



AUG 31 2004

MEMORANDUM ORDER

No. 2004 - 10

**FOR: The Undersecretaries and Assistant Secretaries
All Heads of Offices, DENR Central Office
All Bureau Directors
All Heads of Attached Agencies
All Regional Executive Directors
All Mining Applicants and Others Concerned**

**FROM: The Secretary
Department of Environment and Natural Resources**

**SUBJECT: PROCEDURAL GUIDELINES IN THE EVALUATION OF MINING
PROJECT FEASIBILITY STUDIES FOR THE APPROVAL OF
DECLARATION OF MINING FEASIBILITY AND APPLICATIONS
FOR MINERAL PROCESSING PERMITS AND MINERAL
AGREEMENTS IN THE DEVELOPMENT OR OPERATING
PERIOD**

Pursuant to the effective implementation of Republic Act (R.A.) No. 7942 and to facilitate the approval of the Declaration of Mining Feasibility (DMF) of mining projects and applications for Mineral Processing Permit (MPP) and Mineral Agreements in the Development or Operating Period (MA-D/OP), the following procedural guidelines in the evaluation of mining project feasibility studies (FS) are hereby promulgated for the guidance of all concerned:

Section 1. Basic Principle

All mining and related projects to be approved by the Department of Environment and Natural Resources (DENR) shall demonstrate their capacity to generate wealth for the Government and Contractor/Permit Holder through a full-blown mining project feasibility study following the principles of sustainable development where environmental and social costs and the Government share mandated by law can be absorbed.

Section 2. Submission of Feasibility Studies

The mining project feasibility study submitted to support a DMF or an application for MPP or MA-D/OP, shall undergo the process of evaluation and approval by the MGB. As part of the documents to support a DMF or an application for MPP or MA-D/OP, all mining project feasibility studies shall be submitted to the MGB Regional Office that has administrative jurisdiction over the proposed project.

The project proponent shall submit a minimum of one (1) digital copy and two (2) printed copies of the FS complete with the necessary maps, diagrams, flowcharts, tables, pictures, annexes and appendices. The MGB Regional Office

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shall not receive an FS submitted with less than the minimum number of copies herein provided and does not contain the signature of the preparer and the attachments mentioned thereof.

The FS to be submitted by mining applicants shall be a full-blown mining project feasibility study containing the minimum information outlined in MGB Form No. 05-3 of DENR Administrative Order (DAO) No. 96-40, as amended. For Project Descriptions (PD) covering existing projects and submitted in lieu of an FS as provided for under Sections 5 and 12 of DAO No. 2003-46, the minimum information to be submitted by the proponent shall be guided by MGB Form No. 05-3A. Within five (5) working days from its receipt, the MGB Regional Office shall return the FS or PD to the project proponent if it does not contain the minimum information required under MGB Form Nos. 05-3 or 05-3A, respectively.

Section 3. Evaluation of Feasibility Studies

Within twenty (20) working days upon its receipt, the MGB Regional Office shall conduct its evaluation of the FS or the PD. After evaluation, it shall forward its findings and comments together with one (1) printed copy and the one (1) digital copy of the FS along with the other documents pertinent to the DMF or application for MPP or MA-D/OP to the MGB Central Office. The FS shall undergo evaluation by the Director and the Technical Committee on Mining Feasibility Studies (TCMFS).

In the case of MPP applications with project cost of less than Two Hundred Million Pesos, the MGB Regional Office, after its evaluation of the FS or PD, shall immediately conduct a Technical Conference with the project proponent.

The evaluation shall consider the following criteria:

1. Acceptability of the assumptions, parameters and references used;
2. Appropriate social and environmental expenditures can be absorbed by the project;
3. Payment of taxes, fees, additional government share and other imposts required under existing laws and regulations implemented by local and national governments;
4. Sufficient ore reserves delineated to sustain the projected mining operations. In the case of Financial or Technical Assistance Agreements (FTAA), the project should have a profitable operating mine life of more than ten (10) years to ensure collection of appropriate government share, given a maximum five-year cost recovery period;
5. Grade management, mining sequence and mineral conservation measures to optimize the mine.
6. Guaranteed provision for payment of the appropriate and fair Government share for every project notwithstanding the grant of any incentives by other Government agencies. For projects covered by Mineral Agreements and Mineral Processing Permits, the number of operating years without tax holidays should be more than the number of operating years with tax holidays
7. Overall profitability of the project and its positive contribution to the national and local economy.

The planned expenditures contained in the project's Environmental Protection and Enhancement Program (EPEP) and the Social Development and Management Program (SDMP) shall be used in the evaluation of the project's feasibility. The project proponent must submit its EPEP and SDMP in time for the FS evaluation.

For PD, the evaluation shall also consider the performance of the project proponent in terms of its payment of taxes and fees and compliance to social and environmental provisions and other requirements of law.

Section 4. Validation of Ore Reserves

Except for MPP applications, the ore reserves statement in an FS or PD shall be reviewed by the TCMFS within seven (7) working days upon receipt by the MGB Central Office. If found necessary, the TCMFS shall recommend the conduct of a joint ore reserve validation to be undertaken by the central and regional offices upon payment by the project proponent of the necessary verification fee and submission of the required exploration data. All expenses for the analysis of check samples and reproduction of maps and related documents shall be borne by the project proponent. The validation team shall submit its report to the Director, copy furnished the TCMFS, not later than sixty (60) working days from receipt of the FS by the MGB Central Office.

Section 5. Technical Conference With Proponent


For DMF, MA-D/OP and MPP applications with project cost of more than Two Hundred Million, the TCMFS shall, within a period of sixty (60) working days upon receipt of the FS or PD by the MGB Central Office, convene a technical conference with the project proponent. The Director shall approve the FS or PD if the major concerns identified by the TCMFS, were adequately addressed and justified by the project proponent.

If the FS or PD requires a revision or additional information as recommended by the TCMFS, the project proponent shall issue a letter of undertaking stating his/her commitment to revise or supplement the FS or PD, and submit it within a period of thirty (30) days. Upon submission, the TCMFS shall review the documents and, if found in order, shall recommend its approval. The Director shall approve the FS within ten (10) working days upon receipt thereof.

If the TCMFS finds the project non-feasible based on its FS and other findings of the MGB, such finding shall be a ground for the disapproval of the DMF or the application for MPP or MA-D/OP.

Section 6. Final Evaluation of the DMF, MPP or MA-DO/P Application

The approval of the FS or PD shall cause the final evaluation of the DMF or the application for MPP or MA-D/OP considering other requirements mandated by the revised implementing rules and regulations of R.A. No. 7942, such as the Survey Order for Final Mining Area, Three-year Development and Utilization Work Program, EPEP, SDMP, endorsement by the Sanggunian concerned, among others. The Director shall issue a decision relative to the final evaluation within a period of thirty (30) working days from the date of approval of the FS. In the final evaluation, MGB shall ensure that the Development and Utilization Work Programs of the project corresponds with the projections and timing of activities in the FS.

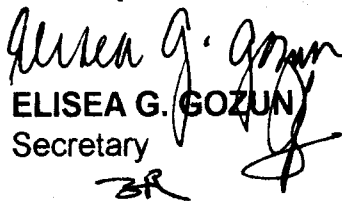


Section 7. Repealing Clause

All memorandum orders, circulars and special orders inconsistent with or contrary to the provisions of this Memorandum Order are hereby repealed or modified accordingly.

Section 8. Effectivity

This 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.


ELISEA G. GOZUN
Secretary
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