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ADMINISTRATIVE ORDER NO. 2005 - 06

APR 06 2005

**SUBJECT: GUIDELINES FOR THE INSTITUTION OF A
SYSTEM OF MANDATORY ENVIRONMENTAL
INSURANCE COVERAGE.**

Section 1. Statement of Policy.

Based on years of experience, it has been observed that existing mechanisms devised to ensure a project proponent's environmental accountability fall short of providing an administrative regime that guarantees full environmental responsibility which translates to adequate and timely environmental rehabilitation, clean-up, remediation and protection for the affected communities, areas and stakeholders.

To remedy this situation, Mandatory Environmental Insurance Coverage (MEIC) shall be hereby required for all ongoing activities/projects and applications for an Environmental Compliance Certificate (ECC) and/or Certificate of Non-coverage (CNC).

Section 2. Scope and Coverage.

The MEIC shall encompass payment of damages to health and property, environmental rehabilitation, remediation and/or clean-up costs and expenses, and provide a facility for the alleviation and recompense for any kind of environmental impairment or damage by reason of the project.

Liability shall be premised on any intentional or accidental release of pollutants and/or contaminants and environmental impairment by reason of a project proponent's failure to observe environmental laws/standards or comply with the terms and conditions specified in environmental management plans or work programs, and other similar instruments which detail a project proponent's obligations towards the environment executed as part of the project's application and/or implementation.

To give due emphasis to the totality and institutionality of the MEIC, it shall be required of all existing and future projects/activities deemed under law



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as environmentally critical/located in environmentally critical areas which consequently require an ECC, as well as projects/activities operating under a CNC.

Section 3. Forms of Coverage. The MEIC shall require project proponents to obtain insurance coverage of the following forms, based on their classification and the provisions of this Order:

1. Environmental Performance Bond (EPB) - shall be required for all ongoing activities/projects and applications for ECCs/CNCs as a requisite in order to guarantee adequate and timely compliance with the environmental standards and the terms and conditions set forth by the DENR during the pre-development, development and/or construction phases of the project. The EPB shall answer for all environmental damages, penalties and legal obligations which may arise from the failure of the project proponent to comply with its undertakings during the afore-mentioned phases; and
2. Environmental Pollution, Impairment and Clean-Up Liability Insurance (EPICLI) - shall be required of all existing and future projects/activities to cover operational phases, including those that have been issued ECCs/CNCs. For this purpose, the submission of appropriate EPICLI Policy Contract shall be an additional condition/requirement in all existing ECCs/CNCs. The EPICLI shall answer for all claims arising from damages to the environment, bodily injury, property damage arising from a pollution event including environmental rehabilitation, clean up and/or remediation costs and expenses for contamination and/or impairment of the environment, inclusive of all violations of environmental laws and standards.

Section 4. The Beneficiaries.

The beneficiaries of the MEIC shall include affected communities, stakeholders and LGUs within the project's primary impact areas as determined through preliminary scoping process and environmental impact assessment. The environs within the primary impact areas shall be included in the scope and coverage of the EPICLI. The MEIC shall also include as beneficiary such pertinent government departments, bureaus and agencies which are tasked under law for the rehabilitation, clean-up and monitoring of such aspects of the projects affected by the pollution event but for which no responsible private or public entity, such as the project proponent, is specified.



The beneficiaries shall be represented by the government, particularly the Department of Environment and Natural Resources (DENR).

As the spearheading agency, the DENR/EMB shall identify affected areas and prescribe rehabilitation/remediation measures when necessary. It may solicit or procure appropriate expertise in determining the guidelines for the assessment of damages, identification of beneficiaries and proper implementation of rehabilitation, clean-up and/or remediation measures or programs, chargeable against the claims to be paid by the Insurance Company/ies concerned.

For this purpose, it shall involve the concerned local government units (LGUs) and appropriate sectors of the civil society for consultations leading to a multi-sectoral approach.

Section 5. *Payment of Claims.*

The Insurance Company/ies shall place all payments of claims into specially created escrow accounts in government depository bank(s) which shall in turn disburse and/or release corresponding payments to beneficiaries only upon the advice of the DENR/EMB after proper documentation.

To assure that claims are verified and rightful parties are compensated and the environment is properly rehabilitated, cleaned-up, remediated, stabilized and protected, unbiased and transparent mechanisms to validate claims and respond to issues raised by the project proponents or the claimants/beneficiaries shall be established. For this purpose and whenever necessary, the DENR/EMB may create multi-sectoral bodies composed of representatives from the business, labor, government, civil society and other stakeholders.

In no case shall the DENR/ EMB receive and handle payments of claims for environmental damages, penalties and charges, except for the claim component which properly accrues to it as an insurance beneficiary.

For purposes of rehabilitation, and whenever applicable, the appropriate government agency tasked for the purpose shall undertake the same with funds coming from the insurance claim upon recommendation of the EMB or multi-sectoral bodies and approved by the DENR Secretary.

Section 6. *Implementation.*

Only duly accredited insurance companies shall be allowed to insure any project proponent covered by this Order. Accreditation of participating Insurance Company/ies shall be conferred by the DENR Secretary.



Within one (1) month from the effectivity of this Order, the DENR/EMB, in consultation with local or international insurance companies, shall come up with appropriate guidelines for accurate identification and specification of the different levels of risks and risks potentials which shall serve as basis for computing the level of coverage needed for a project/activity either under the EPB or EPICLI.

All EMB Regional Directors (RDs) shall require all existing projects/activities within their respective regional jurisdictions to submit EPICLI Policy Contracts from accredited insurance companies as proof of compliance within six (6) months from effectivity of this Order. All Policy Contracts shall be reviewed to ensure compliance with the guidelines established by the DENR/EMB. It shall be the responsibility of the RD's to ensure that projects/activities are continuously and effectively covered by the EPICLI.

Project proponents that have availed of the EPICLI shall be entitled to have their MEIC substituted in place of the Environmental Guarantee Funds (EGF) of their projects/activities. Provided, however, that any pending claim which may be satisfied from either of the EGF or EPICLI shall be taken from the latter.

Multi-partite monitoring teams, NGOs, POs and LGUs may assist the DENR and the concerned insurance companies in monitoring the projects/activities covered by the EPICLI.

Section 7. Dissemination.

The RD's shall conduct seminars, conferences and briefings to communicate the policy and mechanics of this Order to all concerned.

Section 8. Penalties and Sanctions.

Non-compliance of the requirements stated in this Order shall authorize the DENR to automatically revoke or cancel the ECC/CNC issued. Non-compliance shall likewise be a ground for the immediate disapproval of the application submitted by the project proponent.

Insurance companies which issue a Policy Contract to any project proponent pursuant to this Order which fail to adhere with the guidelines drafted for their governance shall be immediately discredited and shall



be forever barred from providing insurance coverage to any project under this Order.

Section 9. Separability Clause.


The provisions of this Order are hereby declared to be separable. If any provision or section of this Order, or application thereof to any person or circumstances, should for any reason be held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or sections of this Order.

Section 10. Repealing Clause.

All other rules, regulations and issuances or parts thereof that are inconsistent with this Order are hereby repealed, amended or modified accordingly.

Section 11. Effectivity.

This order shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.


MICHAEL T. DEFENSOR
Secretary *19/6/9/10*



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