

**DENR ADMINISTRATIVE ORDER
NO. 3**

SUBJECT: Total Ban on Extraction of Sand and Gravel, Quarrying and Other Related Surface Mining Activities in Certain Areas Along the Bued River and Kennon Road Located in Baguio City and Tuba, Benguet.

WHEREAS, Congressman Honorato Y. Aquino of Baguio City and Resolution No. 53 of the Cordillera Executive Board requested among others, the **stoppage** of quarrying, extraction of sand and gravel and related activities along the **Bued River and Kennon Road** for ecological, environmental and safety considerations;

WHEREAS, a field investigation report by a technical team of DENR, Region I, in response to the above request, strongly recommended immediate **suspension and possible revocation** of all sand and gravel and quarry permits which paved the way to the prevalence of illegal extraction, quarrying activities and indiscriminate barring down of slope materials along Kennon Road causing danger to life, property and infrastructures;

WHEREAS, there is a dire need to minimize and/or prevent failures and instabilities of adjoining slopes along the Kennon Road brought about by said illegal activities for public road safety reasons;

THEREFORE, be it resolved that the extraction of sand and gravel, quarrying/ barring down and other related surface mining activities be totally banned along Kennon Road starting from KM Post 241 (Camp 7, Baguio City) up to KM Post 222 (Camp 3, Tuba, Benguet) within a distance of 100 meters on both sides of the road.

BE IT RESOLVED FURTHER THAT SAND AND GRAVEL EXTRACTIONS BE ALLOWED ONLY ALONG THE BUED RIVER from Camp 3 and beyond, at a distance over 100 meters from the center of the road.

This ORDER shall take effect immediately.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on January 4, 1989

**SUBJECT: Rules and Regulations Governing the Granting of
Processor's Permit Related to Small Scale Gold Mining.**

Pursuant to Section 8 of Presidential Decree No. 1988, entitled "Establishing Small Scale Mining as a New Dimension in Mineral Development", the following rules and regulations are hereby promulgated for the guidance of all concerned:

Section 1. Definition of Terms. – Unless otherwise specified, the terms and phrases used in these rules and regulations shall have the following meaning:

- (a) "Government" – the Government of the Republic of the Philippines
- (b) "Secretary" – the Secretary of the Department of Environment and Natural Resources
- (c) "Regional Executive Director" – the head of the Department of Environment and Natural Resources Regional Office
- (d) "Mayor" – city or municipal mayor
- (e) "Processing" – extraction of gold from naturally occurring rocks or minerals such as gravity concentration, leaching, beneficiation, cyanidation, amalgamation, smelting, hydrometallurgy, and other similar activities.
- (f) "Mineral Processing Zone" – designated place outside subsisting mining lease/license/permit where gold bearing naturally occurring rocks or minerals may be processed

Section 2. Processor's Permit. A person or entity may engage in the processing of gold bearing naturally occurring rocks or minerals upon issuance of a processor's permit by the Regional Executive Director or persons duly deputized by the Regional Executive Director. However, those who are presently engaged in the said activity shall secure a processor's permit within three (3) months from the effectivity of this Order.

Section 3. Qualification. Any Filipino citizen, of legal age and with capacity to contract, duly registered and accredited association or cooperative or corporation or partnership at least sixty per centum (60%) of the capital of which is owned by Filipinos, may apply for and may be granted a processor's permit.

Section 4. Application. An application for a gold processor's permit by a qualified person who will be using cyanide, mercury and other toxic substance shall be filed with, and be approved or disapproved by the Regional Executive Director concerned within thirty (30) days after filing, accompanied by the following:

- (a) Proof of financial and technical capability to undertake the processing of gold bearing rocks or minerals in accordance with the accompanying work plan and proposed plant capacity, such as but not limited to the latest financial statements, bank certification, and list of technical men employed by the applicant;
- (b) Work plans, plant site, mill and plant layout design, clearly indicating the safety and antipollution devices/measures as well as the plant capacity which shall not-exceed 50,000 tons of mill feed per year;
- (c) If the applicant is a partnership, association, cooperative or corporation, proofs or evidences showing that it is a licensed and/or duly registered with appropriate government agencies;
- (d) Environmental Clearance Certificate from the Environmental Management Bureau; and
- (e) Application fee in the amount of Three Hundred Pesos (P300.00).

Holders of planning permit and those who use gravity concentration method or nontoxic substances may apply for be granted a processor's permit by the Mayor concerned upon deputization by the Regional Executive Director. Said application shall be accompanied only by the abovementioned application fee.

Section 5. Plant Site. The processing plant shall be located within a mining lease/license/permit area or in a Mineral Processing Zone designated by the Mayor of the municipality or city wherein the site is located, upon recommendation of the Regional Executive Director.

Section 6. Term of the Permit. The term of the permit shall be for a period of four (4) years and renewable for like periods.

Section 7. Renewal. The application for renewal of a gold processor's permit shall be filed thirty (30) to forty five (45) days before the expiration of the processor's permit and shall be acted upon on or before the day of expiration. The renewal may be approved provided that the applicant has complied with all the terms and conditions of the permit and the relevant provisions of mining laws, rules and regulations, as well as of this administrative order.

Section 8. Compliance with Health and Environmental Laws. All laws, rules and regulations governing health, sanitation, pollution control, zoning, labor and mine safety, as well as those for the protection and enhancement of the environment shall be observed and complied within the operation of the gold processing plant.

Section 9. Monitoring and Submission of Reports. The operators of gold processing plants shall submit quarterly production and activity reports in the prescribed form to the Regional Executive Director concerned, who may however require them to submit other reports related to the plant operations. The Regional Executive Director or his authorized representative shall conduct an on site inspection of deliveries of cyanide, mercury and other substances as well as validation of the reports submitted for which the operators may be charged a verification and inspection fee therefrom.

Section 10. Cancellation, Suspension of Permit and Administrative Fines. The noncompliance with and/or violation of this rules and regulations and terms and conditions of the permit shall constitute grounds for the imposition of administrative fines to be imposed by the Regional Executive Director in an amount of not less than FIVE THOUSAND but not more than TWENTY THOUSAND PESOS, and/or suspension/cancellation of the permit.

Section 11. Separability Clause. If any clause, sentence, provision or section of this rules and regulations shall be held invalid or unconstitutional, the remaining parts of this rules and regulations shall not be affected thereby.

Section 12. Repealing Clause. Section 1 (z) and Section 27-A of Mines Administrative Order No. MRD-41, series of 1984, as amended by Mines Administrative Order No. MRD-50, and all other orders, rules and regulations inconsistent with the provisions of this Administrative Order are hereby repealed and/or modified accordingly.

Section 13. Effectively. This Administrative Order shall take effect fifteen (15) days after publication in a newspaper of national circulation and the Official Gazette.

FULGENCIO S. FACTORAN, JR.
Secretary

Recommended by:

GUILLERMO R. BALCE
Director

Signed on January 11, 1989

ADMINISTRATIVE ORDER

NO. 07

SUBJECT: Suspension of the Acceptance of Application and Issuance of Prospecting Permits in Government Reservation (i.e., Forest Reserves, Watershed Forest Reserves, National Parks, Wilderness Areas, Mangrove Reserves, Research Experimental Stations, Reforestation Sites).

In line with the government's thrust towards forest conservation and the clear delineation of ecological zones, it is imperative that mine prospecting in government reservations be held in abeyance pending a review of existing policies on the matter.

Pursuant to Section 7 of Executive Order No. 192, the acceptance of applications and issuance of prospecting permits in all government reservations under the administration of the Department of Environment and Natural Resources are hereby suspended.

This Order shall take effect immediately.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on February 3, 1989

**SUBJECT: Guideline for the Implementation of the
 "Adopt A Tree, Adopt A Mining Forest
 Movement"**

This Guideline covers the details of the criteria, procedure and other mechanism for the effective implementation of the Adopt a Tree, Adopt a Mining Forest Movement.

I. OBJECTIVE OF THE MOVEMENT

The Movement calls for the establishment of a mining forest within a specified area by qualified participants, starting in June 1988 and culminating in a Best Mining Forest Contest in June, 1989 and every year thereafter.

II. AREA QUALIFICATION

To be qualified in the Movement, the area to be adopted as a mining forest must satisfy the following criteria:

- a. It must be covered by mining claim/s owned by, assigned to or under an operating agreement with the participant; Provided, That in the case of mining claim/s assigned to or under an operating agreement with the participant, there shall be a written permission from the claimowner/s stating that no objection is being posed to the area's participation in the Movement; Provided, further, that in the case of mining claim/s not owned by, assigned to or under an operating agreement with the participant, a written permission by the claimowner and operator to the same effect shall likewise be presented;
- b. It must be a denuded/sparsely vegetated area or, preferably, a mined-cut or mine wastes/tailings – covered area;
- c. It must have a minimum area of 5 hectares and not exceeding 5,000 hectares in one contiguous group of mining claims;
- d. In the case of an area with surface ownership, there shall be a written permission of the surface owner to the same effect;

In this regard, each DENR field office from regional to community levels are required to form a Mining Forest Assistance Team that will extend the above-needed assistance and, for the duration of the Movement, render free technical assistance in forest maintenance to the participants as may be requested by the latter.

A Application for Accreditation

The interested participant shall file the application for accreditation with the concerned CENRO by submitting the following documents:

- a. Basic letter application;
- b. Topographic map on a convenient scale showing the position of the area to be adopted in relation to the mining claim/s and location of operating area;
- c. Copy of mining lease contract, permit, license or any documents showing propriety of rights to the mining claim/s constituting the area to be adopted;
- d. Written permission from the claimowner and/or operator, as may be applicable per Item No. IIa hereof; and
- e. Written permission from the surface owner, as may be applicable per Item No. II d hereof.

Four (4) copies of the above documents shall be required.

Acceptance of applications for accreditation shall be open

B. Processing of Application for Accreditation

The concerned CENRO shall process the application for accreditation, based on the qualification criteria for area, participant and tree/seedling species as herein provided. Processing should be done and completed within two (2) weeks starting upon receipt of an application.

After the above processing, the CENRO shall endorse the application to the concerned RED, thru the PENRO, for accreditation.

In cases where an application is found deficient, the CENRO shall inform the applicant about such deficiency and allow the latter to rectify the same; Provided, That deficient applications shall be given a rectification period of two (2) weeks starting upon receipt of notice.

C. Accreditation

The RED shall notify the applicant immediately as to the accreditation of the application and at the same time, serve notice that the adoption movement can be already pursued.

One (1) copy each of the notice of accreditation and all document pertinent thereto shall be furnished by the RED to the Technical secretariat of the Movement, c/o Mines and Geo-Sciences bureau, MGB Compound, North Avenue, Diliman, Quezon City.

D. Maintenance

The participant will plant the qualified trees/seedlings on the designated area and make the necessary proper identification of their adoption. Thereafter, the participant shall undertake the necessary maintenance of the planted trees/seedlings and, if possible, plant more trees for the duration of the Movement.

III. BENEFITS

Participants to the Movement shall be entitled to the following benefits:

- a. Qualification as participant to the "Best Mining Forest" contest; the winners of which shall be recipients of a Presidential trophy to be awarded by the President of the Republic of the Philippines;
- b. Inclusion to the Agroforest Farm and/or reforestation/afforestation programs of the DENR covering the adopted area;
- c. Free technical assistance in forest maintenance by the DENR; and
- d. Expenses for establishing and maintaining the adopted forest are allowed to be charged as operating expenses for income tax purposes.

IV. MANAGEMENT OF THE MOVEMENT

There shall be created a committee to be headed by the Mines and Geo-Sciences Bureau which will manage the Movement to ensure its effective implementation and success. This committee shall also formulate soonest the criteria, in coordination with other DENR offices, for the selection of winners and awarding scheme in the Best Mining Forest contest.

V. GUIDELINE DISSEMINATION

This Guideline shall be distributed to all offices/bureaus/agencies and the DENR offices and interested parties.

VI. EFFECTIVITY

This Guideline takes effect immediately and supersedes regulations previously issued.

APPROVED:
Quezon City, Philippines

VICTOR O. RAMOS
Acting Secretary

Signed on March 22, 1989

**SUBJECT: Authority of the Director of Mines and Geo-Sciences to
Decide Mining Cases Submitted for Resolution Before the
Panel of Investigators.**

In the interest of the service and in order to facilitate the disposition of mining conflicts, authority is hereby granted to the Director of Mines and Geo-Sciences to decide mining cases already submitted for resolution before the Panel of Investigators.

This Order takes effect immediately.

VICTOR O. RAMOS
Acting Secretary

Signed on April 12, 1989

**DENR ADMINISTRATIVE ORDER
NO. 46**

SUBJECT: Suspension of Registration of Mining Claims and Other Applications for Mining Rights in Central Ticao Island, Masbate.

Pursuant to Section 7 of Executive Order No. 192 and DENR Memorandum dated July 11, 1988 ordering the delineation of specific areas for small scale mining operations anticipatory to the passage of the Minahang Bayan Law, the registration of mining claims and other applications for mining rights in Central Ticao Island, Province of Masbate is hereby suspended subject to existing prior rights and the same area reserved for the Minahang Bayan Program.

This Order shall take effect immediately.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on May 31, 1989

**SUBJECT: Guidelines on Mineral Production Sharing Agreement
Under Executive Order No. 279.**

Pursuant to Executive Order No. 279 of 25 July 1987 and in line with the policy of the Government of harnessing the country's mineral resources to hasten economic recovery and promote sustainable national development in order to raise the quality of life of the people, the following rules and regulations governing the exploration, development and utilization of mineral resources are hereby promulgated:

ARTICLE 1

TITLE, POLICIES AND OBJECTIVES

- 1.1 *Title.* This Administrative Order shall be known as the "*Guidelines on Mineral Production Sharing Agreement (MPSA)*".
- 1.2 *Policies and Objectives.* The policies and objectives of the Government on Mineral Resources shall be:
 - (a) To promote equitable access to, economically efficient development of, and fair sharing of benefits and costs derived from the exploration, development and utilization of minerals;
 - (b) To enhance the contribution of mineral resources to economic recovery and sustained national development particularly in developing host rural communities as well as local science and technology resources;
 - (c) To promote the national development and conservation of mineral resources under full control and supervision of the State; and
 - (d) To enable the government to recover full economic rent and/or its equitable share in the production and utilization of minerals.

ARTICLE 2

DEFINITIONS

The terms included in this Article shall have their meaning as follows:

“Agreement” means a Production Sharing Agreement entered into pursuant to Executive Order No. 279 and these Guidelines.

- 2.2 **“Associated Minerals”** means ore minerals which occur together with the principal ore mineral.
- 2.3 **“Calendar Year”** means the period consisting of twelve (12) consecutive months starting with the first of January, while **“Calendar Quarter”** means a period consisting of three (3) consecutive months starting with the first day of January.
- 2.4 **“Commercial Production”** means production of sufficient quantity of minerals to sustain economic viability of mining operations as specified in the approved Medium Term Work Program.
- 2.5 **“Contract Area”** means the area within the jurisdiction of the Republic of the Philippines which is the subject of the Production Sharing Agreement, as diminished pursuant to the relinquishment obligations of the Contractor in proper case, delimited by longitude and latitude.
- 2.6 **“Contractor”** means the qualified person who is awarded the Production Sharing Agreement.
- 2.7 **“Declaration of Mining Feasibility”** means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods, including the Mine Development plan for a period of three (3) years in the case of Integrated Agreements.
- 2.8 **“Department”** means the Department of Environment and Natural Resources
- 2.9 **“Environment”** means physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odors, tastes and biological factors of animals and plants and the social factors of aesthetics.
- 2.10 **“Exploration”** means the examination and investigation of lands and offshore areas supposed to contain valuable minerals by drilling, trenching, shaft sinking, tunneling, test pitting and other means for the purpose of probing the presence of mineral deposits and the extent thereof.
- 2.11 **“Foreign Currency”** means any currency other than the Philippine peso.

- 2.12 *“Government”* means the Government of the Republic of the Philippines or any of its agencies or instrumentalities.
- 2.13 *“Gross Output”* means the actual market value of minerals or mineral products derived from mining operations as defined under the National Internal Revenue Code (Presidential Decree No. 1158, as amended)
- 2.14 *“Mine Development”* refers to steps necessarily taken to reach an orebody or mineral deposit so that it can be mined.
- 2.15 *“Minerals”* means all naturally occurring inorganic substances in solid, liquid, gas or any intermediate state.
- 2.16 *“Mineral Products”* means things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing.
- 2.17 *“Mining”* means to extract and remove minerals including operations necessary for the purpose.
- 2.18 *“Mining Area”* means a portion of the Contract Area selected for mining development and production, delimited by longitude and latitude.
- 2.19 *“Mining Operations”* means mineral exploration, development, production and all other operations necessary to discover, develop, and extract minerals.
- 2.20 *“Ore”* means minerals of rock extracted for profit.
- 2.21 *“Ore Mineral”* means a mineral that can be extracted from ore and contributes to the value of the ore.
- 2.22 *“Peso”* means the currency that constitutes legal tender in the Philippines.
- 2.23 *“Pollution”* means any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the Environment by discharging, emitting, or depositing wastes so as to materially affect any beneficial use adversely, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants, and “pollute” has a corresponding meaning.

- 2.24 “*Qualified Person*” means any Filipino individual, of legal age, or partnership, corporation, cooperative, government corporation, association or juridically distinct entity at least sixty percent (60%) of whose capital is owned by Filipino citizens.
- 2.25 “*Secretary*” means the Secretary of the Department of Environment and Natural Resources.
- 2.26 “*Work Program*” means a document which presents the plan of major mining activities and the corresponding expenditures and budget of a Contractor in its Contract Area during a given period of time, including the plan and expenditures for environmental protection and rehabilitation, development of host and neighboring communities and of local geoscience and mineral technology.

ARTICLE 3

NATURE, TYPES AND AWARD OF PRODUCTION SHARING AGREEMENT

3.1 *Nature of Production Sharing Agreement*

- a. It is an agreement wherein the Government grants the Contractor the exclusive right to conduct mining operations within, but not title over, the Contract Area and shares in the production whether in kind or in value as owner of the minerals therein. The Contractor provides all the necessary financing, technology management and personnel.
- b. The term of the Production Sharing Agreement shall be for a period of twenty five (25) years starting from execution and renewable for another twenty five (25) years.

3.2 *Types of Production Sharing Agreements*

Production Sharing Agreements shall be classified on the basis of the integration of activities and size. Such classification shall determine the application of specific rules and the authority for awarding contracts and estimates of Government share in production.

- a. *Integration of Activities.* There are two types under this category:
 - i. *Integrated Agreement.* Such agreement embraces all activities from Exploration through Production.
 - ii. *Simple Agreement.* This agreement embraces all mining activities after the Exploration Period.
- b. *Size.* Agreements classified on this basis are:

- i. **Large.** These agreements shall cover mining areas with projected investments of at least One Hundred Million Pesos (P100 million) in 1988 base price. Negotiation of terms for these Contracts shall be done by the Negotiating Panel.
- ii. **Medium Scale.** These agreements shall cover mining areas with projected investments of less than One Hundred Million Pesos (P100 million). Negotiation for these types shall be done by a Subcommittee of the Negotiating Panel created by the Secretary.

3.3 **Available Areas** — The following areas are available for Production Sharing Agreements:

- a. Lands of the public domain and alienable and disposable lands not covered by valid and existing Mining Lease and similar Agreements;
- b. Civil and other reservations where the Department retains jurisdiction;
- c. Lands covered by expired/cancelled Mining Lease Agreements;
- d. Private lands; and
- e. Offshore Areas within the Philippine Exclusive Economic Zone.

3.4 **Maximum Onshore Area Allowed**

The maximum area for Production Sharing Agreements shall be:

- i. In any one province:
 - a) To individuals: Five Hundred (500) hectares;
 - b) To mining partnerships, corporations, and juridical entities: Five Thousand (5,000) hectares.
- ii. In the entire Philippines:
 - a) To individuals: One Thousand (1,000) hectares;
 - b) To partnerships, corporations and juridical entities; Ten Thousand (10,000) hectares.

The foregoing provisions, notwithstanding, the Secretary may allow an area not exceeding Ten Thousand (10,000) hectares in any one province depending upon the nature of the deposit, the kind of minerals located, and other circumstances inherent in the mining operations justifying the grant.

3.5 *Award of Production Sharing Agreement*

The award of production sharing agreement shall be by bidding in areas previously explored and determined to be economically viable for Mining Operations. In all other cases and in case of failure of bidding, the award shall be by negotiation.

- a. ***Bidding*** – Prospective bidders shall be invited to pre-qualify to bid over the subject area by way of public announcement in at least two (2) newspapers of general circulation. The Notice of Invitation for pre-qualification shall run once a week for three (3) consecutive weeks for new bids and once a week for two (2) consecutive weeks in the case of re-bidding. In addition, a copy of the Notice shall be posted at the Department and its Regional, Provincial and Community offices where the area being advertised is located.

The Notice shall specify, among others, the location, area, and the date, time and place of submission of pre-qualification requirements. Pre-qualified prospective bidders shall, upon payment of the required fees, be provided with instructions to bidders, the terms and conditions of the Agreement and other documents to guide and inform them in detail of the requirements, terms and conditions of the bidding.

- b. ***Negotiation*** – Proposals for a negotiated Agreement shall be submitted to the Office of the Secretary, DENR, through the appropriate Regional Office. The proposal shall specify the location and area of the proposed Contract Area; the Mineral or Minerals to be explored, developed and produced; the justification for the negotiation; the proposed Exploration Work Program and Budget; proposed share of the Government; and such other matters as may guide the Secretary in the appreciation and evaluation of the proposal as expressed in Article 7 hereof.

Minimum Requirements

Regardless of whether the Agreement shall be awarded by bidding or negotiation, the following minimum requirements shall be submitted by prospective bidders and proponents:

- a. ***For Individuals***
 - i. **Certified photo copies of Income Tax Returns for the immediately preceding three (3) years;**
 - ii. **Proof of sufficient capital and credit lines;**
 - iii. **Sworn statement that bidder or proponent is not a dummy of any person or entity;**
 - iv. **Authorization to the Secretary or his representatives to verify submitted information.**

b. *For corporations, partnerships, and associations:*

- i. Certified photo copy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) or the concerned authorized government agency;
- ii. Certified photo copy of the Articles of Incorporation, Partnership/Association and By-Laws;
- iii. Personal data sheets of the current directors and officers, including their nationalities, bio-data, and relevant experiences, or annual report;
- iv. Audited Financial Statements for the immediately preceding three (3) years, if applicable;
- v. Proof of sufficient capital and credit lines;
- vi. Authorizations to the Secretary or his representative to verify submitted information.

ARTICLE 4

STAGES OF MINING OPERATIONS

Exploration, development and utilization consist of the following physically identifiable periods: Exploration, Development and Construction and Operation and Production. Description and requirements under each of these periods are set down below.

4.1 *Exploration Period*

For Integrated Mineral Production Sharing Agreement, the Exploration Period shall commence upon effectivity of the Contract, and actual activities in the Contract Area shall commence not later than three (3) months after signing the Contract. The Exploration Period shall be for at most two (2) years, renewable for another two (2) years, subject to faithful compliance with the terms of the Contract in the previous years and reasonable expectation of success during the Extension.

4.1.1 The requirements during this period are:

- a. As basis for negotiation, the prospective Contractor must submit to the appropriate panel or sub-committee for examination, evaluation and approval, a sufficiently detailed Exploration Work Program which indicates clearly the schedule of activities including the objectives, specific targets and outputs expected, and the budget. Such Exploration Work Program shall cover the entire duration of the Exploration Period, excluding extension. Any request for extension must be accompanied by a separate Exploration Work Program.

- b. The Contractor shall submit Annual Reports which shall include information on the technical aspects of the operations as well as financial expenditures on various items of activities to serve as basis for evaluation of performance and compliance by the Contractor.
- c. The Contractor shall submit a final report at the end of the Exploration Period which shall in the form and substance comparable to published professional reports of respected international institutions and shall incorporate all the findings in the Contract Area, including locations of samples, assays, chemical analysis, and assessment of the mineral potential. Such report shall also include complete, detailed expenditures incurred during the Exploration Period.
- d. The Contractor must spend the amount necessary to accomplish the annual Work Program.

4.1.2 *Mining Feasibility*

During the Exploration Period, the contractor shall conduct feasibility studies for any part of the Contract Area as warranted. Within this period, the Contractor shall submit a Declaration of Mining Feasibility with a Work Program for development for the next succeeding three (3) years indicating therein the Mining Area. Areas not delineated as part of the Mining Area shall be deemed relinquished in favor of the Government.

Failure of the Contractor to submit a Declaration of Mining Feasibility during the Exploration Period, shall be considered a substantial breach of the Agreement.

4.2 *Development and Construction Period*

Upon submission of the Declaration of Mining Feasibility for an Integrated Agreement or upon signing of the Agreement in case of a Simple Agreement the Contractor shall complete the development of the mine including construction of production facilities within thirty six (36) months, subject to such extension based on justifiable reasons as the Secretary may approve.

4.3 *Operating Period*

Upon completion of the construction of the facilities, the Contractor shall within thirty (30) days thereafter submit a Medium Term Work Program for a period of three (3) years. The Contractor shall commence Commercial Production immediately upon the approval of the said Medium Term Work Program. Failure of the Contractor to commence Commercial Production within the period shall be considered a substantial breach of the Agreement.

Minimum requirements under this Period are:

- a. The Contractor shall submit to the Government Medium Term Work Program covering a period of three (3) years each which shall be submitted not later than thirty (30) days before the expiration of the period covered by the previous Medium Term Work Program.
- b. The Contractor shall conduct Mining operations and other activities for the duration of the Operating Period in accordance with the duly approved Medium Term Programs and any modification thereof approved by the Secretary.

The Contractor shall submit to the Secretary the following reports:

- i. *Quarterly Report*, beginning with the first quarter following commencement of the Operating Period, which shall include:

The tonnage of production in terms of ores, concentrates, and their corresponding grades and other types of products; value and destination of sales or exports and to whom sold; terms of sales, and expenditures.

- ii. *Annual Report*, beginning with the year when the Operating Period commenced which shall include:

(A) The total tonnage of ore reserves whether proven, probable, or inferred; the total tonnage of ores, kind-by-kind, broken down between tonnages mined, tonnages transported from the mines and their corresponding destination, tonnages stockpiled in the mine and elsewhere in the Philippines, tonnages sold or committed for export (whether actually shipped from the Philippines or not), tonnages actually shipped from the Philippines (with full details as to purchaser, destination and terms of sale), and if known to the Contractor, tonnages refined, processed or manufactured in the Philippines with full specifications as to the intermediate products, or final products and of the terms at which they were disposed;

(B) Work accomplished and work in progress at the end of the year in question with respect to all of the installations and facilities related to the exploitation program, including the investments actually made or committed.

(C) Profile of Work Force, including Management and Staff, stating particularly their nationalities, and for Filipinos their place of origin (e.g. barangay, town, province, region).

- (D) Ownership of operating Company or Contractor, particularly with respect to nationality.

All reports shall be submitted in triplicate, thirty (30) days after the end of each quarter, and sixty (60) days after the end of each year, respectively.

- d. The Contractor may make expansions, modifications, improvements and replacements of the mining facilities and may add new facilities, as the Contractor shall consider necessary for the operations, provided such plans shall be embodied in appropriate Work Program approved by the Secretary.

4.4. *Regulatory Fees*

There shall be due the Government for regulatory purposes the following fees during the exploration period:

First Year – Ten Pesos (P10.00) per hectare per year

Second and subsequent years – the amount per hectare per year for the initial year plus a yearly increment of Five Pesos (P5.00).

ARTICLE 5

SHARING IN MINERAL PRODUCTION

5.1 *Government Share in the Production*

The share of the Government shall be composed of a basic share on production or gross output plus a share in windfall profits which shall be determined through negotiations taking into account the following considerations: a) capital investment; b) risks involved; c) contribution to the economy; d) and such other factors as will help in determining a sharing that is fair and equitable to both parties. The basic share shall be expressed as percent of production or gross output.

5.2 *Government Share in Windfall Profits*

The Government share in windfall profits, expressed in money terms shall be calculated according to the following formula:

$$R_w = \text{NIAT} (W1 - W) F$$

where R_w is Government share in windfall profits;

NIAT is net income after deducting income tax, as determined on the basis of generally acceptable accounting principles practiced in the industry;

W1 is the actual return on investment for the period computed as the ratio of net income after tax to total investments.

W is the reference return on investment to be negotiated.

F is the proportionate share of the government in the windfall profit to be negotiated.

- 5.3 The Contractor shall insure that any mining, and/or treatment of ore prior to shipment shall be conducted in accordance with generally accepted international standards which are economically and technically feasible, and in accordance with such standards the Contractor shall use all reasonable efforts to optimize the mining recovery of ore from proven reserves and metallurgical recovery of minerals from the ore provided it is economically and technically, feasible to do so, and shall submit evidence to the Department of compliance with this undertaking. Failure of Contractor to optimize recovery may be cause for Government to recover previous losses and to demand for the use of such optimal method.
- 5.4 The Government shall have the right to review and evaluate any or all documents, data and other types of information about the production, sales and transportation of the minerals covered by the Agreement for purposes of determining its proper share in production including taxes and related fees and demand payments or reimbursements for amounts which should have been paid but not paid for whatever reasons, within five years.
- 5.5 In cases where bidding applies, the same formula in computing the share in windfall profit shall apply.
- 5.6 The share of the associated minerals shall be added to the value of the principal minerals in computing the share of the Government.
- 5.7 The Contractor shall endeavor to obtain the best achievable price for its production and pay the lowest available marketing commissions and related fees. Contractor shall seek to strike a balance between long-term and short-term sales comparable to policies followed by independent producers in the international mining industry. Insofar as Contractor's Affiliates are concerned, prices shall be at arm s-length standard.
- 5.8 The share of the Government on the Minerals produced under the agreement shall be computed periodically and shall be due and payable at such intervals as may be agreed upon between the government and the contractor.

ARTICLE 6

RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

The Contractor shall have the following rights and obligations:

RIGHTS :

- 6.1. To conduct mining operations on the Contract Area in accordance with the terms and conditions of the Agreement;
- 6.2. Exclusive possession of the Contract Area subject to surface an easement rights.
- 6.3 To use and have access to all declassified geological, geophysical, drilling, production and other information held by the Government or any agency or enterprise thereof now or in the future relating to the Contract Area;
- 6.4 To sell, assign, transfer, convey, encumber or otherwise dispose of all its rights, interests and obligations. under the Agreement subject to the approval of the Government;
- 6.5. Subject to applicable laws and regulations, to employ or bring into the Philippines foreign technical and specialized personnel (including the immediate members of their families), as may be required in the operations of the Contractor, provided, that if the employment connection of such foreign persons with the Contractor ceases, the applicable laws and regulations on immigration shall apply to them and their immediate families;
- 6.6 Enjoy, subject to pertinent laws, rules and regulations and the rights of third parties, the use of timber, water and other natural resources in the Contract Area;
- 6.7 To repatriate capital and remit profits, dividends and interest on loans, subject to existing laws, rules and regulations;
- 6.8 To import, when necessary, all equipment, spare parts and raw materials required in the operations in accordance with existing rules and regulations.

OBLIGATIONS:

- 6.9 Perform all Mining Operations in the Contract Area in accordance with the most efficient and internationally-accepted mining and engineering practices providing all the necessary services, technology and financing in connection therewith;
- 6.10 Perform all activities within the periods expressed in the Production Sharing Agreement, Plans and Work Programs
- 6.11 Keep accurate technical records about the operations as well as financial and marketing accounts and make them available to Government representatives authorized by the Secretary for purposes of assessing performance and compliance of the Contractor with the terms of the Contract; however, authorized representatives of other Government agencies may also have access to such accounts in accordance with existing laws, rules and regulations;

- 6.12 Hold the Government free and harmless from claims of all kinds, as well as demands and actions arising out of accidents or injuries to persons or property caused by the Mining Operations of the Contractor and indemnify the Government for any expenses or costs incurred by the Government by reason of any such claims, demands or actions;
- 6.13 Recognize and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands.
- 6.14 Pay taxes or obligations in accordance with existing laws, rules and regulations.
- 6.15 Relinquish to the Government after the Exploration Period, any portion of the Contract Area which shall not be necessary for Mining Operations and not covered by any Declaration of Mining Feasibility.
- 6.16 Furnish all materials, labor, equipment and other installations that may be required for carrying on all Mining Operations. To the maximum extent compatible with efficient operations, the Contractor shall give preference to products and services produced and offered in the Philippines of comparative quality. In particular, the Contractor shall give preference to Filipino construction enterprises and use building which can be constructed by using materials and skills available in the Philippines, employ Filipino subcontractors for road construction and transportation, and purchase Philippine household equipment, furniture and food.
- 6.17 Contribute to national development by helping develop the host and neighboring communities of the Contract Area, local geoscience, and mining technology, and mitigating adverse environmental effects of mining operations;

Development of Host and Neighboring Communities

- a. The Contractor shall coordinate with proper authorities in providing development plan for the host and neighboring communities.
- b. The Contractor shall help create self-sustaining, income generating activities, such as, but not limited to, reforestation and production of goods and services needed by the mine.
- c. The Contractor shall give preference to Filipino citizens, particularly residents of its host and neighboring communities, in hiring personnel for its operations. If the necessary skills and expertise are currently not available, the Contractor must prepare and undertake a training and recruitment program within the first year of commercial production at its expense.

Development of Geoscience and Mineral Technology

- d. The Contractor, in the course of its operations, shall produce geological, geo-physical, chemical and other types of maps and reports in scale, format

and nomenclature consistent with internationally accepted practices and standards.

- e. The Contractor shall systematically keep the data generated from the Contract Area such as cores, assays and other related information, including economic and financial and shall make them accessible to students, researchers, and other persons responsible for developing geoscience and mineral technology after declassification.

Environmental Protection and Industrial Safety

- f. The Contractor shall prepare a plan of mining so that its damage to the environment will be minimal. To the extent possible, control of pollution and the transformation of the mined out areas or materials into alternative economically and socially productive forms must be done simultaneously with mining. An appropriate Environmental Impact Statement (EIS) must be made according to the form prescribed by property government authorities and shall be a required component of the Feasibility Study of the mine. These activities must be reflected clearly in the appropriate Work Program.
- g. The Contractor shall conform to laws and regulations regarding, among others, labor, safety, demarcation of the Contract Area, and non-interference with the rights of other mining operators.

ARTICLE 7

GOVERNMENT CONTROL AND SUPERVISION

7.1 General Principle

The Government shall award mineral resources to parties which it deems most capable of conferring optimal benefits to the Filipino people, which includes, among others, the determination of technical and financial competence of the Contractors, the terms and conditions of the Agreement, particularly those that relate to the economic, social, scientific and technological development of the country or any of its constituency, and the Area to be subject to the Agreement. The Government shall exercise its control and supervision function through specialized agencies and instruments.

- 7.2 The Secretary shall be assisted in managing mining agreements by the following bodies:

- (a) *Negotiating Panel*

A body constituted by virtue of Presidential Administrative Order No. 68 of 1988, chaired by the Secretary, consisting of representatives from DENR, Mines and Geosciences Bureau, NEDA, Dept. of Finance, Central Bank and

the Dept. of Trade and Industry, and assisted by high level consultants in various aspects of mining such as mining law, finance, mineral economics, geology and mining. It is tasked to screen prospective Contractors, conduct negotiations and recommend awards to successful Contractors for approval of the President.

For negotiating contracts involving investments of less than One Hundred Million Pesos (P100 million), the Secretary shall constitute a Subcommittee chaired by him and with members drawn from the members of the Panel or from other units under the Department.

When bidding is necessary, the Secretary shall constitute a Bidding Committee and designate the members from competent officials of the Government.

b. *Technical and Administrative Review Committee*

The Secretary shall constitute a Technical and Administrative Review Committee chaired by the Director of the Mines and GeoSciences Bureau and shall designate its members from the Department, the academic and the private sector. It shall have the following functions:

- i. Review and evaluate every twelve (12) months or as the need arises, the performance and compliance of each Contractor.
- ii. Deliberate on problems related to or arising from the operation of mining contracts, and to recommend specific course of actions to the Secretary or President.
- iii. Monitor and evaluate local and international developments likely to affect the behavior and performance of the local mining operations and Contractors.
- iv. Determine the proper amounts due the Government in the form of share in production and other fees or charges provided in the Contract. It shall also determine if the minimum investments required of each Contractor are complied with, and recommend when to release bond deposits.
- v. Review, analyze and evaluate the report of the Regional Monitoring Group.
- vi. Undertake or contract in-depth researches to support the needs of the Secretary and the Negotiating Panel with data and related information relevant to the operations of mining contracts or about developments in local and world mineral commodity markets, particularly supply, demand, prices, market organizations, technology and trends in policies.

c. *Regional Monitoring Group*

The Regional Monitoring Group, shall consist of the Regional Executive Directors of each region with members to be designated by the Secretary. It shall be tasked to undertake the following:

- i. Provide interested parties with information on areas open for disposal, information on various phases or aspects of mining, including the requirements in acquiring various types of mining rights as well as the forms and other documentary requirements, disapprovals.
- ii. To classify, collate, analyze and evaluate documents on hand to determine performance and compliance of Contractors with the terms of the Contract. It shall refer to the Secretary or other higher authorities documents for approval or disapproval, stating clearly the course of action recommended and the reasons therefor, such as Work Programs.
- iii. It shall keep track of the start and termination of the different phases of mining in any Contract Area, including areas relinquished and what requirements are already fulfilled or are still to be fulfilled; and what areas are put into Mining Production.
- iv. Conduct inspections of mining areas or operations when authorized by the Secretary, to determine performance of the Mining Operations and compliance with the terms of the Contract by the Contractor.
- v. Recommend to the Technical and Administrative Review Committee or to the Secretary for appropriate action specific problems or issues regarding poor performance which may be improved; noncompliance or violation of certain terms of the Contracts. Such recommendation must be clear and provided with the necessary information to make decisions.
- vi. Prepare or contract to prepare a systematic data base and cartographic system so that all existing contracts, including such information as location, contractor, mineral deposits and expiration date, among others, can be made available to the public at cost and can be updated as frequently as quarterly or semestrally.

7.3 *Work Programs*

All Work Programs including changes thereof which entail a variance of at least Twenty Per centum (20%) of the budget are subject to the approval by the Government. Work Programs shall set down, among others, the following:

Plans and budgets for all activities essential to the pursuit of efficient exploration, development, mining, marketing, transporting and the like. Plans, bud-

gets and activities for developing science and technology; environmental management and developing host and neighboring communities.

The Work Programs shall be acted upon within sixty (60) days upon submission; failure to act within this period by the Government shall result in automatic approval.

7.4 Reporting Requirements

The Contractor shall submit the following reports concerning its mining operations to provide the necessary information for monitoring and evaluating performance and compliance with the terms of the Contract:

- a. **Quarterly Reports.** These reports shall contain the following:
 - i. In the Production Period, details about mineral production, inventory, sales and expenditures, and such other information needed to determine the financial obligations of the Contractor. These reports shall be due within thirty (30) days from the end of each Calendar Quarter.
- b. **Annual Report.** The Contractor, during any stage, shall submit an annual report within sixty (60) days after December 31 of each year which states the major activities, achievements and expenditures during the year covered, including maps, assays, rock and mineral analyses and progress geological and similar reports during the exploration and development phases, and sales, levels of production, staffing pattern, ownership, profits, contracts during the Production Period and such other details which are material to evaluating the performance of the Operation as well as the Contractor's compliance with the terms of the Contract.
- c. **Final Report.** At the end of the Exploration and Development Periods, a Final Report must be submitted by the Contractor to the Government. Such report shall integrate all information in maps of appropriate scale and quality as well as in monographs or reports in accordance with international standards. This report must be due within six (6) months after the end of the exploration or development stages. Report at the end of the exploration is essentially geological and engineering in nature, whereas report at the end of Development essentially relates to technical and economic feasibility. A final report shall also be required in case of termination of a contract.
- d. **Confidentiality of Reports and other Information.** In general, reports data and other information provided by the Contractor (Government) shall be treated confidentially by the Government (Contractor) within five (5) years after submission, or after being declassified, whichever comes first. Provided that, release of such information may be done earlier than five years or before declassification upon issuance of a written authority by the Contractor (Government).

ARTICLE 8

FORCE MAJEURE, ARBITRATION AND TERMINATION

8.1 *Force Majeure*

Any failure by the Contractor or the Government to carry out any of its obligations under the Agreement shall not be taken as breach of contract or default if such failure is caused by force majeure, that party having taken all appropriate precautions, due care and reasonable alternative measure with the objectives of avoiding such failures and of carrying out its obligations under the Agreement.

For purposes of the Agreement, *force majeure* shall include among other things: war, insurrection, civil disturbance, blockade, sabotage, embargo, strike and other labor conflict, riot, epidemic, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, lighting, adverse order or direction of any Government *de jure or de facto* or any instrumentality or subdivision thereof, act of God or the public enemy, breakdown of machinery having a major effect on the operations and any cause (whether or not of the kind hereinbefore described) over which the affected party has no reasonable control and which is of such a nature as to delay, curtail or prevent timely action by the party affected.

8.2 *Consultation and Arbitration*

- a. The Government and the Contractor shall consult with each other in good faith and shall exhaust all available administrative and other similar remedies to settle any disagreement or dispute before resorting to arbitration.
- b. Any disagreement or dispute arising from the Agreement between the Government and the Contractor which can not be solved amicably shall be settled by a tribunal of three arbitrators, one to be appointed by the Contractor, another to be appointed by the Government, and the Third by the two arbitrators so appointed. The first two appointed arbitrators shall continue to consider names of qualified persons until agreement on a mutually acceptable Chairman of the tribunal is reached. Such arbitration shall be initiated and conducted pursuant to Republic Act No. 876 otherwise known as the Arbitration Act. Where substantial foreign interests are involved Arbitration in Manila under the rules of the International Chamber of Commerce or under the UNCITRAL and based on the laws of the Republic of the Philippines may be allowed.
- c. The costs of the Arbitration, proceedings shall be borne equally by the Contractor and the Government.

8.3 *Termination of Agreement*

An Agreement may be terminated for any of the following reasons:

- a. If, in the opinion of the Contractor, the mining project is not workable, after having used all reasonable diligence in its endeavor to conduct its activities under the Agreement upon prior notice to the government;
- b. Expiration of the Agreement;
- c. Default or breach of Contract by either Party which makes mining operations unworkable;
- d. Abandonment of the Mining Operations by the Contractor.

8.4 *Disposal of Property*

All sales, removals or disposals of the Contractor's property pursuant to termination of the Agreement shall be effected according to the prevailing laws and regulations.

ARTICLE 9

TRANSITORY PROVISION

- 9.1 All existing mining leases or agreements which were granted after the effectivity of the 1986 Constitution pursuant to Executive Order No. 211, except small scale mining leases and those pertaining to sand and gravel and quarry resources covering an areas of twenty (20) hectares or less shall be subject to these guidelines. All such leases or agreements shall be converted into production sharing agreement within one (1) year from the effectivity of these guidelines. However, any mining firm which has established mining rights under Presidential Decree 463 or other laws may avail of the provisions of EO 279 by following the procedures set down in this document.

ARTICLE 10

EFFECTIVITY

- 10.1 Effectivity. This Administrative Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on June 23, 1989

SUBJECT: Issuance of Certificate of Origin of Mineral Ores.

Pursuant to Section 7 of Executive Order No. 192 and in order to abate illegal extraction of minerals which results in the deprivation of government revenues in the form of taxes and fees, all transporters of mineral ores are hereby required to obtain a Certificate of Origin of Mineral Ores (COMO) from the Community Environment and Natural Resources Officer (CENRO) or his duly authorized representative.

Failure to present the Certificate of Origin of Mineral Ores shall be sufficient cause for the confiscation of said mineral ores.

This Order takes effect fifteen (15) days after publication in newspaper of general circulation.

CELSO R. ROQUE
Acting Secretary

Signed on June 27, 1989

SUBJECT: Delegation of Authority to PENROs, CENROs, and Their Duly Authorized Representatives to Seize and Confiscate Illegally-Sourced/Transported Mineral Ores Including Tools, Equipment and Conveyances Used.

In line with Section 7 of Executive Order No. 192 and to ensure the effective enforcement of mining laws, policies, rules, and regulations, the Provincial Environment and Natural Resources Officers (PENROs), Community Environment and Natural Resources Officers (CENROs), and their duly designated representatives are hereby authorized to seize and confiscate, or order the seizure and confiscation, in favor of the government, of illegally sourced or transported mineral ores including tools, equipment and conveyances used in the commission of any of the offenses defined under Presidential Decree No. 463 or any other mining laws, rules and regulations being implemented by the Department and institute whatever action that may be necessary relative thereto.

This Order takes effect immediately.

FLORENCIO S. FACTORAN, JR.
Secretary

Signed on August 29, 1989

DENR ADMINISTRATIVE ORDER
NO. 102

SUBJECT: Lifting of the Suspension on the Acceptance of Application and Issuance of Prospecting and Exploration Permits in Forest Reserves.

In recognition of the vital importance of the development of the mineral sector in natural resource utilization, the suspension on the acceptance of application and issuance of prospecting and exploration permits is hereby lifted in production forest reserves. The suspension in other forest reserves declared for protection purposes namely: watershed forest reserves, national parks, wilderness areas, mangrove reserves, research experimental stations, reforestation sites, other forest reservations and such other areas that may form part of the Protected Area System continue in effect.

The applicants shall, in addition to the prerequisites for acceptance and issuance of permits, submit an Environmental Impact Assessment (EIA) of the proposed activities over the area being applied for.

This Order shall take effect immediately and amends DAO 7, series of 1989.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on September 13, 1989

**DENR ADMINISTRATIVE ORDER
NO. 104**

SUBJECT: Interim Guidelines in the Registration of Declaration of Location, Receiving/Accepting Applications for Quarry Permit/License and for Industrial Permit.

Pursuant to Section 7 of Executive Order No. 192 and in order to attain the purposes and objectives of the Government as envisioned in Executive Order No. 279, and implemented by DENR Administrative Order No. 57, Series of 1989, and in order not to disrupt the delivery of public service, the registration of Declaration of Location (DOL), receiving/accepting application for Quarry Permit/License (QP/QL) and for Industrial Permit (IP) covering more than twenty (20) hectares shall be governed by the following guidelines:

1. Registration/Applications for DOL, QP/QL and IP may be accepted upon presentation of a letter of Intent indicating the desire of the applicant to enter into a Production Sharing Agreement under the guidelines of DENR Administrative Order No. 57;
2. These applications shall be accepted under the condition that the same shall be for purpose of identifying the technical boundaries of the area of interest of the applicant subject of a Production Sharing Agreement that may be awarded under the provisions of A. O. 57; and
3. These interim guidelines shall remain in force pending the issuance of subsequent guidelines that will finally govern the mechanics/procedures leading to the award of Production Sharing Agreements under said Administrative Order.

This Order shall take effect immediately.

FULGENCIO S. FACTORAN, JR
Secretary

Signed on October 6, 1989

DENR ADMINISTRATIVE ORDER
NO. 122

SUBJECT: Suspension of Registration of Mining Claims and Other Applications for Mining Rights in the Municipality of Balbalan, Province of Kalinga-Apayao.

Pursuant to Section 7 of Executive Order No. 192 and DENR Memorandum dated July 11, 1988 ordering the delineation of specific areas for small scale mining operations anticipatory to the passage of the Minahang Bayan Law, the registration of mining claims and other applications for mining rights in the Municipality of Balbalan, Province of Kalinga-Apayao is hereby suspended subject to existing prior rights and the same area reserved for the Minahang Bayan Program.

This Order shall take effect immediately.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on November 27, 1989

SUBJECT: Guidelines Governing the Distribution, Disposition and Utilization of Marble Deposits within the Biak-Na-Bato Mineral Reservation Established Under Proclamation No. 401.

Pursuant to the provision of Section 3 of Presidential Decree No. 1385 and Presidential Decree No. 1899 and in relation to Proclamation No. 401, the following guidelines are hereby promulgated:

ARTICLE 1

TITLE, POLICIES AND OBJECTIVES

SECTION 1.0 *Title*: This Administrative Order shall be known as the "Guidelines for Biak-na-Bato Mineral Reservation".

SECTION 2.0 *Policies and Objectives*: The policies and objectives of the Government on the Biak-na-Bato Mineral Reservation shall be:

- (a) To rationalize small-scale marble quarry operations;
- (b) To develop marble ancillary industries;
- (c) To provide environmental control mechanisms; and
- (d) To upgrade marble production technology.

ARTICLE 2

DEFINITIONS

SECTION 3. *Definition of Terms* – As used in and for the purpose of these guidelines, the following terms and phrases shall have the following meaning:

- 3.1 "Government" – the Government of the Republic of the Philippines;
- 3.2 "Secretary" – the Secretary of the Department of Environment and Natural Resources (DENR);
- 3.3 "Director" – the Director of the Mines and Geo-Sciences Bureau (MGB);
- 3.4 "Regional Executive Director" – the Regional Executive Director (RED) of the Department of Environment and Natural Resources, Region III;

- 3.5 **“Regional Technical Director”** – the Regional Technical Director (RTD) for Mines Sector of the Department of Environment and Natural Resources, Region III;
- 3.6 **“PENRO”** – the Provincial Environment and Natural Resource Officer of Bulacan;
- 3.7 **“CENRO”** – the Community Environment and Natural Resource Officer of Baliuag;
- 3.8 **“Reservation”** – area established as mineral reservation under Proclamation No. 401;
- 3.9 **“Qualified Person”** – A natural-born Filipino citizen, of legal age, and with capacity to contract, a corporation or partnership, the objectives of which is in accordance with the provisions of Section 2, Article XII of the 1987 Constitution;
- 3.10 **“Cooperative”** – An association of Filipino citizens with minimum membership of 25 individuals, all of legal age and duly registered with the appropriate government agency;
- 3.11 **“People’s Organization”** – a community-based bonafide association of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure and capable to engage in small scale quarry operations;
- 3.12 **“People’s Mining Blocks”** – subdivided blocks of five (5) to twenty (20) hectares, or fractions thereof, as identified in the Mineral Reservation Map which is subject to small-scale quarry operation;
- 3.13 **“Production Sharing Blocks”** – subdivided blocks of twenty (20) hectares, or a fraction thereof, as identified in the Mineral Reservation Map which is subject to Proclamation Sharing Agreement (PSA);
- 3.14 **“Permittee”** – means the cooperative or people’s organization given a small-scale quarry permit;
- 3.15 **“Contractor”** – means the qualified person who is awarded the Production Sharing Agreement;
- 3.16 **“Agreement”** – means the Production Sharing Agreement entered into pursuant to Executive Order No. 279 and this Administrative Order;
- 3.17 **“Mineral Reservation Map”** – the map duly approved by the Regional Executive Director showing the subdivided people’s mining blocks and production sharing blocks of the reservation created by Proclamation No. 401 dated April 11, 1989.

ARTICLE 3

SMALL-SCALE QUARRY PERMITS

SECTION 4. *Area Subject of Application.* The subdivided blocks designated as **People's Mining Blocks** in the Mineral Reservation Map which is an integral part of these guidelines shall be opened to small-scale quarry operations.

SECTION 5. *Who May Qualify for the Issuance of Small-Scale Quarry Permit.* A cooperative or people's organization may qualify provided that:

- 5.1 The members of which shall have not committed any violation of environment and natural resources laws, rules and regulations;
- 5.2 A proof of the capability to develop and operate a quarry resource shall be submitted.

SECTION 6. *Form and Contents of the Application for Small-Scale Quarry Permit.*
An application for a permit shall be accomplished and filed in five (5) copies in the form prescribed for the purpose, duly subscribed and sworn to by the applicant or his duly authorized agent before a Notary Public or any official authorized by law to administer oaths and stating particularly, among others, with sufficient fullness and clarity, the following:

- 6.1 Full name and post office or business address of the cooperative or people's organization;
- 6.2 List of names and addresses of the officers and members of the cooperative or people's organization;
- 6.3 Certificate of registration of the cooperative or people's organization;
- 6.4 Block No. of the area applied for based on the **Mineral Reservation Map**;

SECTION 7. *Where, When and How to File Application.*

- 7.1 Within thirty (30) days from the publication of this Order, the PENRO shall announce the date/s of application by posting notices in the Provincial and Municipal Offices as well as the PENRO and CENRO Offices which have jurisdiction over the area;
- 7.2 An application for a permit shall be filed with the PENRO together with the supporting papers required in the preceding Section and application fees specified under Section 6 below;
- 7.3 The cooperative or people's organization may apply for no more than four (4) People's Mining Blocks but not to exceed twenty (20) hectares.

- 7.4 A small Scale Quarry Application Committee composed of the Governor of Bulacan as Chairman, the PENRO, the representative of the Director, the representative of the RTD, the representative of the 3rd Congressional District of Bulacan, the representative of a locally-based non-government organization (NGO) to be selected by the other six members, shall oversee the evaluation of the applications for small scale quarry permit.

SECTION 8. *Application Fee.* A non-refundable application fee of One Thousand Pesos (₱ 1,000.00) shall accompany the application for a permit for each 5-ha block or fraction thereof. The same fee shall be required in case of application for renewal. Failure on the part of the applicant to pay the aforesaid fees shall be a ground not to accept the application. The date appearing in the Official Receipt evidencing payment of the application fee shall be considered as the official date of the filing of the application.

SECTION 9. *Size of Area.* The area that may be covered by Small-Scale Quarry Permit shall be as follows:

- 9.1 1/16 of one (1) subdivided meridional block of 7.5 seconds of latitude and 7.5 seconds of longitude containing an area of five (5) hectares, more or less or a fraction thereof as appearing in the Mineral Reservation Map; and
- 9.2 1/4 of one (1) meridional block of 15 seconds of latitude and 15 seconds of longitude containing an area of twenty (20) hectares, more or less or a fraction thereof as appearing in the Mineral Reservation Map.

SECTION 10. *Award of Area Block Applied For.* In the event that there are two or more qualified applicants for a mining block, the Secretary or his duly authorized representative shall conduct a raffle to select the awardee.

SECTION 11. *Limitation of Number of Permit.* An applicant may be awarded not more than one (1) permit covering one block as specified in the preceding Section.

SECTION 12. *Duration of the Permit.* The term of the permit shall be for a period of five (5) years from date of issuance, renewable for the like period but not to exceed twenty five (25) years.

SECTION 13. *Commercial Operation.* The permittee shall within twelve (12) months from the date of issuance of the permit, place the area into actual commercial production and shall submit verified quarterly production reports in the prescribed form within ten (10) days after the end of each quarter; Provided, that failure to place the area in actual production within the period aforementioned without justification shall be sufficient cause for the cancellation of the permit.

ARTICLE 4

FISCAL AND REGULATORY PROVISIONS FOR SMALL-SCALE QUARRY PERMITS

SECTION 14. *Payment of Tax.* The permittee shall pay the excise tax on quarry resources in accordance with the provisions of the National Internal Revenue Code.

SECTION 15. *Duties of Permittee.* Before any quarry resources or materials are removed, transported or disposed of from the locality where same are mined or quarried, it shall be the duty of the permittee to first notify the CENRO concerned on a form prescribed for the purpose and to apply for a Certificate of Origin of Mineral Ores (COMO) covering the quarry resources to be removed, transported or disposed of.

The permittee shall likewise abide by the terms and conditions enumerated in Article 7 of this Order.

SECTION 16. *Requisites for Issuance of COMO.* No COMO shall be issued for the removal, transport and disposition of quarry resources unless the same have been inspected by the CENRO and the proper excise tax due thereon shall have been paid beforehand, the official receipt of which shall be indicated on the COMO. Any quarry resources removed, transported or disposed of without compliance with these requisites shall be confiscated in favor of the Government.

SECTION 17. *Occupation Fee.* Upon the grant of the permit, the permittee shall pay to the Municipal Treasurer concerned an occupation fee covering his permit area in the amount of One Hundred Pesos (₱ 100.00) per hectare or a fraction thereof per calendar year. Subsequent payments shall be due within thirty (30) days of the succeeding years during the term of the permit.

ARTICLE 5

PRODUCTION SHARING AGREEMENT

SECTION 18. *Area for Mineral Production Sharing Agreement.* The Production Sharing Blocks as defined in the Mineral Reservation Map shall be opened to Production Sharing Agreement.

SECTION 19. *Application for Production Sharing Agreement.* Any corporation or partnership may apply for a Production Sharing Agreement in accordance with Executive Order No. 279 and its implementing guidelines.

SECTION 20. *Where, When and How to File.*

20.1 Application for a Production Sharing Agreement shall be filed with the Regional Executive Director.

20.2 Within thirty (30) days from the publication of this Order, the Regional Executive Director shall announce the date/s of application and bidding by publishing a notice in a newspaper of national circulation which date/s shall not be earlier than thirty (30) days from the date of publication of said notice.

20.3 Corporations may apply for no more than five (5) Production Sharing Blocks to contain an aggregate area not exceeding one hundred (100) hectares.

SECTION 21. *Application Fee.* The applicant shall pay a non-refundable application fee of Five Thousand Pesos (₱ 5,000.00) upon filing of the application for Production Sharing Agreement.

SECTION 22. *Maximum Area that May be Awarded.* The applicant may be awarded an area not exceeding five (5) subdivided blocks of twenty (20) hectares each or a maximum of one hundred hectares (100) provided that these blocks shall be won by bidding. In case of failure by bidding, the area shall be awarded through negotiation.

SECTION 23. *Mode and Means of Bidding.*

23.1 All prospective bidders shall undergo a pre-qualification process to determine their technical and financial capability to develop and utilize the quarry resources. A committee to be headed by the Regional Technical Director shall oversee the pre-qualification process;

23.2 Bidding shall be conducted on a block by block basis. The winning bid shall be the proposal submitting the highest result based on the following formula:

$$\text{Winning Bid} = \text{BS (in \%)} \times \text{GMAPO (in cu. m.)} \times \text{P (in ₱/cu.m.)}$$

where:

BS	=	Proposed basic share of the government expressed in percentage
GMAPO	=	Guaranteed Minimum Annual Production Output, in cu.m.
P	=	Average price of raw marble block in ₱ /cu. m. in Manila fixed by the MGB

23.3 A PSA Bids and Negotiations Committee composed of the RED as Chairman, the Director, the RTD, a representative each from 3rd Congressional District of Bulacan, the Department of Trade and Industry, Department of Finance, and the Governor of Bulacan as members, shall oversee the bidding or negotiation. The Committee shall determine, among others, the technical and financial capability of the applicants, the moral standing and business integrity of the members of the company's incorporators.

23.4 The opening of sealed bids and the announcement of winning bidders shall be conducted by the PSA Bids and Negotiations Committee.

ARTICLE 6

FISCAL AND REGULATORY PROVISIONS FOR PRODUCTION SHARING AGREEMENTS

SECTION 24. *Payment of Tax.* The Contractor shall pay the excise tax on quarry resources in accordance with the provisions of the National Internal Revenue Code.

SECTION 25. *Government Share.* In addition to the tax mentioned above, the Contractor shall pay to the DENR thru the PENRO the government share from the quarry resources or materials actually produced or removed from the quarry area computed as follows:

$$GS = BS (\text{ in } \%) \times APO (\text{ in cu. m. }) \times P (\text{ in } \text{P} \text{ cu. m.})$$

where:

- GS = Government share in Peso
- BS = Basic share expressed in percentage initially fixed in the bid proposal
- AP0 = Actual Production Output, in cubic meters
- P = Price of raw marble block/cubic meter initially fixed in the bid proposal of the winning contractor or the price subsequently fixed or adjusted by the DENR and the Contractor as provided below.

For purposes of determining the fair market price of the raw marble produced or removed from the quarry area on which the government share shall be computed, the price fixed in the winning bid shall be updated and adjusted by the PENRO and the Contractor within six (6) months from the signing of the Agreement and every six (6) months thereafter, provided, that if no agreement is reached on a common price, the government has the option to receive its share in kind.

SECTION 26. *Time and Manner of Payment of the Government Share.* The government share shall be due and payable on the actual production output of the quarry upon removal of the quarry resources or materials from the locality where they were mined or quarried.

SECTION 27. *Duties of the Contractor.* Before any quarry resources or materials are removed, transported or disposed of, it shall be the duty of the Contractor to do the following:

- a) Notify the CENRO concerned on a form to be prescribed for the purpose;
- b) Pay the tax due to the Bureau of Internal Revenue and the government share to the PENRO;
- c) Apply for a COMO covering the quarry materials to be removed, transported or disposed of.

The Contractor shall likewise abide by the terms and conditions enumerated in Article 7 of this Order.

SECTION 28. *Requisites for Issuance of COMO.* No COMO shall be issued by the CENRO unless the quarry materials or resources have been inspected and the proper tax and government share shall have been paid beforehand, the official receipts of which shall be indicated on the COMO. Any quarry resources or materials removed, transported or disposed of without compliance with these requisites shall be confiscated.

SECTION 29. *Guaranteed Minimum Annual Production Input.* To ensure optimum production, it shall be mandatory for the contractor to pay the government share based on the guaranteed minimum annual production output fixed by the Secretary irrespective of whether said minimum production was attained during the year. It shall be the duty of the CENRO to determine and compare the actual production of the Contractor during a given year against the guaranteed minimum production output and to make a report thereon to the PENRO within fifteen (15) days after the end of the year to enable the latter to determine if the Contractor is still liable for any deficiency in the government share. At the beginning of each year, no COMO shall be further issued to the Contractor unless any deficiency in the government share shall have been properly paid by the concerned Contractor.

SECTION 30. *Occupation Fee.* The contractor shall pay to the Municipal Treasurer concerned an annual occupation fee of One Hundred Pesos (P 100.00) per hectare or fraction thereof upon signing of the agreement. Subsequent payments shall be due within the first thirty (30) days of the succeeding years during the term of the agreement.

ARTICLE 7 GENERAL PROVISIONS

SECTION 31. *Conditions Under Which Permits/Agreements Are Issued.* Permits/agreements issued under these guidelines shall be subject, among others, to the following terms and conditions:

- 31.1 The permit/agreement shall be for the exclusive use of the permittee/contractor and is non-transferable and non-negotiable;
- 31.2 The permit/agreement may be suspended or cancelled at any time by the Secretary or his duly authorized representative when public interest, welfare, ecological, mine safety, health and sanitation reasons and peace and order conditions so requires or demands or upon failure of the permittee/contractor to comply with the other terms and conditions stated in the permit/agreement;
- 31.3 The statements made in the application and those made later in support thereof shall be considered as conditions and essential parts of the permit/agreement and any misrepresentation contained therein shall be a cause for the suspension or cancellation of the permit/agreement;

- 31.4 The removal or extraction of quarry materials under the permit/agreement shall be confined within the area specified therein, the boundaries of which, according to the application, are established on the ground with prominent marks;
- 31.5 The permit/agreement shall not include the destruction or cutting of trees;
- 31.6 The permittee/contractor shall comply with pertinent rules and regulations on environmental protection and conservation;
- 31.7 The permittee/contractor shall abide with whatever provisions the Department of Environment and Natural Resources and the Provincial Government of Bulacan may adopt for the development of the mineral reservation;
- 31.8 The permittee/contractor shall file under oath at the end of each quarter a detailed production and financial report to the Regional Executive Director;
- 31.9 The permittee/contractor shall pay all taxes, fees, and excise taxes due the government or any such taxes or fees as any hereafter be provided by law;
- 31.10 The permittee/contractor shall compensate the owners or occupants of private lands, if any there be, an amount to be agreed upon by the landowner and the permittee/contractor. In case of disagreement, the RTD shall determine the just and reasonable compensation due the landowner; and
- 31.11 The permittee/contractor shall abide by the Mines Safety Rules and Regulations.

SECTION 32. *Approval of the Permit/Agreement.* Upon compliance with all the requirements under these guidelines, a permit/agreement containing the principal rights and obligations of the parties shall be issued by the Secretary upon recommendation of the Regional Executive Director.

SECTION 33. *Rights Acquired Under the Permit/Agreement.* A permit/agreement duly approved and granted under the provisions of these guidelines confers upon the permittee/contractor from the grant thereof and during its terms and renewal, if any, the exclusive privilege to explore, develop and utilize the mineral commodity for which the permit/agreement was granted.

SECTION 34. *Easement Rights.* When quarry area block/s are so situated that for purposes of more convenient exploration, development and utilization thereof by any permittee/contractor, it is necessary to build, construct, or install on the quarry area blocks occupied or under a small scale quarry permit/mineral production sharing agreement, roads, transways, electric transmission, telephone or telegraph lines, aerial transportation thereto or therefrom, dams and their normal flooded areas, ditches, canals, pipelines, flumes, cuts, shafts or tunnels to drain or convey water, ore, and wastes therefrom, which are hereby declared to be for a general purpose, use or benefit, the concerned permittee/contractor upon payment of just compensation to the affected entity shall be entitled to the right to enter and occupy/use the said portion of quarry area blocks.

The rights provided by this provision shall be consistent with the conceptualized development plan of the reservation which shall also conform to the actual development plan of the area which the DENR and the Provincial Government of Bulacan may continually adopt for the overall development of the reservation.

SECTION 35. *Inspection of Operations.* The Secretary, Director, Regional Executive Director, Regional Technical Director, PENRO, CENRO or their duly authorized representatives shall have the authority to inspect any operation of the permittee/contractor at all reasonable times and to examine the records including books of accounts of said operations and to carry out any other inspection authorized by law or regulations. The permittee/contractor shall furnish such officers or representatives with all technical and actual data specified in these guidelines and shall give them ample facilities and assistance to discharge their duties as such. For this purpose, the permittee/contractor shall be under obligation to keep the permit area open at all reasonable times for such inspection.

ARTICLE 8

PENAL PROVISIONS

SECTION 36. *Theft of Minerals.* Any person who, without a permit/agreement granted under existing laws, rules and regulations, extract, remove or dispose of minerals within the reservation or from the area covered by the applications/permits/agreements held or owned by other persons, shall be deemed to have stolen the said minerals. He shall, upon conviction, be penalized in accordance with applicable provisions of existing laws, besides paying compensation for the minerals removed, extracted and disposed of the royalty and the damages caused thereby

SECTION 37. *Ground for the Cancellation of the Permit/Agreement.* The permit/agreement may be cancelled by the Secretary on any of the following grounds:

- 37.1 For public interest;
- 37.2 Non-payment of royalty and/or occupation fee within the prescribed period;
- 37.3 Non-submission of the required reports within the prescribed period; and
- 37.4 Violation of any of the terms and conditions of the permit/agreement.

SECTION 38. *Effectivity.* This Administrative Order shall take effect fifteen (15) days after its publication in a newspaper of national circulation.

FULGENCIO S. FACTORAN, JR.
Secretary

Signed on December 28, 1989.

(Small Scale Quarry Permit Form Omitted)
(Production Sharing Agreement Form Omitted)

DENR MEMORANDUM ORDER
NO.03

SUBJECT : Creation of a DENR Committee to Formulate A Conceptualized Development Plan and the Guidelines for the Distribution, Disposition and Utilization of Mineral Resources Per Proclamation No. 401 Dated April 11, 1989.

For the judicious implementation of Proclamation No. 401 segregating a portion of Biak-na-Bato National Park and declaring same as mineral reservation, there is hereby created a Committee to formulate a conceptualized developmental plan of the area and come up with the appropriate guidelines for the eventual distribution, disposition and utilization of the mineral resource therein. The Committee shall be composed of:

Chairman:

Pedro C. Caleon	-	MGB Asst. Director
Israel C. Gaddi	-	RTD Mines, Region 3

Members:

Atty. Roquesa E. de Castro	-	PENRO Bulacan
Eriberto Almazan	-	CENRO Baliuag
Francis H. How	-	NRDC
Gil Mayor	-	NCR
Atty. Emilio Vidad	-	DENR
Nelia C. Halcon	--	MGB
Gabino V. Belleza	-	MGB
Jose N. Ronan	-	MGB
Samuel T. P'aragas	-	DENR
Vicente Madamba	-	MGB

The Committee is hereby ordered to immediately convene on April 25, 1989, 9:00 AM at the Crispin Hall of the PETROLAB Building, North Avenue, Q.C and shall within a period of 15 days submit to the Secretary the conceptualized developmental plan and the necessary guidelines.

When needed the Committee shall require the attendance of specific DENR personnel to accomplish the above priority.

This Order takes effect immediately.

FULGENCIO S. FACTORAN JR
Secretary

Signed on April 19, 1989