

## CHAPTER 11

### ENVIRONMENTAL LAW

The Philippine's Environmental Policy is enunciated in Presidential Decree No 1151 (1977) which declares that it is the continuing policy of the State to:

- (1) create, develop, maintain, and improve conditions under which man and nature can thrive in productive and enjoyable harmony with each other;
- (2) fulfill the social, economic, and other requirements of present and future generations of Filipinos; and
- (3) ensure the attainment of an environmental quality that is conducive to a life of dignity and well-being.<sup>1</sup>

The Decree also established the environmental impact assessment system, which requires private establishments and government agencies to submit Environmental Impact Statements (EIS) for every action, project, or undertaking planned by them, which significantly affects the quality of the environment.<sup>2</sup> However, Presidential Decree No 1586 (1978) limited the coverage of the EIS requirement of Presidential Decree No 1151 by specifying that only projects and areas which are environmentally critical will automatically fall within its purview. Proclamation No 2146, issued on 14 December 1981, identified three types of environmentally critical projects, namely:

- (1) Heavy Industries
  - (a) non-ferrous metal industries
  - (b) iron and steel mills
  - (c) petroleum and petro-chemical industries, including oil and gas
  - (d) smelting plants
- (2) Resource Extractive Industries
  - (a) major mining and quarry projects
  - (b) forestry products
    - (i) logging
    - (ii) major wood processing projects
    - (iii) introduction of fauna (exotic-animals) into public/private forests
    - (iv) forest occupancy
    - (v) extraction of mangrove products
    - (vi) grazing
  - (c) fishery projects

---

<sup>1</sup> Presidential Decree No 1151, s 1.

<sup>2</sup> Presidential Decree No 1151, s 4.

- (i) dikes and fishpond development projects
- (3) Infrastructure Projects
  - (a) major dams
  - (b) major power plants (fossil-fueled, nuclear-fueled, hydro-electric or geothermal)
  - (c) major reclamation projects
  - (d) major roads and bridges

Environmentally critical areas include the following:

- (1) all areas declared by law as national parks, watershed reserves and wildlife preserves and sanctuaries;
- (2) areas set aside as aesthetic potential tourist spots;
- (3) areas which constitute the habitat for any endangered or threatened species of indigenous Philippine wildlife (flora and fauna);
- (4) areas of unique historical, archeological or scientific interests;
- (5) areas which are traditionally occupied by cultural communities or tribes;
- (6) areas frequently visited and/or hard-hit by natural calamities (geologic hazards, floods, typhoons);
- (7) areas with critical slopes;
- (8) areas classified as prime agricultural lands;
- (9) aquifers recharge areas;
- (10) water bodies;
- (11) mangrove areas;
- (12) coral reefs.

Department Administrative Order (DAO) No 21 (1992) has amended the Rules and Regulations Implementing PD 1586. The projects specifically exempted from EIA system are those which are characterized by all of the following conditions:

- (1) discharges minimal amount of wastes and the management of such wastes is relatively easy;
- (2) has capitalization of not more than P500.00;
- (3) employs not more than twenty persons.

Environmental Impact Assessment is generally defined as a process which consists of identifying and predicting the impact of proposed projects and programmes on the biophysical environment and on man's health and well-being and interpreting and communicating information about such impacts in a manner which can be utilized by planners and decision-makers. The importance of this tool is that it measures resource allocation and utilization in terms of costs associated with environmental conservation.<sup>3</sup>

---

<sup>3</sup> National Environmental Protection Council *A Handbook on the Environmental Impact Statement System* (1983), as referred to in *Tolentino* n 7 at p 16.

On the other hand, Presidential Decree No 1152 (1977), or the Philippine Environment Code, deals with the environment in its totality with the establishment of management policies and quality standards for: air quality; water quality management; land-use management; natural resources management and conservation; conservation and utilization of surface and ground waters; and waste management.

On 14 January 2000, DAO No 2000-05 was issued providing for programmatic compliance procedures within the Environmental Impact Statement (EIS) system in order to streamline the procedure for industries in regional industrial centers. Categories within the purview of programmatic compliance are:

- (a) A project subdivided into several phases and/or stages situated in a contiguous area;
- (b) a project consisting of several components or a clusters of projects co-located in a designated area such as an industrial estate or export processing zone.

The processing steps under these guidelines are the following:

- (a) Screening wherein a proponent may submit a project profile to the Environmental Management Bureau (EMB) to enable a procedural assessment as to whether the undertaking is subject to programmatic compliance procedures;
- (b) Scoping is initiated by the project proponent at the earliest stage to define the range of actions, alternatives and impacts to be examined as well as the area for ecoprofiling;
- (c) EIS Preparation is made by the project proponent based on procedural guidelines of the EMB. It requires the proponent to involve the broadest range of stakeholders in the project;
- (d) Submission of the EIS to the EMB which shall be evaluated within seven working days for completeness and decide whether the information contained is sufficient for a thorough evaluation of the subject environmental impacts. Fifteen copies are also furnished the Offices of the Regional Executive Director, PENRO, CENRO and local government units with an executive summary to be made available to the public;
- (e) Review of the EIS by the EIA Review Committee and the holding of a public hearing on it;
- (f) Granting or denial of the ECC Application;
- (g) Decision of the DENR Secretary to either grant or deny the issuance of the ECC. If granted, there are certain conditionalities attached to it.

Under DAO 21 (1992), the procedure for projects covered by EIS could be outlined as follows.

## I. Submission of Forms

Any government or private entity planning to undertake a project should determine if it falls within the EIA system by consulting the Environmental Management Bureau or the DENR Regional Office, as the case may be. Once determined to be covered by the EIA system, the submission of an EIS for an environmentally critical project or a project description (PD) for an environmentally critical area is required. An EIS is a more detailed and in-depth analysis of the environmental impact of a particular project. A PD is essentially a brief description of the sources of pollution and the controls to be effected. When determined to be exempted, a certificate of exemption is issued which may nonetheless contain conditions requiring the proponent to institute necessary remedial measures.<sup>4</sup>

## II. Evaluation and Recommendation of Appropriate Action

After the initial evaluation of the EIS, the EIA unit of the Environmental Management Bureau may recommend any of the following: the issuance or denial of the Environmental Clearance Certificate (ECC), revision of the submitted EIS, on-site inspection of the proposed site, or further review by the EIA Review Committee. The EIA Review Committee may require the holding of a public hearing which is conducted by the Environmental Management Bureau through its Legal Division.

## III. Issuance of Environmental Clearance Certificate (ECC)

Once the EIS or the PD, as the case may be, has been approved, an Environmental Clearance Certificate (ECC) is issued to the proponent which gives him the authority to proceed with the implementation of the project. Said certificate contains conditions which the proponent is bound to comply with. One of these conditions may be related to the mitigating measures which should be incorporated in the project implementation, like the installation of specified anti-pollution equipment. Otherwise, the ECC could be suspended or cancelled and the proponent subjected to a fine not to exceed fifty thousand pesos (P50,000.00) Philippine currency, at the discretion of the Environmental Management Bureau.<sup>5</sup>

Monitoring is done to determine compliance with the stipulation in their ECCs and to enforce compliance with EIA requirements for projects which bypassed the EIS, as well as determine their actual environmental impact.

## A. POLLUTION CONTROL

---

<sup>4</sup> E Dominguez, Evaluation of Air Quality, Water Quality and Waste Management Regulation in the Philippines, p 9.

<sup>5</sup> A Tolentino 'Environmental Law: Boon or Bane to Foreign Trade and Investment', p 50 (Typescript).

Republic Act 3931 entitled, “An Act Creating the National Water and Air Pollution Control Commission’ provided the basis for air quality management when it declared a national policy to maintain reasonable standards for purity for the water and the atmospheric air *vis-à-vis* their utilization for domestic, agricultural, industrial and other legitimate uses. The primary thrust of this policy is the prevention and control of industrial pollution. Presidential Decree 984 (1976) revising RA 3931 elaborated on this policy by including the control of land pollution and all other kinds of pollution and environmental disturbances like noise and odor.

Presidential Decree 1181 (1977), provides for the prevention, control and abatement of air pollution from motor vehicles and for other purposes, the Land Transportation Office is tasked to implement emission standards from motor vehicles and may deputize appropriate agencies for the purpose. The idea was for the NPCC to be the national standard setting agency and the Land Transportation office to be the enforcement arm in so far as motor vehicles were concerned so as not to diffuse the functions of the former to police industrial pollution, which is already a major activity.

Republic Act No. 8749 (1999), otherwise known as the Philippine Clean Air Act of 1999 sets forth as the state’s policy to: (a) protect and advance the right of people to a balanced and healthy ecology in accord with the rhythm and harmony of nature; (b) attain and maintain a balance between development and environmental protection; and (c) maintain a quality of air that protects human health and welfare. Its implementing rules lay down the powers and functions of the DENR, Department of Transportation and Communication (DOTC), Department of Trade and Industry (DTI), Department of Energy (DE) and all other concerned agencies, the rights and obligations of stakeholders and the rights and duties of the people with respect to the Air Quality Management and Control Program.<sup>6</sup> Finally, the Rules provide for various kinds of fines and penalties for the three (3) categories of violations of the provisions of the Clean Air Act (1) Violation of Standards for Stationary Sources; (2) Violation of Standards for Motor Vehicles; (3) Violations of Other Provisions of the Clean Air Act, which range from a maximum of One Hundred Thousand pesos (P100,000.00) or ten (10) years imprisonment to a minimum of One Thousand Pesos (P1,000.00) or six (6) months and one (1) day imprisonment.<sup>7</sup>

In a case brought before the Supreme Court regarding the constitutionality of Section 20 of the Clean Air Act, it was ruled that such section does not absolutely prohibit incineration as a mode of waste disposal, rather only those burning processes which emit poisonous and toxic fumes are banned.<sup>8</sup>

---

<sup>6</sup> DENR Administrative Order No 2000-81, ss 2 & 3, part I of the Implementing Rules and Regulations for Rep Act No 8749.

<sup>7</sup> *Id*, part XIII.

<sup>8</sup> *MMDA v Jancom* GR No 147465, 30 January 2002, 375 SCRA 320.

Presidential Decree 984 or the National Pollution Control Decree prohibits the throwing, running, draining or otherwise disposing into any of the water, air and/or land resources any organic or inorganic matter or any substance in gaseous or liquid form that shall cause pollution thereof. No person shall likewise perform any of the following activities without first securing a permit for the discharge of industrial wastes and other wastes which could cause pollution: (i) the construction, installation, modification or operation of any sewage works or extensions thereof; (ii) the increase in volume of wastes in excess of the permitted discharge under the existing permit; and (iii) the construction or operation of any industrial/commercial establishment which would cause an increase in the discharge of wastes directly into the water, air and/or land resources of the Philippines or would otherwise alter their physical, chemical or biological properties in any manner not already lawfully authorized.<sup>9</sup> Penalties for the commission of the prohibited acts include fines, imprisonment, closure or stoppage of operations as well as payment of damages.<sup>10</sup>

In 1974, Presidential Decree 600, also known as the Marine Pollution Decree, was issued giving the Philippine Coast Guard the responsibility for preventing, containing and controlling pollution of the seas and other bodies of water within the territorial jurisdiction of the Philippines. Collaterally, Presidential Decree 602 (1874) was promulgated creating the National Operation Center for Oil Pollution (NOCOP) in the Philippine Coast Guard in order to enforce the provisions of Presidential Decree 600 (1974) and further designating the NOCOP as the contact agency of similar agencies of the Association of Southeast Asian Nations (ASEAN) for assistance in cases of major oil spills in the region.

Apart from the provisions of the Civil Code broadly classifying excessive noise as nuisance, according to *Velasco v Meralco*,<sup>11</sup> noise continuously emitted by an electric substation constitutes an actionable nuisance. Republic Act No 4136 (1964) or Land Transportation Code, regulates the attachment of horns and mufflers on motor vehicles in order to prevent or minimize the emission of exceptionally loud, startling or disagreeable sounds in the operation of said vehicles. Presidential Decree No 96 (1973) further regulated the use or attachments of sirens, bells, horns, whistles and other similar gadgets that produce exceptionally loud or startling sounds, including domelights, blinkers and similar signaling or flashing devices, unless authorized or allowed to use the same. Offenders are liable to imprisonment for six months and/or a fine of P600 in addition to cancellation or renovation of the certificate of registration of the motor vehicle on which the unauthorized gadget or device is installed.<sup>12</sup>

---

<sup>9</sup> Presidential Decree No 984 (1976), s 8.

<sup>10</sup> *Id*, s 9.

<sup>11</sup> GR No 18390, 06 August 1971, 40 SCRA 342.

<sup>12</sup> Presidential Decree No 96 (1973), s 2.

Presidential Decree 1096 (1977) (National Building Code of the Philippines) requires all industrial establishments to provide positive noise abatement devices to tone down the noise level of equipment and machineries in accordance with the acceptable levels laid down by the Department of Labor and Employment and the NPCC, now the Department of Environment and Natural Resources (DENR).

## B. WASTE MANAGEMENT

A number of Philippine laws cover waste management. One of the earliest is the Commonwealth Act 383 (1938) which prohibits the dumping into any river of refuse, waste matter or substances that may cause an elevation of the river beds, or block the course of streams and considers the unlawful act as a misdemeanor for which a penalty of imprisonment for not more than six months or a P1,000 fine may be imposed. For the purpose of protecting fish and other aquatic resources, Act 4003 makes unlawful the discharge or deposit into the waters of the Philippines of any petroleum, acid, coal or oil tar or any refuse from any refinery, mill or factory.

On January 26, 2001, the Ecological Solid Waste Management Act of 2000 was passed. It defined Solid Waste as referring to all discarded households, commercial waste, non-hazardous, institutional and industrial waste, street sweepings, construction debris, agricultural waste and other hazardous/non-toxic solid waste.

The local government units shall be primarily responsible for the implementation and enforcement of this Act. Segregation and collection of solid waste shall be conducted at the *barangay* level specifically biodegradable, compostable and reusable wastes but the collection of non-recyclable materials and special wastes shall be the responsibility of the municipality or city. Multi-purpose environment cooperatives or associations can undertake projects under the provisions of this Act. The *barangay* shall be responsible for ensuring that a 100% collection efficiency from residential, commercial, industrial and agricultural wastes. A 10-year Government Solid Waste Management Plan shall be prepared for the re-use, recycling and composting of wastes generated in their respective jurisdictions. The plan shall take identify the specific strategies and activities taking into account the following such as – availability and provision of properly designed containers or receptacles in selected collection points for temporary storage of solid wastes, segregation of different types of wastes for re-use, recycling and composting, handling and transfer to processing or final disposal sites and issuance and enforcement of ordinance to effectively implement the *barangay* collection system.

Under the Toxic Substances and Hazardous and Nuclear Wastes Control Act, hazardous wastes are defined as ‘substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped,

transported or brought from the country of origin for dumping or disposal into or in transit through any part of the territory of the Philippines'. They shall also refer to 'by-products, side-products, process residues, spent reaction media, contaminated plant or other substances from manufacturing operations, and as consumer discards of manufactured products'. Nuclear wastes are defined as 'hazardous wastes made radioactive by exposure to the radiation incidental to the production or utilization of nuclear fuels but does not include nuclear fuel, or radioisotopes which have reached the first stage of so as to be usable for any scientific, medical, agricultural, commercial, or industrial purpose'.<sup>13</sup>

Primarily, the objective of the Act is to 'regulate, restrict or prohibit the importation, manufacture, processing, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment; to prohibit the entry, even in transit, of hazardous and nuclear wastes and their disposal into the Philippine territorial limits for whatever purpose; and to provide advancement and facilitate research and studies on toxic chemicals' through inventory and testing requirements. Among the acts and omissions considered as unlawful by Republic Act 6969 are: (i) to knowingly use a chemical substance or mixture which is imported, manufactured, processed or distributed in violation of the Act; (ii) failure or refusal to submit reports or other required information; and (iii) failure or refusal to comply with pre-manufacture and pre-importation requirements. These acts or omissions are punishable by imprisonment from six months to six years and a fine ranging from P600 to P4,000.

### C. NATURE CONSERVATION AND MANAGEMENT

Republic Act No. 7586, otherwise known as the National Integrated Protected Areas System Act of 1992 institutes the National Integrated Protected Areas System (NIPAS) which classifies and administers all designated protected areas to maintain essential ecological processes and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources found therein, and to maintain their natural conditions to the greatest extent possible'.<sup>14</sup> The law gives policy recognition to a protected area system whereby each designated protected area will serve one or more of the objectives of conservation as part of the system with the corresponding planning and management required to ensure that the national objectives are met in one or another part of the system.

For a more effective administration and management, private sector and local government participation was given much thought and consideration. A management board takes the role of a local protected area administrator. This devolution of function from the DENR to the regional office of DENR and the creation of a division in the Regional Office called the Protected Areas and

---

<sup>13</sup> *Id.*, s 5(h) & (i).

<sup>14</sup> Rep Act No 7586 (1992), s 9, as implemented by DAO 25, series of 1992 dated 29 June 1992.

Wildlife Division solves the present problem of lack of priority and interest in protected area management.

Under the same law, certain enforcement mechanisms were updated, particularly as to the penalties that could be imposed for violation of laws concerning protected areas. The penalties that may be imposed are a fine or imprisonment or both, as determined by the court, provided that if the area requires rehabilitation or restoration, the offender shall also be required to restore or compensate for the restoration of the damage. The court may also order eviction of the offender from the land and forfeiture in favor of the government of all minerals, timber or any species collected or removed therefrom, including all devices/equipment used in connection therewith and constructions or improvements placed thereon.<sup>15</sup>

The NIPAS system currently includes 281 protected areas covering 2.7 million hectares or 9 percent of the country's total land area. Protected Area Management Boards (PAMBs) are being established with participation of local stakeholders and these Boards are responsible for developing and implementing area-specific management plans.<sup>16</sup>

In order to conserve the country's wildlife resources and their habitats for sustainability, RA No. 9147 otherwise known as the "Wildlife-Resources Conservation and Protection Act" was enacted on July 30, 2001. Aside from all wildlife species found in all areas of the country, this law also applies to exotic species which are subject to trade, are cultured, maintained and/or bred in captivity or propagated in the country.<sup>17</sup>

The DENR has jurisdiction over all terrestrial plant and animal species, all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds, and all amphibians and *dugong*. On the other hand, the Department of Agriculture (DA) has jurisdiction over all declared aquatic critical habitats, all aquatic resources, including but not limited to all fishes, aquatic plants, invertebrates, and all marine mammals except *dugong*. Except for the Palawan Council on Sustainable Development, both departments shall jointly update their list of species under their jurisdiction.<sup>18</sup>

Likewise, the Secretary determines whether any wildlife specie or subspecies is threatened and classified it as critically endangered, vulnerable or other accepted categories based on best scientific data and with due regard to internationally accepted criteria. The list is updated regularly and a threatened specie cannot be removed therefrom within three (3) years following its initial listing. It is only upon the filing of a petition based on substantial scientific

---

<sup>15</sup> Rep Act No 7586 (1982), s 21.

<sup>16</sup> World Bank, Philippines Environment Monitor 2000, p 24.

<sup>17</sup> Section 3.

<sup>18</sup> Rep Act No 9147 (2001), s 4.

information of any person seeking for the addition or deletion of a species from the list that the Secretary evaluates based on relevant factors and act on the petition within a reasonable period.<sup>19</sup>

Bioprospecting is allowed only upon the execution of an undertaking stipulating that the proponent's compliance with and commitments to reasonable terms which are necessary to protect biological diversity. Before granting the necessary permit, consultation with concerned agencies is made by the Secretary as well as prior informed consent be obtained by applicant from the concerned indigenous cultural communities, local communities, management board or private individual or entity. The applicant shall disclose the intent and scope of the bioprospecting activity in a language and process understandable to the community. If the applicant is a foreign entity or individual, a local institution should be actively involved in the research, collection, and whenever appropriate, the technological development of the products derived from the biological and genetic resources. Upon submission of the complete requirements, the Secretary shall act on the research proposal within a reasonable period.<sup>20</sup>

All activities dealing on genetic engineering and pathogenetic organisms in the Philippines, as well as activities requiring the importation, introduction, field release and breeding of organisms that are potentially harmful to man and the environment shall be reviewed in accordance with biosafety guidelines ensuring public welfare and protection and conservation of wildlife and their habitat.

Breeding and propagation of wildlife for commercial purposes shall be allowed by the Secretary or the authorized representative through the issuance of wildlife farm/culture permit. However, only progenies of wildlife raised, as well as unproductive parent stock shall be utilized for trade. Commercial breeding operations for wildlife, whenever appropriate shall be subject to an environmental impact study.<sup>21</sup>

The Philippine Constitution places the development and utilization of forest lands and/or forest resources under the full control and supervision of the State; and allows the State to enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per cent of the capital of which is owned by such citizens.<sup>22</sup>

The leading legislation on the subject of forest preservation and protection is Presidential Decree No. 705 (19 May 1975) entitled the 'Revised Forestry Code of the Philippines' as amended by PD 1559 (11 June 1978), PD 1775 (14 January 1981) and Executive Order No. 277 (1987), hereinafter referred to as the

---

<sup>19</sup> Rep Act No 9147 (2001), s 14.

<sup>20</sup> *Id*, s 14.

<sup>21</sup> *Id*, s 16.

<sup>22</sup> CONST., art XII, s 2.

'Forestry Code.' This Code underscores the need for proper classification, management and utilization of lands of the public domain to maximize their productivity to meet the demands of the increasing population.

The Department of Environment and Natural Resources (DENR) has jurisdiction and authority over all forest lands. As such, it is responsible for the protection, development, management, regeneration and reforestation of forest lands; the regulation and supervision of the operations of licensees, lessees and permittees for the taking or use of forest products therefrom or the occupancy or the use thereof; the implementation of multiple use and sustained yield management in forest lands; the protection, development and preservation of national parks, marine parks, game refuges and wildlife; the implementation of measures and programs to prevent *kaingin* and to manage occupancy of forests and grazing lands; in collaboration with other bureaus, the effective, efficient and economic classification of lands of the public domain; and the enforcement of reforestation, parks, game and wildlife laws, rules and regulations.

The Secretary of the Department of Environment and Natural Resources is also authorized to negotiate and enter into, for and in behalf of the government, joint venture, co-production, or production-sharing agreements for the development and utilization of forest lands and/or forest resources with Filipino citizens or corporations or associations at least sixty per cent of whose capital is owned by Filipino citizens. Such agreements may be for a period not exceeding twenty-five years renewable for not more than twenty five years, and shall conform with the following minimum terms and conditions:<sup>23</sup>

- (i) A provision that the agreement-holder shall furnish the necessary management, technological, and financial services when required, as determined by the Secretary of Environment and Natural Resources;
- (ii) A stipulated share of revenues and the manner of payment thereof;
- (iii) Provision on consultation and arbitration with respect to the interpretation of the agreement;
- (iv) Provision of anti-pollution and environmental protection measures;
- (v) Provision for the restoration and protection of the forest;
- (vi) Provision for an effective monitoring scheme to be implemented by the DENR which shall include, but shall not be limited to, the periodic inspection of all records and books of account of the agreement-holder;
- (vii) A commitment to community development; and
- (viii) The submission of a management and development plan to be approved by the Secretary of Environment and Natural Resources.

In order to curb illegal logging and other forms of forest destruction, the Chain Saw Act of 2002<sup>24</sup> was enacted. It regulates the ownership, possession, sale, importation and use of chainsaws or similar cutting implement rendered

---

<sup>23</sup> CONST., art XII, s 2.

<sup>24</sup> Rep Act No 9175 (2002).

operative by an electric or internal combustion engine or similar means. It penalizes the selling, purchasing, re-selling, transferring, distributing or possessing a chainsaw without a proper permit, its unlawful importation or manufacturing actual unlawful use and the tampering of engine serial number of any chainsaw.

#### D. FISHERY RESOURCES

The principal legislation on fisheries is Presidential Decree No. 704 entitled 'An Act Revising and Consolidating all laws and decrees affecting fishing and fisheries,' as amended by Presidential Decree Nos. 1015 (1976) and 1058 (1976), otherwise known as the Fisheries Decree of 1975. Under the said decree, it is the policy of the State to 'accelerate and promote the integrated development of the fishery industry and to keep the fishery resources of the country in optimum productive condition through proper conservation and protection'.

In order to carry out this declared policy, the Bureau of Fisheries and Aquatic Resources (BFAR) was created, which has jurisdiction and responsibility for the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country, except municipal waters which shall be under the jurisdiction of the municipal or city government concerned. The BFAR was granted broad powers in the enforcement of the various fishery laws. It was authorized to issue fishpond lease agreements (FLAs) to qualified applicants for public forest lands declared by the Forest Management Bureau as available for fishpond development purposes. Thus, no person shall exploit, occupy, culture, capture or gather fish or fry of any species of fish or fishery/aquatic products, engage in any fishery activity in Philippine or municipal waters, operate a commercial fishery boat for scientific, research or educational purposes, or seek employment as a fisherman without first securing a license from the BFAR.

The BFAR may also recommend to the Secretary of Agriculture the promulgation of fishery administrative orders (FAOs), designating an area or areas in Philippine waters as fishery reservation for the exclusive use of the government or of any of its political subdivisions or agencies, or for the culture of fish and other aquatic animals for educational, research and scientific purposes; and the promulgation of FAOs establishing fish refuges and sanctuaries to be administered in the manner prescribed by the BFAR.

In addition to these powers, the BFAR was conferred adjudicative powers, performing quasi-judicial functions aside from its administrative and regulatory authority over persons and corporations engaged in the fishery industry licensed by it. As a quasi-judicial agency, the BFAR has original and exclusive jurisdiction to hear and decide cases involving fishponds, fishing boats and other

miscellaneous fishery products; conduct administrative investigations; and decide on illegal fishing cases.

The BFAR also has the power to recommend to the Secretary appropriate action on charter contracts, leases or lease-purchase agreements between foreign fishing boats and foreign persons, corporations or entities.

Other pertinent laws and presidential issuances of fish resources are: Republic Act No. 6541 (1972) prohibiting and punishing electro-fishing; Presidential Decree No. 1058 (1976) increasing the penalties provided for under Presidential Decree No. 704 for certain forms of illegal fishing and dealing in illegally caught fish, etc.; Presidential Decree No. 1219 (1977) providing for the exploration, utilization and conservation of coral resources as amended by Presidential Decree No. 1698 (1980); Letter of Instructions No. 1328 (1976) banning commercial trawls and purse seine within a distance of seven (7) kilometers from the shoreline in all provinces; Letter of Instructions No. 550 (1977) directing the Secretary of Natural Resources to train *barangay* officials as deputy fish wardens and/or deputy forest wardens.

The Philippine Fisheries Code of 1998<sup>25</sup> regulates all aquatic and fishery resources whether inland, coastal and fishing areas including but not limited to fishponds, fish pens and cages as well as all lands devoted to aquaculture or businesses relating to fishery, whether public or private lands. The provisions of the Code are enforced in all Philippine waters over which the Philippines has sovereignty and jurisdiction including the Exclusive Economic Zone (EEZ)<sup>26</sup> and continental shelf.

The municipal or city government has jurisdiction over municipal waters<sup>27</sup> and shall be responsible for the management, conservation, development, protection, utilization and disposition of all fish and fishery/aquatic resources. The Integrated Fisheries and Aquatic Resources Councils serves as the venue for close collaboration among LGUs in the management of continuous resources.

The Fisheries Code provides that the use and exploitation of the fishery and aquatic resources in Philippine waters are reserved exclusively to Filipinos provided, however, that research and survey activities may be allowed under strict regulations, for purely research, scientific, and technological and educational purpose that would also benefit Filipino citizens. The Department of Agriculture (DA) has the power to issue such number of licenses and permits for the conduct of fishery activities with preference given to resource users in the local communities adjacent or nearest to the municipal waters. The DA has the power to prescribe catch ceiling limitations, establishment of closed season and

---

<sup>25</sup> Rep Act No 8550 (1998).

<sup>26</sup> Presidential Decree No 1599 (1978).

<sup>27</sup> DAO 2001-17 dated 11 June 2001 provides guidelines for delineating/delimiting municipal waters.

the introduction of foreign aquatic species as well as the protection of rare, threatened and endangered species. All government agencies as well as private corporations are required to prepare a detailed environmental impact statement prior to undertaking activities or programs.<sup>28</sup>

Disposition of public lands for fishery purposes are primarily available to qualified fisherfolk cooperatives/associations. Upon expiration of Fishpond Lease Agreements (FLA), the current lessees shall be given priority and be entitled to an extension of twenty-five (25) years in the utilization of their respective leased areas. No fishpens or fish cages or fish traps are allowed in the lakes. Fish ponds leased to qualified persons shall be for more than 50 hectares for individuals and 250 hectares for corporations or fisherfolk organizations. The lease shall be for a period of twenty-five (25) years renewable for another 25 years. The DA shall not only establish a code of practice for aquaculture but shall formulate incentives and disincentives such as, but not limited to, effluent charges, user fees and negotiable permits to encourage compliance with the environmental standards and to promote sustainable management practices.<sup>29</sup>

Under the Philippine Fisheries Code,<sup>30</sup> the following are prohibited and penalized:

- (1) Unauthorized fishing or engaging in other unauthorized fisheries activities;
- (2) Poaching in Philippine waters;
- (3) Fishing through explosives, noxious or poisonous substance and/or use of electricity;
- (4) Use of fine mesh net;
- (5) Use of active gear in the municipal waters and bays and other fishery management areas;
- (6) Ban on coral exploitation and exportation;
- (7) Ban on *muro-ami*, other methods and gear destructive to coral reefs and other marine habitat;
- (8) Illegal use of superlights;
  
- (9) Conversion of mangroves;
- (10) Fishing in overfished areas and during closed season;
- (11) Fishing in fishery reserves, refuge and sanctuaries;
- (12) Fishing or taking of rare, threatened or endangered species;
- (13) Capture of *sabalo* and other breeders/spawners;
- (14) Exportation of breeders, spawners, eggs or fry;
- (15) Importation or exportation of breeders, fish or fishery species;
- (16) Violation of catch ceilings;

---

<sup>28</sup> *Id.*, ss 5-13.

<sup>29</sup> *Id.*, ss 45-48.

<sup>30</sup> *Id.*, ss 86-106.

- (17) Aquatic pollution;
- (18) Other violations under this Code:
  - a. failure to comply with minimum safety standards;
  - b. failure to conduct a yearly report on all fishponds, fishpens and fish cages;
  - c. gathering and marketing of shell fishes which is sexually mature or below the minimum size or above maximum quantities prescribed for the particular species;
  - d. obstruction to navigation or flow and ebb of tide in any stream, river, lake or bay;
  - e. construction and operation of fish corrals/traps, fish pens or fish cages;
- (19) Employment of unlicensed fisherfolk, worker or crew by commercial fishing vessel operators;
- (20) Obstruction of defined migration paths of anadromous, catadromous and other migratory species in areas including but not limited to river mouths or estuaries; and
- (21) Obstruction to fishery law enforcement officer.

The development and conservation of coral resources is regulated by Presidential Decree No. 1219 (1977) as amended by Presidential Decree No. 1698 (1980). It deals with the exploration, exploitation, utilization and conservation of coral resources and to protect these resources as provided for under other existing laws. Environmentalists were against this decree because the conservation of corals is necessary for the preservation of the natural.

## E. MINERAL RESOURCES

The Philippines is endowed with large deposits of minerals. Locally found metallic minerals are cadmium, chromite, cobalt, copper, gold, iron, lead, manganese, mercury, molybdenum, nickel, palladium, silver, uranium and zinc. Non-metallic minerals in local deposits are asbestos, barite, cement raw materials, clay, coal, construction raw materials, diatomite, feldspar, guano, gypsum, marble, mica, natural gas, perlite, petroleum, phosphate rock, pyrite, rock asphalt, silica sand, sulphur, and talc.<sup>31</sup> With these natural endowments, the exploitation of minerals contributes largely to the growth of the national economy. But these mining operations have adverse effects on the ecological balance. The large-scale extraction and usage of mineral resources are inherently and essentially polluting. They consist of the excavation and permanent removal of the minerals from their deposited positions, and thereafter their burning fuel or other utilization. From the stage of exploration to extraction, mining has invariably inflicted some degree of damage to the environment either through the pollution/siltation of rivers and seabeds, the acidification of

---

<sup>31</sup> M Feliciano et al, *Environmental Law in the Philippines*, 224 (1992).

agricultural plains or the unwanted emissions of smoke, dust, soot, noise, and other forms of air pollution.<sup>32</sup> These negative environmental effects are the externalities which arise out of the profit-oriented decisions of mining firms. It is through the use of the regulatory powers of the State that the private sector is compelled to shoulder the costs of these externalities.

It is for these reasons that mining legislation was enacted to oblige environmental protection measures to be undertaken by mining operators. The leading law on mining is Presidential Decree No. 463 (1974), 'The Mineral Resources Development Decree of 1974,' as amended by Presidential Decree Nos. 1385 (1978), 677 (1980) and 1902 (1984). Presidential Decree No. 463 amended the Mining Act of 1936 which requires all mining lease contractors to comply with pollution control laws and regulations. Under the said Decree, penalty provisions are included to curb pollution from mine wastes and mill tailings. Section 81 of the said Decree provides that 'dumping sledge, tailings and mines wastes in public roads, rivers or other public property shall be a punishable act penalized by payment of fines or imprisonment, or both.' Section 91 delineates specific conservation measures for resource recovery and prevention. An added dimension in the law is the requirement that mining operators should institute measures to make the area habitable and economically useful upon abandonment of operations due to the exhaustion of mineral resources or for other reasons. This provision is reinforced by Presidential Decree No. 1189 (1977) which provides that all entities engaged in mining are required 'to the fullest extent possible to restore, rehabilitate, and return the lands, rivers and the natural environment... to their original condition'.

In 1977, the Mine Wastes and Tailing Fee Act<sup>33</sup> was promulgated imposing fees on mining companies to contain future contingencies. The fees paid were to accrue to a reserve fund to be used exclusively for the payment of damages to land, agriculture crops and forest products, marine life and aquatic resources, the destruction of infrastructure, the revegetation, and the rehabilitation of farm lands and other areas devoted to agriculture and fishing damaged by pollution caused by the operation of mining companies.

Presidential Decree No. 512 was signed Declaring Prospecting and Other Mining Operations of Public Use and Benefit and Establishing the Basis and Prescribing the Rules and Procedures relating to Acquisition and Use of Surface Rights in Mineral Prospecting, Development and Exploitation, and Providing Protection and Compensation to Surface Owners, dated 16 January 1981.

To encourage investment in the mining industry by local and foreign-owned corporations, Executive Order No. 279 (1987) was promulgated authorizing the Secretary of Department of Environment and Natural Resources

---

<sup>32</sup> *Id.*, at 227.

<sup>33</sup> Pres Decree No 1251 (1977).

to negotiate and conclude joint venture, co-production or production sharing agreements for the exploration, development and utilization of mineral resources, and prescribing the guidelines for such agreements and those agreements involving technical or financial assistance by foreign-owned corporations for large-scale exploration, development, and utilization of minerals. Under said mode of undertaking, the private contractual party – a Philippine national or a corporation or association at least 60 per cent of whose capital is owned by Filipinos – shall, for a period not exceeding 25 years renewable for a similar period, furnish the technical, management and financial services for the development of mineral resources. Among the minimum requirements of the contract are the institution of industrial safety and anti-pollution measures and the restoration and/or protection of the environment.

Republic Act No. 7076 (1991), otherwise known as the ‘People’s Small-Scale Mining Act’ defines small-scale mining as ‘minimum activities which rely heavily on manual labor using simple implements and methods,’ and which do not use explosives or heavy mining equipment. The main purpose of the law is to ‘promote, develop, protect and rationalize viable small-scale mining activities in order to generate more employment opportunities and provide an equitable sharing of the nation’s wealth and natural resources.’ Through this law, the pernicious effects of the classic trade-off between development and environment could be minimized if not totally avoided.

The most recent law is Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995. It declares that all mineral resources in public and private lands within the territory and exclusive economic zone of the Philippines belong to the State. Thus, it shall be the State to promote their rational exploration, development, utilization and conservation through the combined efforts of the government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of the affected communities.<sup>34</sup> Where there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural, or ecological value, the President may establish mineral reservations upon the recommendation of the DENR Secretary, mining operations in existing mineral reservations and such other reservations as may thereafter be established shall be undertaken by the Department or through a contractor.<sup>35</sup> Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation, and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socio-economic development.<sup>36</sup>

In *La Bugal-B'laan Tribal Assn, et al v. Secretary Victor Ramos*, the Supreme Court *en banc* upheld the constitutionality of the Philippine Mining Law, its Implementing Rules and Regulations insofar as they relate to financial and technical agreements as well as the subject Financial and Technical Assistant Agreement.<sup>37</sup>

---

<sup>34</sup> Section 2.

<sup>35</sup> Section 5.

<sup>36</sup> Section 69.

<sup>37</sup> GR No 127882, 01 December 2004.