Director, upon the recommendation of the concerned Regional Director and shall have a term of ninety (90) days upon the issuance thereof. It shall allow the Permit Holder to undertake the activities for the corresponding first ninety (90) days of the approved pertinent Work Programs, including the EPEP.

Section 15. Priority Right of Previous Private Applicant. In the event that an SMEP is terminated, cancelled, revoked or otherwise withdrawal, and the Permit Area was formerly covered by a valid and existing mining application, such Permit Area shall be declared open to refining application and the previous private applicant shall have priority to pursue his/her/its application over the area: Provided, That such priority shall be exercised by filing the necessary Letter of Intent within a period of sixty (60) days upon receipt of written notice from the concerned MGB RO. For this purpose, the said private applicant shall be duly informed by the concerned MGB RO about the issuance of the order of termination, cancellation, revocation or formal acceptance of a Notice of Withdrawal.

Section 16. Service Contract and/or Memorandum of Agreement (MOA). The Permit Holder may avail of the services of a

qualified Service Contractor(s) or enter into a MOA with the proponent of Government Project to undertake specific works related to the said project: Provided, That the pertinent Service Contract(s) or MOA shall require the approval of the Secretary.

Section 17. Authority of NRDC to Collect Certain Fees.

In cases where the NRDC is the Permit Holder, the management and service fees collected under the SMEP shall be shared by the NRDC and the concerned Local Government Units (LGUs), as follows: 60% for NRDC and 40% for the LGUs.

Section 18. Separability Clause. If any clause, sentence, section or provision of this Administrative Order is held or declared to be unconstitutional or invalid by a competent court, the remaining parts hereof shall continue to be valid and in effect.

Section 19. Repealing Clause. All orders, rules and regulations inconsistent with or contrary to the provisions hereof are hereby repealed or modified accordingly.

Section 20. Effectivity. This Administrative Order shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation and fifteen (15) days after registration with the Office of the National Administrative Register.

(Sgd.) **ANTONIO H. CERILLES**
Secretary

Published at:

MALAYA - May 06, 2000