



DENR ADMINISTRATIVE ORDER

No. 2005 - 18

(SEP 01 2005)

SUBJECT: Adoption of Alternative Dispute Resolution (ADR) Principles and Procedures in the Resolution of Appropriate Environment and Natural Resources Conflicts

Pursuant to the Constitution which mandates the State to protect and advance the right of the people to a balanced and healthful ecology, and guarantees equitable access to natural resources; and consistent with the Alternative Dispute Resolution Act of 2004 (Republic Act No. 9285, or ADR Act) which declares as state policy the promotion of ADR as an important means to achieve speedy and impartial justice and de-clog court dockets; the following order is hereby issued to adopt alternative dispute resolution principles and procedures in appropriate cases within the Department's jurisdiction.

Section. 1. Statement of policy.

It is hereby declared the policy of the Department to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the Department shall encourage and actively promote the use of ADR as an important means to achieve speedy and impartial justice and de-clog dockets of cases filed with the Department. As such, the Department shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the Department shall enlist active civil society and private sector participation in the settlement of disputes through ADR.

Sec. 2. Objectives.

The objective of this Administrative Order is to facilitate the resolution of environmental disputes through the use of ADR. Specifically, the Department is committed to institute complementary measures to unclog its docket of cases following a two-pronged strategy: 1) by facilitating mutually-acceptable solutions for appropriate cases; and 2) by minimizing the number of cases raised for formal administrative or judicial resolution. This measure is intended to enhance public confidence in the Department as an institution of good governance.

Sec. 3. Definition of Terms

(a) "ADR system" shall have the same meaning as in the ADR Act, to wit: any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, as defined in (the) Act, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.

Sec. 4. Coverage

Cases and disputes that are covered by ADR are those identified by the respective Department bureaus, attached agencies and regional offices and those that are determined by the Oversight Committee as provided in the last paragraph of Sec. 5.



For this purpose, all Department bureaus, attached agencies, and regional offices shall make an inventory of the types and nature of disputes and cases that are presently filed with them. On the basis of such inventory, they shall identify such disputes and cases, now and hereinafter, that may be subject to ADR.

Sec. 5. *Exceptions.*

In no case, however, shall the following cases be subject to ADR:

- a) cases and disputes where applicable regulations are conflicting and would thus require resolution by a body higher than the bureau, attached agency or regional office;
- b) cases where the resolution thereof would require a policy change;
- c) cases which involve criminal liability;
- d) cases that involve the issue of jurisdiction of the Department or the courts;
- e) administrative cases against DENR officials and employees; and
- f) cases that by law cannot be compromised.

Disputes that have assumed national significance, or involve national officials, or have reached national media attention, as well as cases that arise as a direct outcome of Presidential directives, are to be referred directly to the Oversight Committee, provided in Section 10 hereof, to determine if ADR is appropriate.

Sec. 6. *Recognition of party autonomy in dispute resolution.*

Pursuant to the Department's recognition of the freedom of parties to a dispute to make their own arrangements to resolve the conflict, parties may resort to traditional or customary modes of settlement of disputes, which are not contrary to law. The Department shall take into account the mutually acceptable solution reached by the parties, not contrary to law, as basis for its decisions or orders, without prejudice to the rights of persons who were not party to the solution or settlement.

Sec. 7. *Integrating ADR in existing administrative procedures.*

All Department bureaus, attached agencies, and regional offices shall adopt alternative dispute resolution principles, consistent with relevant laws, in their current procedures for resolving environment and natural resources conflicts. Where appropriate, it shall adapt an applicable ADR system as provided in the ADR Act. Department bureaus, attached agencies, regional offices and quasi-judicial bodies such as the Panel of Arbitrators, Mines Adjudication Board and Pollution Adjudication Board shall create or modify their respective rules of procedures, where appropriate, to incorporate ADR principles or steps in addressing conflicts or hearing cases under their jurisdictions.

Sec. 8. *ADR Training for DENR personnel.*

To institute and strengthen the capacities for ADR of key personnel in the Department, the following shall be created and/or undertaken:

- a) There shall be established a comprehensive and continuing ADR training for personnel involved in addressing or deciding conflicts brought before their offices;
- b) The Undersecretary for Management and Technical Services shall be responsible for the creation and design of a comprehensive ADR Training and Development Program, including the information and educational campaign thereof within and outside the Department. However, ADR guidelines and training modules shall be tailored to the specific sector

- where it will apply (e.g. EIA system, adjudication of mining disputes or pollution cases, etc.);
- c) The bureaus, attached agencies, and regional offices shall adopt and implement a continuing ADR training and development program, in coordination with the Office of the Undersecretary for Management & Technical Services;
 - d) The Assistant Secretary for Legal and General Services and the Assistant Secretary for Foreign Assisted and Special Projects shall provide support for the Department-wide ADR Training and Development Program and related activities in the bureaus, attached agencies, and regional offices, upon the direction and supervision of the Undersecretary for Management and Technical Services; and
 - e) The Financial Management Services shall allot budgetary support for the ADR Training and Development Program and related activities in the central office, bureaus, attached agencies, regional offices.

Sec. 9. Support mechanisms for ADR.

In order to optimize the use of ADR in the Department, the following measures are to be undertaken:

- a) All bureaus, attached agencies, regional offices and the Legal Division of the Department shall identify and designate an ADR Focal Point in their respective offices that shall coordinate ADR activities and report to the Oversight Committee;
- b) The Office of Undersecretary of Management and Technical Services shall develop, operate, and maintain a Department-wide database on ADR case studies, without prejudice to the right of parties to withhold confidential information protected by law. The case studies shall be included in the website of the DENR, which must be regularly and promptly updated to ensure timeliness and accuracy of the information stored therein;
- c) The Bureau Directors, Regional Executive Directors, Regional Directors of EMB and MGB, and the Undersecretary for Management and Technical Services shall adopt and maintain a reporting procedure on ADR capacity building in their respective offices to the Oversight Committee;
- d) The Oversight Committee, bureaus, attached agencies, or regional offices, may initiate cooperative undertakings with academic institutions, non-government organizations, or other private sector groups, to assess and analyze the effectiveness of ADR, including efforts initiated prior to this Order. These assessments shall be considered in improving the training program as well as Department rules and regulations, policies and procedures.

Sec. 10. Supervision and Oversight.

To supervise and monitor the implementation of the ADR program within the Department, an ADR Oversight Committee is hereby established, to be composed of the following:

- a) the Undersecretary for Management & Technical Services, Chair;
- b) the Assistant Secretaries for Legal Services & for Foreign-Assisted and Special Projects; and
- c) Bureau Directors and Heads of Attached Agencies.

The Committee may invite a representative from civil society or private sector with relevant expertise or experience as member of the Oversight Committee.



The Committee shall primarily serve as administrator and implementer of the ADR program and not as an appellate body for review of decisions or agreements, without prejudice to its advisory role in Section 5, last paragraph.

Sec. 11. Transparency, Accountability, Participation and Due Diligence.

All personnel and officials involved in the Department's ADR activities, including those in bureaus, attached agencies and regional offices, shall maintain the highest standards of transparency, accountability, participation and due diligence in applying ADR.

In appropriate cases and when parties to the conflict agree, representatives of non-government organizations, affected industries, and community leaders, may be invited to be present and to observe all ADR processes that the Department offices shall undertake. The invited observers are encouraged to submit reports to the office responsible for the ADR activity/case, whether open or confidential, oral or written, on their observations, comments, critique, and/or recommendations on the ADR processes that they were invited to observe.

All ADR Focal Points shall submit to the Oversight Committee a quarterly report of their ADR and ADR-related activities. The Oversight Committee shall consolidate the reports of ADR Focal Points and submit a report to the Secretary.

The Public Affairs Office in the central office, bureaus, attached agencies & regional offices shall make timely announcements and summary reports of ADR activities to the media and interested public.

Sec. 12. Repealing clause.


All orders, rules and regulations, or parts thereof, which are inconsistent with the provisions of this order are hereby repealed, amended or modified accordingly.

Sec. 13. Separability.

If, for any reason, any part or provision of this order shall be held unconstitutional or invalid, all other parts or provisions not affected shall thereby continue to remain in full force and effect.

Sec. 14. Effectivity.

This order shall take effect immediately after its complete publication in a newspaper of general circulation and filing with the Office of the National Administrative Register.


Michael T. Defensor
Secretary *ni* *ANT*



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