

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE POLLUTION ADJUDICATION BOARD (DENR), PETITIONER, VS. MARCOPPER MINING CORPORATION, RESPONDENT.

G.R. No. 137174. July 10, 2000

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-137174/>

GONZAGA-REYES, J.:

In this petition for review on certiorari, petitioner REPUBLIC OF THE PHILIPPINES through the Pollution Adjudication Board of the Department of Environment and Natural Resources seeks to annul the Decision[1] of the Court of Appeals[2] in CA-G.R. SP No. 44656 setting aside the Order[3] of the Pollution Adjudication Board[4] in DENR-PAB Case No. 04-00597-96; as well as the Resolution[5] denying reconsideration of said Decision.

The following antecedent facts are undisputed:

Respondent Marcopper Mining Corporation (MMC) was issued a temporary permit to operate a tailings[6] sea disposal system under TPO No. POW-85-454-EJ for the period October 31, 1985 to October 21, 1986. Before it expired, MMC filed an application for the renewal thereof with the National Pollution Control Commission (NPCC). On September 20, 1986, MMC received a telegraphic order from the NPCC directing the former to "(i)mmediately cease and desist from discharging mine tailings into Calancan Bay." The directive was brought about through the efforts of certain religious groups which had been protesting MMC's tailings sea disposal system. MMC requested the NPCC to refrain from implementing the aforesaid directive until its adoption of an alternative tailings disposal system. The NPCC granted MMC's request and called a conference to discuss possible alternative disposal systems. Consequently, an Environmental Technical Committee, composed of representatives from the NPCC, the Bureau of Mines and Geo-Sciences, and MMC was created to study the feasibility of various tailings disposal systems that may be appropriate for utilization by MMC and to submit its findings and recommendations thereon.

Meanwhile, after the expiration of MMC's TPO No. POW-85-454-EJ on October 21, 1986, the NPCC issued to MMC a new temporary permit, TPO No. POW-86-454-EJ dated November 11, 1986, to expire on February 10, 1987, with the condition that "[t]he tailings disposal system shall be transferred to San Antonio Pond within two (2) months from the date of this permit." MMC moved for the deletion of the condition stating that it needed to develop and mine the ore deposits underneath the San Antonio pond for it to continue its mining operations. In a letter-manifestation dated February 5, 1987, MMC requested the NPCC for an extension of TPO No. POW-86-454-EJ and the indefinite suspension of the condition in said permit until such time that the NPCC shall have finally resolved the NPCC case entitled "Msgr. Rolly Oliverio, et al. vs. Marcopper Mining Corporation."

In the meantime, the NPCC was abolished by Executive Order No. 192[7] dated June 10, 1987, and its powers and functions were integrated into the Environmental Management Bureau and into the Pollution Adjudication Board (PAB).[8]

On April 11, 1988, the Secretary of Environment and Natural Resources, in his capacity as Chairman of the PAB, issued an Order directing MMC to "cease and desist from discharging mine tailings into Calanacan Bay." The order reads:

The Temporary Permit to Operate issued to Marcopper Mining Corporation expired on February 10, 1987.

Section 96 of the National Pollution Control Commission (NPCC) Rules and Regulations, which were adopted by the Board, provides that in no case can a permit be valid for more than one (1) year.

Records show that Marcopper Mining Corporation has not filed any application for renewal of the permit.

Marcopper Mining Corporation is hereby ordered to cease and desist from discharging mine tailings into Calanacan Bay immediately upon receipt of this Order.

SO ORDERED."[9]

Immediately thereafter, the DENR Undersecretary for Environment and Research issued a telegraphic order dated April 15, 1988, enjoining immediate compliance by MMC of the cease and desist order of April 11, 1988.

MMC appealed the above orders of April 11, 1988 and April 15, 1988 to the Office of the President, docketed as O.P. Case No. 3802. In an Order dated May 2, 1988, the Office of the President denied MMC's requests for issuance of restraining orders against the orders of the PAB. Consequently, MMC filed an "Urgent Ex-Parte Partial Motion for Reconsideration" dated May 6, 1988, seeking the reconsideration of the above Order. In an Order dated May 13, 1988, the Office of the President granted the above partial motion for reconsideration, thus:

"WHEREFORE, the instant "Urgent Ex-Parte Motion for Reconsideration" is hereby GRANTED, and the Order of this Office, dated May 2, 1988, is hereby set aside insofar as it denies respondent-appellant's requests for issuance of restraining orders.

Accordingly, the Pollution Adjudication Board, its agents, deputies or representatives are hereby enjoined from enforcing its cease and desist order of April 15, 1988 pending resolution by this Office of respondent-appellant's appeal from said orders.

It is further directed that the status quo obtaining prior to the issuance of said cease and desist order be maintained until further orders from this Office.

It is understood, however, that during the efficacy of this restraining order, respondent-appellant shall immediately undertake, at a cost of not less than P30,000.00 a day, the building of artificial reefs and planting of sea grass, mangroves and vegetation on the causeway of Calanacan Bay under the supervision of the Pollution Adjudication Board and subject to such guidelines as the Board may impose.

SO ORDERED."[10]

In line with the directive from the Office of the President, the Calanacan Bay Rehabilitation Project (CBRP) was created, and MMC remitted the amount of P30,000.00 a day, starting from May 13, 1988 to the Ecology Trust Fund (ETF) thereof. However, on June 30, 1991, MMC stopped discharging its tailings in the Bay, hence, it likewise ceased from making further deposits to the ETF.

From the issuance of the Order on May 13, 1988 until the cessation of the tailings disposal on June 30, 1991, MMC made its contribution to the ETF in the total amount of Thirty-Two Million Nine Hundred and Seventy-Five Thousand Pesos (P32,975,000.00). Thereafter, MMC filed a Motion dated July 9, 1991 manifesting that it would discontinue its contributions/deposits to the ETF since it had stopped dumping tailings in the Bay. MMC prayed that the Order issued by the Office of the President on May 13, 1988 be lifted.

On February 5, 1993, the Office of the President rendered a decision in O.P. Case No. 3802 dismissing the appeal; affirming the cease and desist Order issued by the PAB; and lifting the TRO dated May 13, 1988. The Office of the President resolved the appeal in this wise:

"This brings to the fore the primordial issue of whether or not the Secretary of Environment and Natural Resources gravely erred in declaring the TPO No. POW-86-454-EJ issued to respondent-appellant MMC expired on February 10, 1987, and in ordering the latter to cease and desist from discharging mine tailings into Calancan Bay.

Respondent-appellant argues that the cease and desist orders were issued by the PAB ex-parte, in violation of its procedural and substantive rights provided for under Section 7 (a) of P.D. No. 984 requiring a public hearing before any order or decision for the discontinuance of discharge of a sewage or industrial wastes into the water, air or land could be issued by the PAB.

We are not persuaded.

Section 7(a) of P.D. No. 984, reads in part:

"Sec. 7(a) Public Hearing. - Public hearing shall be conducted by the Commissioner, Deputy Commissioner or any senior official duly designated by the Commissioner prior to issuance or promulgation of any order or decision by the Commissioner requiring the discontinuance of discharge of sewage, industrial wastes and other wastes into the water, air or land resources of the Philippines as provided in the Decree: provided, that whenever the Commission finds a prima facie evidence that the discharged sewage or wastes are of immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable standards set by the Commission, the Commissioner may issue an ex-parte order directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such sewage or wastes without the necessity of a prior public hearing. x x x . (underscoring supplied).

Clearly then, it is self-indulgent nonsense to assume that the DENR Secretary, acting as PAB Chairman, is absolutely without authority to issue an ex-parte order requiring the discontinuance of discharge of sewage or other industrial wastes without public hearing. As can be gleaned from the afroequoted proviso, this authority to issue an ex-parte order suspending the discharge of industrial wastes is postulated upon his finding of prima-facie evidence of an imminent "threat to life, public health, safety or welfare, to animal or plant life or exceeds the allowable standards set by the Commission." [11]

In a letter dated January 22, 1997 [12], Municipal Mayor Wilfredo A. Red of Sta. Cruz, Marinduque informed the PAB that MMC stopped remitting the amount of 30,000.00 per day as of July 1, 1991 to the ETF of the CBRP. This letter-complaint of Mayor Red was docketed as DENR-PAB Case No. 04-00597-96, for violation of P.D. 984 [13] and its implementing Rules and Regulations.

In an order dated April 23, 1997, the PAB ruled that the obligation of MMC to deposit P30,000.00 per day to the ETF of the CBRP subsists, as provided for in the Order of the Office of the President dated May 13, 1988, during the "efficacy of said order restraining the PAB from enforcing its cease and desist order against MMC". Since the Order was lifted only on February 5, 1993, the obligation of MMC to remit was likewise extinguished only on said date and not earlier as contended by MMC from the time it ceased dumping tailings into the Bay on July 1, 1991. We quote in part:

"The issue before this Board is whether Marcopper Mining Corporation is still obliged to remit the amount of P30,000.00 to the CBRP. The answer by the Order from the Office of the President dated 13 May 1988, which states that the obligation on the part of Marcopper Mining to pay the amount of P30,000.00 per day for the rehabilitation of Calancan Bay is binding only during the efficacy of the said Order.

The record further shows that on 05 February 1993, the Office of the President lifted its Order dated 13 May

1988. This means that as of the date of the lifting, Marcopper Mining Corporation no longer had any obligation to remit the amount of P30,000.00 to the CBRP. Thus, Marcopper's obligation only runs from 13 May 1988 to 05 February 1993. Beyond the cut-off date of 05 February 1993, Marcopper is no longer obligated to remit the amount of P30,000.00 per day to the CBRP.

It does not matter whether Marcopper was no longer dumping its tail minings into the sea even before the cut-off date of 05 February 1993. The obligation of Marcopper to pay the amount of P30,000.00 to the CBRP arises from the Office of the President Order dated 13 May 1988, not from its dumping of mine tailings.

WHEREFORE, Marcopper Mining Corporation is hereby ordered to pay the CBRP the amount of P30,000.00 per day, computed from the date Marcopper Mining Corporation stopped paying on 01 July 1991, up to the formal lifting of the subject Order from the Office of the President on 05 February 1993.

SO ORDERED."[14]

MMC assailed the aforementioned Order dated April 23, 1997 of the PAB as null and void for having been issued without jurisdiction or with grave abuse of discretion in a petition for Certiorari and Prohibition (with prayer for temporary restraining order and preliminary injunction) before the Court of Appeals which was docketed as CA-G.R. No. SP-44656. In a Resolution dated July 15, 1997, the Court of Appeals required the PAB and its members to comment on said petition.

On November 19, 1997, the Office of the Solicitor General, on behalf of the PAB and its members, filed with the Court of Appeals the required comment.

On September 15, 1997, for purposes of determining whether or not to grant MMC's prayer for a temporary restraining order and preliminary injunction, the Court of Appeals conducted a hearing where counsel for the parties were heard on oral arguments.

In a Resolution dated September 19, 1997, the Court of Appeals issued a writ of preliminary injunction, conditioned upon the filing of a bond by MMC in the amount of P500,000.00 enjoining the PAB and its members to cease and desist from enforcing the assailed Order dated April 23, 1997, until it had made a full determination on the merits of the case.

On January 7, 1998, the Court of Appeals promulgated a Decision in CA-G.R. SP No. 44656, the dispositive portion of which reads:

"In view of the foregoing, the instant petition is hereby GRANTED and, accordingly, the questioned Order of respondent Pollution Adjudication Board dated 23 April 1997 is hereby SET ASIDE. Respondents are ordered to REFRAIN and DESIST from enforcing aforesaid Order. The injunctive bond filed by the petitioner in the amount of Five Hundred Thousand (P500,000.00) is hereby RELEASED."

The motion for reconsideration of the above decision was denied in a Resolution dated January 13, 1999 of the Court of Appeals.

Hence, the instant petition on the following grounds:

I

The Court of Appeals erred in ruling that Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995) repealed the provisions of Republic Act No. 3931, as amended by Presidential Decree No. 984, (otherwise known as the National Pollution Control Decree of 1976), with respect to the power and function of petitioner Pollution Adjudication Board to issue, renew or deny permits for the discharge of the mine tailings.

II

Respondent Marcopper Mining Corporation bound itself to pay the amount of P30,000.00 a day for the

duration of the period starting May 13, 1988 up to February 5, 1993.

III

Respondent Marcopper Mining Corporation was not deprived of due process of law when petitioner Pollution Adjudication Board directed it to comply with its long-existing P30,000.00 per day obligation under the Order of the Office of the President dated May 13, 1988.[15]

In setting aside the Order of the PAB dated April 23, 1997, requiring MMC to pay its arrears in deposits, the Court of Appeals ruled that the PAB exceeded its power and authority in issuing the subject Order for the following reasons:

"The applicable and governing law in this petition is Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995 ("Mining Act", approved on March 3, 1995).

Chapter XI of the Mining Act contains a series of provisions relating to safety and environmental protection on mining and quarrying operations. More specifically, Section 67 of the Mining Act in essence, grants the mines regional director the power to issue orders or to take appropriate measures to remedy any practice connected with mining or quarrying operations which is not in accordance with safety and anti-pollution laws and regulations.

From a reading of that provision, it would appear therefore that prior to the passage of the Mining Act, the Pollution Adjudication Board had jurisdiction to act on pollution-related matters in the mining business. With the effectivity of the Mining Act and in congruence with its Sec. 115 (i.e., Repealing and Amending Clause), the power to impose measures against violations of environmental policies by mining operators is now vested on the mines regional director. Be that as it may, we are constrained to enunciate that the PAB had no authority to issue the challenged Order dated 23 April 1997. More so, respondent PAB as petitioner argued and We note, had remained perplexingly silent on the matter for almost six (6) years from July 1991 when MMC ceased to make its deposits up to April 1997 when respondent PAB precipitately issued the Order requiring MMC to pay its arrears in deposits to the ETF. And PAB, apparently oblivious to MMC's economic quandary had issued said Order ex-parte without hearing or notice.

x x x

As a general rule, the adjudication of pollution cases pertains to the Pollution Adjudication Board (PAB), except in cases where the special law, expressly or impliedly, provides for another forum, as in the instant petition.

Thus under Republic Act No. 7942 and its implementing rules and regulations, the mines regional director, in consultation with the Environmental Management Bureau (*italics ours*), is specifically mandated to carry out and make effective the declared national policy that the State shall promote the rational exploration, development, utilization and conservation of all mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines, through the combined efforts of government and the private sector in order to enhance national growth and protect the rights of affected communities. (Sec. 2, R.A. 7942).

Under this expansive authority, the Mines Regional Director, by virtue of this special law, has the primary responsibility to protect the communities surrounding a mining site from the deleterious effects of pollutants emanating from the dumping of tailing wastes from the surrounding areas. Thus, in the exercise of its express powers under this special law, the authority of the Mines Regional Director to impose appropriate protective and/or preventive measures with respect to pollution cases within mining operations is *perforce*, implied. Otherwise, the special law granting this authority may well be relegated to a mere paper tiger - talking protection but allowing pollution.

It bears mention that the Pollution Adjudication Board has the power to issue an ex-parte order when there is

prima facie evidence of an establishment exceeding the allowable standards set by the anti-pollution laws of the country. (Pollution Adjudication Board v. Court of Appeals, et al., 195 SCRA 112). However, with the passage of R.A. 7942, insofar as the regulation, monitoring and enforcement of anti-pollution laws are concerned with respect to mining establishments, the Mines Regional Director has a broad grant of power and authority. Clearly, pollution-related issues in mining operations are addressed to the Mines Regional Director, not the Pollution Adjudication Board.

This being the case, the questioned Order dated 23 April 1997 requiring MMC to pay its arrears in deposits was beyond the power and authority of the Pollution Adjudication Board to issue and as such, petitioner may seek appropriate injunctive relief from the court. Thus, certiorari lies against public respondent PAB." [16]

The Court of Appeals likewise ruled that the obligation of MMC to contribute to the ETF of the CBRP ceased inasmuch as the latter discontinued dumping tailings into the Bay and the actual funds in the ETF are sufficient to rehabilitate the Bay. It ratiocinated thus:

"In the instant case, it is of record that petitioner MMC undertakes its obligation to provide for the rehabilitation of the Bay waters. This obligation, through its monetary contribution to the ETF, is however anchored on its continuing disposal of the mines tailings waste into the Bay. Hence, since it ceased its mining operations in the affected area as of July 1991 and had not been discharging any tailings wastes since then, its consequent duty to rehabilitate the polluted waters, if any, no longer exists.

x x x

Be that as it may, this Court observes that out of the approximate sum of thirty-two (32) million pesos contributed by the petitioner to the ETF there is admittedly an existing estimated balance of fourteen (14) million pesos in the Fund. For its part, petitioner does not renege on its obligation to rehabilitate and in fact undertakes to continue the rehabilitation process until its completion within two (2) years time and which would only cost six (6) million pesos. Thus, as petitioner convincingly argued and which respondent unsatisfactorily rebuked, the existing fourteen (14) million pesos in the ETF is more than enough to complete the rehabilitation project. (TSN, Hearing dated 15 September 1997, at pp. 56 to 62, Rollo).

xxx. Without much ado, the Court concurs with the finding that to demand a daily deposit of thirty thousand (P30, 000.00) pesos even if the root of the obligation, that is, the dumping of tailings waste, had ceased to exist, is indubitably of a herculean and onerous burden on the part of petitioner amounting to a deprivation of its property and a denial of its right to due process." [17]

Unsatisfied, the OSG argues that the Philippine Mining Act of 1995 did not amend or repeal the provisions of Republic Act No. 3931, as amended by Presidential Decree No. 984 (otherwise known as the National Pollution Control Decree of 1976); that the Mines Regional Director has no power over areas outside mining installations and over areas which are not part of the mining or quarrying operations such as Calancan Bay; that the powers of the Mines Regional Director cannot be exercised to the exclusion of other government agencies; that the jurisdiction of a Mines Regional Director with respect to anti-pollution laws is limited to practices committed within the confines of a mining or quarrying installation; that the dumping of mine tailings into Calancan Bay occurred long before the effectivity of the Philippine Mining Act and that MMC cannot hide under cover of this new law. The OSG further argues that the portion of the Order of May 13, 1988, setting the period of time within which MMC shall pay P30,000.00 per day, which is during the efficacy of the restraining order was never questioned or appealed by MMC. Finally, the OSG argues that PAB did not violate MMC's right to due process by the issuance of the Order dated April 23, 1988 without notice and hearing as it was simply requiring MMC to comply with an obligation in an Order which has long become final and executory.

In the context of the established facts, the issue that actually emerges is: Has the PAB under RA 3931 as amended

by PD 984 (National Pollution Control Decree of 1976) been divested of its authority to try and hear pollution cases connected with mining operations by virtue of the subsequent enactment of RA 7942 (Philippine Mining Act of 1995)? As mentioned earlier, the PAB took cognizance and ruled on the letter-complaint (for violation of PD 984 and its implementing rules and regulations) filed against MMC by Marinduque Mayor Wilfredo Red. In the subject Order dated April 23, 1997, the PAB ruled that MMC should pay its arrears in deposits to the ETF of the CBRP computed from the day it stopped dumping and paying on July 1, 1991 up to the lifting of the Order of the Office of the President dated May 13, 1988 on February 5, 1993.

The answer is in the negative. We agree with the Solicitor General that the Court of Appeals committed reversible error in ruling that the PAB had no authority to issue the Order dated April 23, 1997.

Republic Act No. 3931 (An Act Creating The National Water And Air Pollution Control Commission) was passed in June 18, 1964 to maintain reasonable standards of purity for the waters and air of the country with their utilization for domestic, agricultural, industrial and other legitimate purposes. Said law was revised in 1976 by Presidential Decree No. 984 (Providing For The Revision Of Republic Act No. 3931, Commonly Known As The Pollution Control Law, And For Other Purposes) to strengthen the National Pollution Control Commission to best protect the people from the growing menace of environmental pollution. Subsequently, Executive Order No. 192, s. 1987 (The Reorganization Act of the DENR) was passed. The internal structure, organization and description of the functions of the new DENR, particularly the Mines and Geosciences Bureau, reveals no provision pertaining to the resolution of cases involving violations of the pollution laws.[18] The Mines and Geo-Sciences Bureau was created under the said EO 192 to absorb the functions of the abolished Bureau of Mines and Geo-Sciences, Mineral Reservations Development Board and the Gold Mining Industry Development Board to, among others, recommend policies, regulations and programs pertaining to mineral resources development; assist in the monitoring and evaluation of the Bureau's programs and projects; and to develop and promulgate standards and operating procedures on mineral resources development.[19]

On the other hand, the PAB was created and granted under the same EO 192 broad powers to adjudicate pollution cases in general. Thus,

SEC. 19. Pollution Adjudication Board. - There is hereby created a Pollution Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Director of Environmental management, and three (3) others to be designated by the Secretary as members. The Board shall assume the powers and functions of the Commission/Commissioners of the National Pollution Control Commission with respect to the adjudication of pollution cases under Republic Act 3931 and Presidential Decree 984, particularly with respect to Section 6 letters e, f, g, j, k, and p of P.D. 984. The Environmental Management Bureau shall serve as the Secretariat of the Board. These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board.[20]

Section 6 letters e, f, g, j, k, and p of PD 984 referred to above are quoted as follows:

(e)

Issue orders or decision to compel compliance with the provisions of this Decree and its implementing rules and regulations only after proper notice and hearing.

(f)

Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished.

(g)

Issue, renew, or deny permits, under such conditions as it may determine to be reasonable, for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system or parts thereof: Provided, however, That the Commission, by rules and regulations, may require subdivisions, condominium, hospitals, public buildings and other similar human settlements to put up appropriate central sewerage system and sewage treatment works, except that no permits shall be required to any sewage works or changes to or extensions of existing works that discharge only domestic or sanitary wastes from a singles residential building provided with septic tanks or their equivalent. The Commission may impose reasonable fees and charges for the issuance or renewal of all permits required herein.

(h)

(i)

(j)

Serve as arbitrator for the determination of reparations, or restitution of the damages and losses resulting from pollution.

(k)

Deputize in writing or request assistance of appropriate government agencies or instrumentalities for the purpose of enforcing this Decree and its implementing rules and regulations and the orders and decisions of the Commission.

(l)

(n)

(o)

(p)

Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Decree.

Section 7(a) of P.D. No. 984 further provides in part:

"Sec. 7(a) Public Hearing. - Public hearing shall be conducted by the Commissioner, Deputy Commissioner or any senior official duly designated by the Commissioner prior to issuance or promulgation of any order or decision by the Commissioner requiring the discontinuance of discharge of sewage, industrial wastes and other wastes into the water, air or land resources of the Philippines as provided in the Decree: provided, that whenever the Commission finds a prima facie evidence that the discharged sewage or wastes are of immediate threat to life, public health, safety or Welfare, or to animal or plant life, or exceeds the allowable standards set by the Commission, the Commissioner may issue and ex-parte order directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such sewage or wastes without the necessity of a prior public hearing. x x x . (underscoring supplied).

The ruling of the Court of Appeals that the PAB has been divested of authority to act on pollution-related matters in mining operations is anchored on the following provisions of RA 7942 (Philippine Mining Act of 1995):

SEC. 67. Power to Issue Orders. - The mines regional director shall, in consultation with the Environmental Management Bureau, forthwith or within such time as specified in his order, require the contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with safety and anti-pollution laws and regulations. In case of imminent danger to life or property, the mines regional director may summarily suspend the mining or quarrying operations until the danger is removed, or appropriate

measures are taken by the contractor or permittee.

And

SEC. 115. Repealing and Amending Clause. - All laws, executive orders, presidential decrees, rules and regulations, or parts thereof which are inconsistent with any of the provisions of this Act are hereby repealed or amended accordingly.

The other provisions in Chapter XI on Safety and Environmental Protection found in RA 7942 promote the safe and sanitary upkeep of mining areas to achieve waste-free and efficient mine development with particular concern for the physical and social rehabilitation of areas and communities affected by mining activities[21], without however, arrogating unto the mines regional director any adjudicative responsibility.

From a careful reading of the foregoing provisions of law, we hold that the provisions of RA 7942 do not necessarily repeal RA 3931, as amended by PD 984 and EO 192. RA 7942 does not contain any provision which categorically and expressly repeals the provisions of the Pollution Control Law. Neither could there be an implied repeal. It is well-settled that repeals of laws by implication are not favored and that courts must generally assume their congruent application. Thus, it has been held:

"The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi*, i.e., every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject." [22]

There is no irreconcilable conflict between the two laws. Section 19 of EO 192 vested the PAB with the specific power to adjudicate pollution cases in general. Sec. 2, par. (a) of PD 984 defines the term "pollution" as referring to any alteration of the physical, chemical and biological properties of any water, air and/or land resources of the Philippines, or any discharge thereto of any liquid, gaseous or solid wastes as will or is likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.

On the other hand, the authority of the mines regional director is complementary to that of the PAB. Section 66 of RA 7942 gives the mines regional director exclusive jurisdiction over the safety inspection of all installations, surface or underground in mining operations. Section 67 thereof vests upon the regional director power to issue orders requiring a contractor to remedy any practice connected with mining or quarrying operations which is not in accordance with safety and anti-pollution laws and regulations; and to summarily suspend mining or quarrying operations in case of imminent danger to life or property. The law likewise requires every contractor to undertake an environmental protection and enhancement program which shall be incorporated in the work program which the contractor shall submit as an accompanying document to the application for a mineral agreement or permit. In addition, an environmental clearance certificate is required based on an environment impact assessment. The law also requires contractors and permittees to rehabilitate the mined-out areas, and set up a mine rehabilitation fund. Significantly, the law allows and encourages people's organizations and non-governmental organizations to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.

From the foregoing, it readily appears that the power of the mines regional director does not foreclose PAB's authority to determine and act on complaints filed before it. The power granted to the mines regional director to

issue orders requiring the contractor to remedy any practice connected with mining or quarrying operations or to summarily suspend the same in cases of violation of pollution laws is for purposes of effectively regulating and monitoring activities within mining operations and installations pursuant to the environmental protection and enhancement program undertaken by contractors and permittees in procuring their mining permit. While the mines regional director has express administrative and regulatory powers over mining operations and installations, it has no adjudicative powers over complaints for violation of pollution control statutes and regulations.

True, in *Laguna Lake Development Authority vs. Court of Appeals*,^[23] this Court held that adjudication of pollution cases generally pertains to the Pollution Adjudication Board (PAB) except where the special law provides for another forum. However, contrary to the ruling of the Court of Appeals, RA 7942 does not provide for another forum inasmuch as RA 7942 does not vest quasi-judicial powers in the Mines Regional Director. The authority is vested and remains with the PAB.

Neither was such authority conferred upon the Panel of Arbitrators and the Mines Adjudication Board which were created by the said law. The provisions creating the Panel of Arbitrators for the settlement of conflicts refers to disputes involving rights to mining areas, mineral agreements or permits and those involving surface owners, occupants and claim-holders/concessionaires.^[24] The scope of authority of the Panel of Arbitrators and the Mines Adjudication Board conferred by RA 7942 clearly exclude adjudicative responsibility over pollution cases. Nowhere is there vested any authority to adjudicate cases involving violations of pollution laws and regulations in general.

Thus, there is no genuine conflict between RA 7942 and RA 3931 as amended by PD 984 that precludes their co-existence. Moreover, it has to be conceded that there was no intent on the part of the legislature to repeal the said law. There is nothing in the sponsorship speech^[25] of the law's proponent, Representative Renato Yap, and the deliberations that followed thereafter, to indicate a legislative intent to repeal the pollution law. Instead, it appears that the legislature intended to maximize the exploration, development and utilization of the country's mineral resources to contribute to the achievement of national economic and social development with due regard to the social and environmental cost implications relative thereto. The law intends to increase the productivity of the country's mineral resources while at the same time assuring its sustainability through judicious use and systematic rehabilitation. Henceforth, the Department of Environment and Natural Resources as the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources, through its Secretary, has the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director, and to promulgate such rules and regulations as may be necessary to carry out the provisions of RA 7942.^[26] The PAB and the Mines Regional Director, with their complementary functions and through their combined efforts, serve to accomplish the mandate of RA 3931 (National Pollution Control Decree of 1976) as amended by PD 984 and EO 192 and that of RA 7942 (Philippine Mining Act of 1995).

That matter settled, we now go to the issue of whether the appellate court erred in ruling that there is no basis for further payments by MMC to the Ecology Trust Fund of the Calancan Bay Rehabilitation Project considering that MMC "convincingly argued and which respondent unsatisfactorily rebuked, the existing fourteen (14) million pesos in the ETF is more than enough to complete the rehabilitation project." Indeed, the records reveal that witness for PAB, Mr. Edel Genato, who is the Technical Resource person of the PAB for the project admitted that the funds in the ETF amounting to about Fourteen Million Pesos are more than sufficient to cover the costs of rehabilitation. Hereunder are excerpts from the transcript of stenographic notes taken during the hearing held on September 15, 1997:

ATTY. HERNANDEZ:^[27]

I would like your Honor, if the court will allow, our witness from the EBRB Your Honor would attest to that . .

.

JUSTICE JACINTO:

Is it not being taken from the 14 million?

ATTY. HERNANDEZ:

Yes, Your Honor.

JUSTICE RASUL:

What is his role?

ATTY. HERNANDEZ:

He is our Technical Resource person Your Honor, of the project.

JUSTICE RASUL:

In other words, he has participated in the . . (inaudible)?

ATTY. HERNANDEZ:

Yes, Your Honor.

JUSTICE RASUL:

Do you agree with him?

MR. EDEL GENATO:

Yes, Your Honor, that the Calancan rehabilitation program is being funded by Marcopper through the Ecology Trust Fund.

JUSTICE RASUL:

Will the construction be finished in two years time?

MR. EDEL GENATO:

Presently, under the Steering Committee of the Calancan Bay Rehabilitation, there is another phase that is being proposed. Actually the two years time will definitely cover the other phase of the . . (inaudible)

JUSTICE RASUL:

Never mind that. Will the amount be sufficient to the end of the construction?

MR. EDEL GENATO:

Yes, Sir.

JUSTICE RASUL:

Enough?

MR. EDEL GENATO:

Yes, Sir.

JUSTICE RASUL:

There is no more need for collecting the 30 thousand a day? . . . Do not . . . I will hold you for contempt . . .

ATTY. HERNANDEZ:

I'm sorry Your Honor.

JUSTICE RASUL:

Again.

MR. EDEL GENATO:

Well Your Honor, I cannot comment on the amount Your Honor.

JUSTICE RASUL:

You have already made your comment, but you received some signal from your lawyer.

ATTY. HERNANDEZ:

Your Honor . . .

MR. EDEL GENATO:

No, no Your Honor. . .

JUSTICE RASUL:

My question is, do you agree with him that the 14 million fund will be enough to sustain the construction up to the end?

MR. EDEL GENATO:

Two years?

JUSTICE RASUL:

Yes.

MR. EDEL GENATO:

Your Honor. . .

JUSTICE AMIN:

Categorical answer.

JUSTICE RASUL:

You just answer, is it enough, in your own honest way, on your honor?

MR. EDEL GENATO:

I think so Your Honor.[28]

We must sustain the appellate court on this point on account of the testimony of Mr. Edel Genato. Further, we note that the Office of the President never objected nor ruled on the manifestation dated July 9, 1991 filed by MMC that it would stop paying since it already ceased dumping mine tailings into the bay. Still further, the order

of the OP directing MMC to rehabilitate at a cost of P30,000.00 a day "during the efficacy of the restraining order" had become functus officio since MMC voluntarily stopped dumping mine tailings into the bay.

To sum up, PAB has jurisdiction to act and rule on the letter-complaint of Mayor Wilfredo Red of Marinduque for violation of PD 984 and its implementing rules and regulations which jurisdiction was not lost upon the passage of RA 7942 (the Philippine Mining Act of 1995). Nevertheless, MMC must be declared not to have arrears in deposits as admittedly, the ETF already has more than sufficient funds to undertake the rehabilitation of Calancan Bay.

WHEREFORE, the petition is hereby partially GRANTED. The assailed Decision is REVERSED insofar as the jurisdiction of the PAB to act on the complaint is concerned; but AFFIRMED insofar as Marcopper Mining Corporation has no arrears in deposits with the Ecology Trust Fund of the Calancan Bay Rehabilitation Project.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1]Dated January 7, 1998; Annex "A", Rollo, pp. 33-43.

[2]Sixth Division composed of Associate Justices Omar U. Amin (ponente), Jesus M. Elbinias and Hector L. Hofileña.

[3]Dated April 23, 1997; Annex "D", Rollo, pp. 61-62.

[4]Composed of Victor O. Ramos (Chairman), Antonio G.M. La Viña (Presiding Officer) and Delfin Ganapin, Jr., Manuel S. Gaspay, Leonardo U. Sawal, Profirio C. Macatangay as members.

[5]Dated January 13, 1999, Rollo, p. 45.

[6]The Philippine Mining Act of 1995 defines "Mine wastes and tailings" as soil and rock materials from surface or underground mining and milling operations with no economic value to the generator of the same.

[7]Providing For The Reorganization Of The Department Of Environment, Energy And Natural Resources, Renaming it As The Department of Environment and Natural Resources, And For Other Purposes.

[8]See Secs. 16 & 19.

[9]Original Records, Annex "B", p. 20.

[10]OR, Annex "C", pp. 21-23.

[11]Rollo, pp.

[12]OR, Annex "D", pp. 24-25.

[13] Providing for the Revision of Republic Act No. 3931, commonly known as the Pollution Control Law and for Other Purposes.

[14]Original Records, Annex "A", pp. 18-19.

[15]Rollo, pp. 15-16.

[16]Rollo, pp. 39-42.

[17]Rollo, pp. 40, 42.

[18]SEC. 6. Structural Organization.- The Department shall consist of the Department proper, the staff offices, the staff bureaus and the regional/provincial/community natural resources offices.

The Department proper shall consist of the following:

- (a) Office of the Secretary
- (b) Offices of the Undersecretaries
- (c) Offices of Assistant Secretaries
- (d) Public Affairs Office
- (e) Special Concerns Office
- (f) Pollution Adjudication Board

The staff sectoral bureaus, on the other hand, shall be composed of:

- (a) Forest Management Bureau
- (b) Lands Management Bureau
- (c) Mines and Geo-Sciences Bureau
- (d) Environmental Management Bureau
- (e) Ecosystems Research and Development Bureau
- (f) Protected Areas and Wildlife Bureau.

The field offices shall consist of all department regional offices, the provincial offices and the community offices.

[19]SEC. 15. - Mines and Geo-Sciences Bureau. - There is hereby created the Mines and Geo-Sciences Bureau which shall absorb the functions of the Bureau of Mines and Geo-Sciences (BMGS), Mineral Reservations Development Board (MRDB) and the Gold Mining Industry Development Board (GMIDB) all of which are hereby merged in accordance with Section 24 hereof except those line functions and powers which are transferred to the regional field office. The Mines and Geo-Sciences Bureau, to be headed by a Director and assisted by an Assistant Director shall advise the Secretary on matters pertaining to geology and mineral resources exploration, development and conservation and shall have the following functions, but not limited to:

- (a) Recommend polices, regulations and programs pertaining to mineral resources development and geology;
- (b) Recommend policies, regulations and oversee the development and exploitation of mineral resources of the sea within the country's jurisdiction such as silica sand, gold placer, magnetite and chromite sand, etc.
- (c) Advise the Secretary on the granting of mining rights and contracts over areas containing metallic and non-metallic mineral resources;
- (d) Advise the Regional Office on the effective implementation of mineral development and conservation programs as well as geological surveys;
- (e) Assist in the monitoring and evaluation of the Bureau's programs and projects to ensure efficiency and effectiveness thereof;
- (f) Develop and promulgate standards and operating procedures on mineral resources development and geology;

(g) Supervise and control the development and packaging of nationally applicable technologies on geological survey, mineral resource assessment, mining and metallurgy; the provision of geological, metallurgical, chemical and rock mechanics laboratory services; the conduct of marine geological and geophysical survey and natural exploration drilling programs;

(h) Perform other functions as may be assigned by the Secretary and/or provided by law.

[20]Emphasis ours.

[21] SEC. 63. Mines Safety and Environmental Protection.-All contractors and permittees shall strictly comply with all the mines safety rules and regulations as may be promulgated by the Secretary concerning the safe and sanitary upkeep of the mining operations and achieve waste-free and efficient mine development. Personnel of the Department involved in the implementation of mines safety, health and environmental rules and regulations shall be covered under Republic Act No. 7305.

x x x

SEC. 66. Mine Inspection. - The regional director shall have exclusive jurisdiction over the safety inspection of all installations, surface or underground, in mining operations at reasonable hours of the day or night and as much as possible in a manner that will not impede or obstruct work in progress of a contractor or permittee.

xxx xxx xxx.

xxx xxx xxx.

SEC. 69. - Environmental Protection. - Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program shall be incorporated in the work program which the contractor or permittee shall submit as an accompanying document to the application for a 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 and stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.

SEC. 70. Environmental Impact Assessment (EIA). - Except during the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit, an environmental clearance certificate shall be required based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment system including Sections 26 and 27 of the Local Government Code of 1991 which require national government agencies to maintain ecological balance, and prior consultation with the local government units, non-governmental and people's organizations and other concerned sectors of the community: Provided, That a completed ecological profile of the proposed mining area shall also constitute part of the environmental impact assessment. People's organizations and non-governmental organizations shall be allowed and encouraged to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.

SEC. 71. Rehabilitation.-Contractors and permittees shall technically and biologically rehabilitate the excavated mined-out, tailings covered and disturbed areas to the condition of environmental safety, as may be provided in the implementing rules and regulations of this Act. A mine rehabilitation fund shall be created, based on the contractor's approved work program, and shall be deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. Failure to fulfill the above obligation shall mean

immediate suspension or closure of the mining activities of the contractor/permittee concerned.

[22]Hagad vs. Gozo-Dadole, 251 SCRA 242 (1995).

[23]231 SCRA 292 (1994).

[24]Chapter XIII. - Settlement of Conflicts

SEC. 77. Panel of Arbitrators. -- There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come down from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- (a) Disputes involving rights to mining areas;
- (b) Disputes involving mineral agreements or permits;
- (c) Disputes involving surface owners, occupants and claim-holders/concessionaires; and
- (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

SEC. 78. Appellate Jurisdiction. -- the decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

SEC. 79. Mines Adjudication Board. -- The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

- (a) To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;
- (b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;
- (c) To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may be deem necessary or experiment in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where

further proceedings by the Board are not necessary or desirable;

- (1) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
- (2) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

[25]"It is an undisputed fact that the Philippines is one of the highly mineralized countries in the world with a wide range of economic minerals found in over 77 percent of its 76 provinces.

The country was estimated to have 30.8 billion metric tons, of which 11.5 billion metric tons (37.3%) are metallic and 19.3 billion metric tons (62.3%) are non-metallic.

As of 1990, the country's total mineral ore reserves was 18 million metric tons. Metallic ores such as primary gold, primary copper, chromite and iron, were pegged at 8.8 billion metric tons. Non-metallic ores, on the other hand, such as cement raw materials, magnesite and marble, were placed at around 9.1 billion metric tons.

In the 1970's when the mining industry was contributing about 23% of the country's total export earnings, it had 32 metal producing firms.

The heydays of the mining industry was not to be sustained when world metal prices started to decline in 1982.

While there were 31 gold and copper mining firms in 1982, this dwindled to only 16 in 1987, and to 12 as of this month.

Today, almost all the remaining mining firms are declaring losses in millions and are laying off thousands of workers.

Where lies the problem?

What needs to be done?

While the most obvious explanation for the sorry state of the mining industry is the plummeting worldwide market prices especially for metals, much blame is pointed at inconsistent and changing laws that fail to optimize the use of our mineral resources and make the industry incompetent in the global market.

The mining industry has also been hit by environmental groups. . . /ala

x x x

MR. YAP (R.) . . . by environmental groups who have been painting mining as a dirty, unnecessary and ecologically devastating exercise.

In the past months, your Committees on Natural Resources, Ways and Means, and Local Government have been working to resuscitate the mining industry by coming up with a most practicable mining package. These measures are: Committee Report No. 294 on House Bill No. 10816; Committee Report No. 289 on House Bill No. 10693 and Committee Report to be filed on House Bill No. 10694.

This mining package seeks to address the three major concerns of the industry: the need for a comprehensive law to cover the exploration, development, utilization and conservation of mineral resources; the need to address the mining safety and environmental protection concerns in the mining operations; and the need to revitalize the mining industry for it to be able to compete in the world market through: (1) incentives under the Omnibus Investments Acts; (2) the setting of the government share or excise tax under the National Internal Revenue Act at 2% to make the mining industry competitive worldwide; and lastly, the exemption to tailings dam or pond and other pollution control devices from the real property tax under the Local Government Code.

x x x

On the aspect of mining safety and environmental protection, the Act mandates strict compliance by the contractors and permittees with the mines safety rules and regulations that shall be promulgated by the DENR Secretary.

Furthermore, Mr. Speaker, the Act also requires contractors, licensees and permittees to rehabilitate technically and biologically the excavated mined-out, tailings covered and disturbed areas."

[26]See Sec. 8.

[27]Counsel for PAB.

[28]Rollo, pp. 246-254.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.