

AMENDMENTS TO SECTION 16 (ANCESTRAL LANDS) AND TO CHAPTER XIV (DEVELOPMENT OF MINING COMMUNITIES, SCIENCES AND MINING TECHNOLOGY) OF DENR ADMINISTRATIVE ORDER NO. 96-40, AS AMEN...

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Pursuant to Section 8 of Republic Act (R.A.) No. 7942, otherwise known as the “Philippine Mining Act of 1995”, and Section 275 of DENR Administrative Order (D.A.O.) No. 96-40, entitled “Revised Implementing Rules and Regulations of Republic Act No. 7942, otherwise known as the ‘Philippine Mining Act of 1995’”, and in line with the policy of the Government to continuously provide for a responsive regulatory framework, the following Sections of D.A.O. No. 96-40, as amended, are hereby further amended for the guidance and compliance of all concerned:

Section 1. Section 16 of the said D.A.O. is hereby amended to read as follows:

“Section 16. Ancestral Lands

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The implementation of this Section shall be in accordance with Republic Act No. 8371, otherwise known as “The Indigenous Peoples Rights Act of 1997” and other pertinent laws.”

Section 2. Sections 134 to 136-D of the said D.A.O. are hereby further amended to read as follows:

“Section 134. Development of Mining Community, Mining Technology and Geosciences, and Institutionalization of Public Awareness and Education on Mining and Geosciences

a. The Contractor/Permit Holder/Lessee shall assist in the development of the host and neighboring communities in accordance with its Social Development and Management Program (SDMP) to promote the general welfare of the inhabitants living therein. Host community refers to the barangay(s) where the mining area is located, and neighboring community refers to the barangay(s) adjacent to the host community;

b. The Contractor/Permit Holder/Lessee shall develop a program for the advancement of mining technology and geosciences to build up resources and mineral discoveries, improve operational efficiency and resource recovery, and enhance environmental protection and mine safety;

c. The Contractor/Permit Holder/Lessee shall develop and institutionalize an Information, Education and Communication (IEC) Program for greater public awareness and understanding of responsible mining and geosciences; and

d. The Contractor/Permit Holder/Lessee shall allot annually a minimum of one and a half percent (1.50%) of the operating costs necessary to implement Subsections (a), (b) and (c) of this Section. Provided that of this amount, 1.125% (75% of 1.50%) shall be apportioned to implement the SDMP in Subsection (a) hereof, 0.150% (10% of 1.50%) for the implementation of Program for the Development of Mining Technology and Geosciences in Subsection (b) hereof and 0.225% (15% of 1.50%) for the implementation of IEC Program in Subsection (c) hereof. Provided, further, That any unspent amount and/or savings, for any given year, allotted for the implementation of the various programs shall be added to the succeeding year’s allotment and may be

re-programmed after consultations with host and neighboring communities.

For the purpose of this D.A.O., the term Operating Cost shall mean the specific costs of producing a saleable product on a commercial scale incurred in the calculation of the net income before tax, as confirmed by the Bureau/Regional Office. This shall include all costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management.

The Contractor/Permit Holder/Lessee shall submit to the Regional Office concerned a sworn statement of its previous year's operating costs within sixty (60) days after the end of each calendar year as basis for the implementation of Subsections (a), (b), and (c) hereof in the case of an operating mine: Provided, That, in the case of new mining operations, the basis for the initial SDMP implementation shall be the operating costs estimates contained in the approved Mining Project Feasibility Study: Provided, further, That the expenditures for the implementation of Subsections (a), (b), and (c) hereof shall not be credited to the royalty payment for Indigenous Peoples/Indigenous Cultural Communities per Section 16 hereof.

Section 135. Credited Activities or Expenditures

Programs/Projects/Activities (P/P/As) under the following areas of concern shall be considered as creditable activities or expenditures:

a. For the development of the host and neighboring communities:

1. Human Resource Development and Institutional Building – P/P/As geared towards strengthening existing local institutions, fostering the creation of new community organizations, and providing marginalized/disadvantaged groups the opportunity to participate fully in the development of their communities. These shall include, but not limited to, capacity- and capability-building on project management, organizational development, entrepreneurship, and skills development/training;
2. Enterprise Development and Networking – P/P/As geared towards the development and promotion of economically viable community enterprises by providing members of the community access to capital and thereby enhance and stimulate existing livelihood industries and other income generating activities, help create new ones, and develop market diversification. These shall include income generating activities, such as animal husbandry, provision of farm implements, establishment of small/micro-businesses, such as household-based food processing, horticulture and agronomy, traditional handicrafts, support to small local businesses through preferential procurement of goods and services from local sources, as well as cooperative development, market linking and networking, among others;
3. Assistance to Infrastructure Development and Support Services – P/P/As geared towards stimulating and facilitating other forms of economic activity, such as the development, construction, improvement, and/or maintenance of farm-to-market roads, water systems, post-harvest facilities, bridges, and electric power, among others;
4. Access to Education and Education Support Programs – P/P/As geared towards providing educational opportunities to members of the community, including scholarships from primary to tertiary education, technical/vocational education, provision of apprenticeship programs, construction/repair/improvement of school buildings and related facilities, provision of school furniture and fixtures, and subsidy to teachers, among others;
5. Access to Health Services, Health Facilities and Health Professionals – P/P/As geared towards achieving overall improvement in the living conditions and health of the host and neighboring communities, such as the

provision of health facilities, access to health services, medicines and professionals, health education and preventive measures, training of health paraprofessionals, maternal-child health care and family planning, provision of health insurance, establishment of nutrition and immunization programs, access to clean and potable water, and provision of waste and sewage disposal facilities, among others;

6. Protection and Respect of Socio-Cultural Values – P/P/As geared towards safeguarding the existing socio-cultural values of the host and neighboring communities to promote social cohesion and cultural awareness, and to instill community pride; and

7. Use of facilities/services within the mine camp or plant site, such as hospitals, schools, among others, by members of the host and neighboring communities, the expenditures of which shall be apportioned pro-rata according to the number of people from said communities accommodated in such facilities.

Provided, That expenditures for P/P/As for the mine camp accruing to the Contractors'/Permit Holders'/Lessees' employees and their families shall not be included in the computation of the cost of the SDMP.

b. For the development of mining technology and geosciences:

1. Basic and applied research on mining technology, geosciences, and related subjects such as, but not limited to, the socioeconomics related to mining operations, environmental protection, mineral economics, among others;
2. Advanced studies, related to mining which are conducted by qualified researchers who are not employees of the mine, following current guidelines by the Department of Science and Technology, including the cost of publication thereof in refereed technical journals or monographs accessible to the local scientific community;
3. Expenditures for scholars, fellows and trainees, including grants for dissertations, on mining technology and geosciences and related subjects; and
4. Expenditures on equipment and capital outlay as assistance for research and/or educational institutions which serve as a venue for developing mining technology and geosciences.

Provided, further, That the Provincial and Municipal Governments concerned shall be consulted in the determination of beneficiaries of scholarships and trainings, as well as the subject of researches and training programs.

c. For the promotion of public awareness and education on mining technology and geosciences:

1. Establishment/enhancement/maintenance of information and publicity centers where stakeholders can access information on the performance of a mining project;
2. Publication of IEC materials on social environmental and other issues/ concerns relative to mineral resources development and responsible mining operations;
3. Expenditures for continuing public awareness and education campaigns such as radio and web-based broadcasts, publications, and other forms of mass communication, on mining-related information, issues and concerns; and
4. Expenditures on equipment and capital outlay as assistance to the institutionalization of public awareness and education on mining technology and geosciences.

Section 136. Duties and Responsibilities of the Contractor/Permit Holder/ Lessee on the Development of the Host and Neighboring Communities

a. Coordinate with proper authorities in the provision and implementation of development plans for the host and

neighboring communities;

b. Promote community service and volunteerism by encouraging members of the host and neighboring communities to impart time, knowledge, skills and talents in the development and implementation of community P/P/As as a way of instilling community ownership and achieving a more cohesive and stronger community;

c. Help create self-sustaining income generating activities such as, but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income generating activities are identified to be present within the host and/or neighboring communities, the Contractor/Permit Holder/ Lessee shall work with such communities towards the preservation and/or enhancement of such activities; and,

d. Give preference to qualified Filipino citizens in the hiring of personnel for its mining operations, the majority of which shall originate according to priority from the host and neighboring communities, the host municipality and province where mine is located: Provided, That the Contractor/Permit Holder/Lessee shall organize, at its own expense, skills enhancement programs in the absence of the needed skills: Provided, further, That it shall give its firm commitment to skills re-formation and entrepreneurship development for people in the mining communities as an integral part of the mine closure process.

Section 136-A. Social Development and Management Program and Community Development Program

All Contractors/Permit Holders/Lessees shall prepare an SDMP, in consultation and in partnership with the host and neighboring communities. The SDMP shall be actively promoted and shall cover and include all P/P/As towards enhancing the development of the host and neighboring communities in accordance with Sections 135 and 136 hereof. To meet the changing needs and demands of the communities, the Contractor/Permit Holder/Lessee engaged in mining operations shall submit every five (5) years an SDMP to the Regional Office for approval as provided for in Section 136-B hereof.

In the case of a holder of an Exploration Permit or a Mineral Production Sharing Agreement or Financial or Technical Assistance Agreement in the Exploration Stage, the Permittee/Contractor shall develop and implement a Community Development Program (CDP) which implementation shall be supported by a fund equivalent to a minimum of ten percent (10.0%) of the budget of the approved two (2)-year Exploration Work Program: Provided, That the CDP shall be developed in consultation and in partnership with the host communities within the area subject of active exploration activities and may include P/P/As identified in, but not limited to, Subsection (a) of Section 135 hereof: Provided, further, That the CDP shall be submitted to the Regional Office concerned, for approval, within six (6) months upon registration of the approved Exploration Permit.

The second (2nd) or succeeding CDP shall be submitted to the Regional Office concerned not later than 30 days from the completion of the preceding CDP.

Section 136-B. Processing and Approval of the SDMP, and the Programs on Development of Mining Technology and Geosciences, IEC and CDP

The Contractor/Permit Holder/Lessee shall submit at least three (3) legible copies and a complete electronic file of the five (5)-year SDMP and the Programs on Development of Mining Technology and Geosciences and on IEC to the Regional Office concerned.

Within five (5) days upon receipt thereof, the Regional Office concerned shall conduct an evaluation of the submitted programs as to its form, substance, and completeness. Additional documents or information which are deemed necessary to supplement the programs may be required by the Regional Office concerned.

A technical conference shall be held among the Contractor/Permit Holder/Lessee, Regional Office concerned and appropriate experts for the final evaluation of the programs. During the technical conference, the Contractor/Permit Holder/Lessee shall present the highlights of its programs, while the Regional Office concerned and the concerned experts shall present their comments on the submitted programs. If the proposed programs conform to the standards, these shall be duly approved by the Regional Office concerned through the issuance of a Certificate of Approval. The Regional Office shall provide the Bureau with a copy each of the approved SDMP and Programs on the Development of Mining Technology and Geosciences and on IEC, and the Certificates of Approval, within seven (7) days upon approval.

If the Programs require some revisions/additional information, the Contractor/Permit Holder/Lessee shall be required to address the deficiencies within ten (10) days from the date of the technical conference. Should the Contractor/Permit Holder/Lessee fail to address the deficiencies within the prescribed period, the Programs shall be returned to the proponent for revision/rectification and resubmission.

Within thirty (30) days from the approval of the SDMP, the Contractor/Permit Holder/Lessee shall enter into a Memorandum of Agreement (MOA) with the host and neighboring communities as represented by the Barangay(s)/Municipality(ies) concerned and shall register the same in the Regional Office concerned, to ensure the implementation of the various P/P/As.

The Contractor/Permit Holder/Lessee shall provide each of the Local Government Units concerned and the host and neighboring communities with a copy each of the approved programs within five (5) days after the registration of the approved Contract/Permit or five (5) days after receipt of the order approving the Declaration of Mining Project Feasibility, as the case may be.

The succeeding 5-year SDMP and the Programs on Development of Mining Technology and Geosciences and on IEC shall be submitted to the Regional Office concerned not later than thirty (30) days from the completion of the preceding five (5)-year Programs.

A copy each of the succeeding approved Programs shall be provided to the Local Government Units concerned and the host and neighboring communities within five (5) days from its approval.

Based on the approved Programs and for effective implementation of the same, Annual Programs shall be submitted, at least thirty (30) days prior to the beginning of every calendar year, to the Regional Office concerned, for approval and implementation the following year. The Regional Office concerned shall furnish the Bureau with the approved annual Programs within seven (7) days from its approval.

A copy of the CDP is a mandatory requirement for the acceptance of the following applications:

1. Exploration Permit renewal
2. Mineral Production Sharing Agreement - renewal of Exploration Period
3. Financial or Technical Assistance Agreement - renewal of the Exploration Period or application for Pre-Feasibility/Feasibility Period

Provided, That an approved CDP is required prior to commencement of the implementation of the approved Exploration Work Program under the renewed Exploration Permit/ Exploration Period or approved Pre-Feasibility/Feasibility Period.

The Bureau shall retain oversight function over the evaluation, approval and implementation of the Programs.

Detailed guidelines in the preparation of and on compliance with the different Programs shall be prescribed by the

Secretary through the Director.

Section 136-C. Organization of Community Relations Office

The Contractor/Permit Holder/Lessee shall incorporate in its organizational structure a Community Relations Office (CRO) that is primarily tasked to marshal the resources needed and serves as facilitator/coordinator for the successful implementation of the SDMP, and the Programs on Development of Mining Technology and Geosciences and on IEC. A Community Relations Officer (ComRel) shall head the CRO and shall be reporting directly to the highest company on-site official. The ComRel must be a graduate of any social science course, or any person with experience and training on community development work and, preferably, with strong knowledge of the local culture.

During the Exploration Stage, the Permittee/Contractor may hire and/or designate community development professional(s) and/or community liaison officer(s) to ensure the effective implementation of the CDP.

Section 136-D. Monitoring and Auditing of Annual SDMP and Annual Programs on Development of Mining Technology and Geosciences and on IEC and CDP

Monthly internal monitoring of the Annual SDMP (ASDMP) shall be done jointly by the CRO and representatives of the host and neighboring communities to determine the level of implementation of the P/P/As in accordance with the ASDMP.

The CRO shall provide the Regional Office with the quarterly reports of accomplishments on the implementation of ASDMP, Annual Program on the Development of Mining Technology and Geosciences and Annual Program on IEC. It shall likewise prepare and submit annual report to the Regional Office, copy furnished the Bureau.

The Regional Office shall conduct semi-annual monitoring of the implementation of the approved programs and submit its monitoring report(s) to the Bureau as basis for periodic audits.

An annual status report on the implementation of the CDP shall be submitted to the Regional Office concerned, subject to periodic monitoring/audit.”

Section 3. Section 136-E of the same D.A.O. is hereby retitled to read as follows:

“Section 136-E. Review and Evaluation of the Approved Programs

On the initiative of the Bureau, Regional Office concerned, Contractor/Permit Holder/Lessee and/or the host and neighboring communities, the approved SDMP and Programs on Development of Mining and Mineral Processing Technologies and Geosciences and on IEC can be reviewed and/or revised during their period of coverage to account for changes in the nature and cost of activities: Provided, That prior to the end of the five-year term of the approved Programs, they shall be subject to performance review by the Bureau to determine and measure the impact of the various Programs, the results of which shall serve as an integral guide in the preparation of the new Programs.”

Section 4. Section 136-F is hereby added to contain the provisions of the former Section 136-E of the same D.A.O. with amendments, to read as follows:

“Section 136-F. Penalties

Contractor/Permit Holder/Lessee found not implementing its approved SDMP and Programs on Development of Mining Technology and Geosciences and on IEC, or operating without such approved Programs shall, on the first offense, be liable to a fine not exceeding Five Thousand Pesos (P5,000.00). A succeeding offense shall be sufficient ground to suspend its mining/milling operations in the mining areas, in addition to a fine not exceeding Five Thousand Pesos (P5,000.00).

Provided, further, That approved Programs shall be deemed revoked if the mining operation of the Contractor/Permit Holder/Lessee is suspended or stopped for a period of at least two (2) consecutive years.”

Section 5. Section 137 of the same D.A.O. is hereby amended to read as follows:

“Section 137. Contribution to the Advancement of Mining Technology and Geosciences

As part of its obligations under the mining contract/permit, the Contractor/ Permit Holder/Lessee shall have the following responsibilities as contribution to the advancement of mining technology and geosciences:

a. In the course of its operations, produce geological, geophysical, geochemical and other types of maps and reports that are appropriate in scale and which in format and substance are consistent with the internationally accepted standards and practices. Such maps shall be made available to the scientific community in the most convenient and cost effective forms, subject to the condition that the Contractor/Permit Holder/Lessee may delay release of the said information for a reasonable period of time which shall not exceed three (3) years;

b. Systematically keep the data generated from the Contract/Mining Area such as cores, assays and other related information, including economic and financial, and may make them accessible to students, researchers and other persons responsible for developing mining technology and geosciences subject to the condition that the Contractor/Permit Holder/Lessee may delay release of data to the science and technology community within a reasonable period of time which shall not exceed three (3) years; and

c. Replicate the data, maps and reports cited in Paragraphs (a) and (b) and furnish the Bureau for archiving and systematic safekeeping which shall be made available to the science and technology community for conducting research and for undertaking other activities which contribute to the development of mining technology and geosciences and the corresponding manpower training and development: Provided, That the release of such data, maps, and the like to the science and technology community shall be similarly constrained in accordance with Paragraphs (a) and (b) above.”

Section 6. Section 139 of the same D.A.O. is hereby amended to read as follows:

“Section 139. Transfer of Social Assets and Services

The Contractor/Permit Holder/Lessee shall, within one (1) year from the abandonment, cancellation or termination of the Agreement/Permit/Lease and consistent with the social aspect of the Final Mine Rehabilitation and/or Decommissioning Plan, remove all improvements deemed no longer socially usable after consultation with Local Government Unit(s)/community(ies) concerned, on the mining premises found on public land(s). Otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper Government authorities, national or local, to ensure that said infrastructure and facilities are continuously maintained and utilized by the host and neighboring communities.”

Section 7. Separability Clause - If any clause, sentence, section or provision of these implementing rules and regulations is held or declared to be unconstitutional or invalid by a competent court, the remaining parts hereof shall not be affected thereby.

Section 8. Repealing and Amending Clause - All existing orders, rules and regulations, memorandum circulars or directives or part(s) thereof inconsistent with or contrary to the provisions of this Administrative Order are hereby repealed, amended and/or modified accordingly. The Secretary shall furthermore have the authority, inter alia, to amend, revise, add to, clarify, supplement, interpret, delete, or make exemptions (to the extent not contrary to the provisions of the Act) to any provision of these implementing rules and regulations with the end in view of ensuring that the Act is appropriately implemented and enforced.

Section 9. Effectivity - This Administrative 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: 05 May 2010

(SGD.) HORACIO C. RAMOS

Secretary

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