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CLARIFICATORY GUIDELINES IN THE IMPLEMENTATION OF DENR ADMINISTRATIVE ORDER NO. 96-40 OR “REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942 OTHERWISE KNOWN AS ...

DENR MEMORANDUM ORDER NO. 34-99, December 27, 1999

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In order to achieve a consistent implementation of DENR Administrative Order No. 96-40 or the Revised Implementing Rules and Regulations of Republic Act No. 7942, the following clarificatory guidelines are hereby promulgated:

Section 1. Area Status and Clearance of Applications for Exploration Permit, Mineral Agreement and Financial or Technical Assistance Agreement . Before securing the Area Status and Clearance from the pertinent DENR Sectors, the Bureau/concerned Regional Offices(s) shall first check in its control maps if the area is free/open for mining applications. Only cleared mining applications shall be forwarded to the pertinent DENR Sectors for Area Status and Clearance in accordance with DENR Memorandum Order No. 98-03.

Section 2. "Duly Authorized Representative" of Permittee. Under the terms and conditions of an Exploration Permit, the duly authorized representative of a Permittee refers to entities/service contractors to whom the Permittee has entered into an operating agreement or other similar forms of agreement duly approved by the Secretary.

Section 3. Renewal of Exploration Permit. The failure of a Permittee to apply for a renewal of the Exploration Permit within the prescribed period shall automatically open the area to mining applications upon the expiration of the said Permit.

Section 4. Mandatory Requirements by a Permittee for an Application for MA/FTAA (Section 30). The Exploration and Environmental Work Programs are not applicable as mandatory requirements for an application for a Mineral Agreement or Financial or Technical Assistance Agreement by a Permittee, hence, these documents shall not be required in the filing of said application.

Section 5. Mandatory Requirements for Mineral Agreement Application . Mineral Agreement applications going directly into the development/operating phase shall be required to submit a Three (3)-Year Development/Utilization Work Program, instead of a Two (2)-Year Exploration Work Program. The Development/Utilization Work Program shall be accompanied by an appropriate Mining Project Feasibility Study (MGB Form No. 5-3) duly prepared, signed and sealed by a licensed Mining Engineer, Geologist or Metallurgical Engineer and the pertinent Declaration of Mining Project Feasibility duly signed by the applicant.

Section 6. Registration of Mineral Agreement . In the registration of the Mineral Agreement, it shall be first forwarded to the Bureau for numbering upon approval of the Secretary, thence, to the concerned Regional Office for registration, for areas outside Mineral Reservations. The Director/concerned Regional Director shall notify the Contractor to cause the registration of its Mineral Agreement with the Bureau for areas inside Mineral Reservations or with the concerned Regional Office for areas outside Mineral Reservations within fifteen (15)

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working days from receipt of the written notice.

Section 7. Availment of Multiphase Activities under the FTAA . Any two (2) or more of the periods (Exploration, Pre-Feasibility Study, Feasibility Study) provided in Section 52 of the DENR Administrative Order No. 96-40 may be simultaneously undertaken in one approved contract area, as the need of the Contractor may arise, subject to the pertinent provisions of Section 60 of the same Administrative Order: Provided, That the Contractor shall file a Notice to the concerned Regional Office, copy furnished the Bureau of its intention to avail of the renewal of the Exploration Period or to advance to/avail of the Pre-Feasibility Study/Feasibility Study/Development and Construction/Operating Period, as deemed applicable, either in the whole or a portion of the Contract Area, subject to the approval of the Director.

Failure of the Contractor to file the Notice to avail of the renewal of the Exploration Period or to advance to/avail of the Pre-Feasibility Study/Feasibility Study Period shall mean that the said periods shall not be availed of by the Contractor.

Section 8. Three (3) Letters-Notice Policy . The Mines and Geosciences Bureau shall adopt the Three (3) Letters-Notice policy in exalting compliance of mining applicants with all requirements to support mining applications. Thus, each Letter-Notice shall give the mining applicant fifteen (15) to thirty (30) days upon receipt of the Letter-Notice to comply with the pertinent requirements: Provided, That an interval of no more than thirty (30) days between deadlines shall be observed in sending the Letters-Notice.

The failure of the mining applicant to fully comply with the requirement as embodied in the Letters-Notice shall be a ground for denial of the mining application.

Section 9. Authorized Capitalization . The minimum authorized capital of Ten Million Pesos (P10,000,000.00) and paid-up capital of Two Million Five Hundred Thousand Pesos (P2,500,000.00) required for a corporation/association/cooperative/partnership under DENR Memorandum Order No. 99-10 shall apply to the principal applicant whether or not this applicant is supported by an operator or service contractor thru an operating agreement or other similar forms of agreement: Provided, That in the case of a mining application with two (2) or more applicants as co-applicants, the minimum authorized capital of P10 Million and paid-up capital of P2.5 Million may be required from just one (1) of the co-applicants.

In the case of a mining application by an individual, the minimum amount of Two Million Five Hundred Thousand Pesos (P2,500,000.00) shall be required as proof of financial capability, which shall be in the form of a bank deposit or credit line.

Consistent with the provisions of DENR Memorandum Order No. 99-10, the foregoing requirements shall be mandatory in the acceptance of a mining application.

Section 10. Prior Approval by the Sanggunian . Prior approval or indorsement by any two (2) of the concerned Sanggunian (Panlalawigan, Bayan and Barangay) shall be required in support of mining applications intended for development and/or utilization purposes. In the case of mining applications intended for exploration, a proof of consultation with/project presentation to any two (2) of the concerned Sanggunian shall be required.

In either case, the proof of prior approval, indorsement, consultation and/or project presentation shall be in the form of a formal Resolution or Certification by the concerned Sanggunian.

Section 11. Approval of Memorandum of Agreement/Option Agreement/Operating Agreement and other similar forms of Agreement under Mining Rights/Applications . Memorandum of Agreement(s)/Option Agreement(s)/Operating Agreement(s) and other similar forms of Agreements under a mining application shall be

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registered with the Bureau/concerned Regional Office and shall form part of the supporting document of a mining application, subject to the evaluation of the Bureau/Regional Office. Such agreement shall be deemed approved upon approval of the mining application.

Memorandum of Agreement(s)/Option Agreement(s)/Operation Agreement or other similar forms of Agreement entered into under a mining permit/contract shall be registered with the Bureau/concerned Regional Office and shall be subject to the approval of the Secretary upon evaluation and recommendation by the Director. Any of such Agreement that is not duly registered and/or approved by the DENR Secretary shall be deemed void in so far as the Department is concerned.

Section 12. Effectivity. This Order shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation and fifteen (15) days after registration with the Office of the National Administrative Register.

Adopted: 27 Dec. 1999

(SGD.) ANTONIO H. CERILLES
Secretary

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