



Republic of the Philippines
Department of Environment and Natural Resources
ENVIRONMENTAL MANAGEMENT BUREAU
Regional Office No. VIII
DENR Compound, Jones St., Tacloban City, Philippines
Tel No: (053) 832-2319
E-mail Address: embr8_records@emb.gov.ph



01 March 2022

ENVIRONMENTAL MANAGEMENT BUREAU
RELEASED BY: _____
DATE: 3-4-22
TIME: 12:15

DR. PATRICIA B. ARINTO

Dean

University of the Philippines, Visayas- Tacloban College

Magsayasay Boulevard, Tacloban City, Philippines

E-mail: upvtac.upvisayas@up.edu.ph

Attention: **Mr. TELESFORO S. SALES**
UPV Tacloban College

Dear **Dr. Arinto**:

Environmental Greetings!

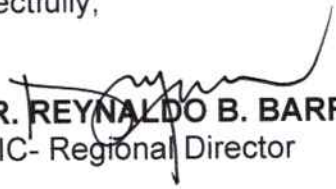
This has reference to a Notice of Violation dated **16 July 2018** issued by this Office against the **University of the Philippines, Visayas- Tacloban College, Hi-Tri Development Corporation**, and the **Department of Public Works and Highways, Region VIII** for allegedly failing to secure an **Environmental Compliance Certificate (ECC)** for the **Site Development, Concrete Road, and Drainage Construction** for the **Proposed Construction** of the new **UPVTC Campus** in **Brgy. 107, Sta. Elena, Tacloban City, Philippines**, violating **Section 4 of Presidential Decree No. 1586**, otherwise known as the **Philippine Environmental Impact Statement System**.

The records of this Office will reveal that in a case Decision for the said NOV issued last **20 September 2018**, a copy of which is hereto attached as Annex "**A**", this Office has found that a violation has indeed been committed and that the UPVTC was held as the one under obligation to secure the ECC per the Memorandum of Agreement executed by and between the DPWH and Hi-Tri Development Corporation, the contractor of the project. In view of this, the liability for the violation committed rests upon the UPVTC.

The records will, however, further reveal that the UPVTC has failed to settle the fine amounting to **THIRTY-TWO THOUSAND FIVE HUNDRED PESOS (Php 32, 500.00)** before this Office, as penalty of the violation. Hence, demand is hereby made upon the UPVTC to settle the said amount **within twenty (20) days from receipt of this letter**. Otherwise, this Office shall be constrained to explore all legal rights, including but not limited to, the legal proceedings necessary in accordance with existing laws, rules, and regulations.

Thank you for your cooperation.

Respectfully,


ENGR. REYNALDO B. BARRA
OIC- Regional Director

Copy furnished:

FLORENCE B. REGINALDO
Project Manager
Hi-Tri Development Corporation
Brgy. 107, Sta. Elena, Tacloban City, Philippines
E-mail: florencereginaldo@gmail.com

RD ALLAN S. BORRAMEO
Regional Director
Department of Public Works and Highways, Region VIII
Government Center, Baras, Palo, Leyte
Email: borrameo.allan@dpwh.gov.ph



Republic of the Philippines
Department of Environment and Natural Resources
ENVIRONMENTAL MANAGEMENT BUREAU
DENR Compound, Jones St. Tacloban City
Tel.No. (053) 832-1088

EMB R08 LEGAL

In re violation of the provisions of P.D 1586

-versus-

ENVIRONMENTAL MANAGEMENT BUREAU
RELEASED BY: *[Signature]*
DATE: 9/21/18
TIME: 1:32pm

UNIVERSITY OF THE PHILIPPINES- VISAYAS TACLOBAN COLLEGE
Sto. Nino Extension, Tacloban City, Philippines

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)
REGIONAL OFFICE NO. VIII
Government Center, Baras, Palo, Leyte

HI-TRI DEVELOPMENT CORPORATION
Brgy. 107, Sta. Elena, Tacloban City, Philippines

X-----X

DECISION

This Decision is being issued in view of the **Notice of Violation¹** dated **16 July 2018** issued against above named Respondents for the following violation:

- (a) Failure to secure an Environmental Compliance Certificate for the Site Development, Concrete Road, and Drainage Construction for the proposed construction of the new UPVTC Campus in Barangay 107, Sta. Elena, Tacloban City, in violation of **Section 4, Presidential Decree No. 1586**;

FACTS

An **Environmental Compliance Certificate (ECC)** is a decision document issued to the Proponent after thorough review of the EIA Report. The ECC outlines the commitments of the proponent which are necessary for the project to comply with existing environmental regulations or to operate within best environmental practice that are not currently covered by existing laws. It contains specific measures and conditions that the project Proponent has to undertake before and during the operation of a project, and in some cases, during abandonment phase, to mitigate adverse environmental impacts. One of the salient features of which are conditions, which the Proponent has conformed to

¹Annex A

implement mitigating measures for potentially negative impacts and/or enhancement measures for potentially positive impacts as identified in the Environmental Impact Assessment Report.

The present Notice of Violation is premised on the following factual antecedents:

On **02 May 2018**, this Office received a complaint letter from a concerned citizen of Brgy. 107, Sta. Elena, Tacloban City against a construction project being undertaken by Hi-Tri Development Corporation.

On **09 May 2018**, this Office conducted an investigation and the investigation report alleged the following relevant findings and observations, among others:

1. That Hi Tri Development Corporation is a contractor for the Site Development and Concrete Road and Drainage Construction for the proposed construction of the new University of the Philippines- Visayas Tacloban College campus located at Brgy. 107, Sta. Elena, Tacloban City;
2. That the project was not operational at the time of the monitoring.
3. That according to a certain Ma. Concepcion Tadle of Hi Tri Dev't Corp., the project has started last October 2017.
4. That according to another employee, the total area of the new campus is at approximately one hundred twenty (120) hectares and around seventy hectares will be affected for the whole development and construction of the entire project.
5. That the project operates one unit of a ready-mixed concrete batching plant.
6. That the said concrete batching plant has no valid permit to operate air pollution source and control installation.
7. That it has also no valid Discharge Permit.
8. That the project has no Environmental Compliance Certificate.

Based on the above findings/observations, a Notice of Violation dated **30 May 2018** has been served upon Hi Tri Development Corporation for the following violations: **(a)** Failure to secure an Environmental Compliance Certificate; **(b)** Failure to secure Permit to Operate Air Pollution Source Equipment before utilizing a Concrete Batching Plant; **(c)** Failure to secure a Discharge Permit before utilizing a water pollution source (Concrete Batching

Plant). Respondent was called to attend a Technical Conference on **25 June 2018**.

On **14 June 2018**, this Office received Hi Tri Development Corporation's Position Paper. In the said Position Paper, Respondent alleged that it is the contractor of the road network, drainage, and lighting system at the UPV Tacloban College in Sta. Elena, Tacloban City under contract with the **Department of Public Works and Highways (DPWH) Regional Office VIII**. It argued that the proper party that must secure the required ECC should have been the project proponent, which is the UPVTC for nothing in their contract with the DPWH, being the primary implementing agency of the project, specifically in the items of scope of work, which required them to secure the ECC as the contractor.

Also, in failing to secure a Permit to Operate Air Pollution Source and Control Installation and a valid Discharge Permit for the concrete batching plant, Respondent asserted that the subject facility is still under construction and has never been utilized or made operational for the road concreting of the mentioned project. In effect, Respondent argued that the need to secure the subject permits has not yet arisen.

On **25 June 2018**, the Technical Conference was conducted. In summary, Respondent, represented by project manager Mr. Florence Reginaldo and Mr. Dario P. Ondez moved to adopt the explanations laid down in its position paper and asked to admit the same as their official position during the technical conference. Mr. Reginaldo expressed a few words of elaboration on the issue of the need to secure the permits. He stood firm on his contention that the concrete batching plant are not yet operational. He also claimed that, under a memorandum of agreement, it is the UPVTC who should secure the ECC.

In a separate Decision issued by this Office, violations **(b)** and **(c)**, or the failure to secure a discharge permit and permit to operate air pollution source and control installation were both dismissed on the ground that Respondent cannot be reasonably expected to secure the subject permits pending completion of the construction of the facilities. It was held that the need to secure the subject permits has not yet arisen. Hence, the dismissal of the violations of failure to secure the discharge permit and the failure to secure a permit to operate are reasonable. The same notwithstanding, it was emphasized that Respondent is bound to secure the subject permits upon completion but prior to operation of the relevant facilities.

In order to avoid the issuance of an erroneous decision against an improper party, the resolution of the first cited violation or the failure to secure an ECC was deferred and another Notice of Violation dated **16 July 2018**, subject of this Decision, and has impleaded therein the DPWH Region VIII and the UPVTC, now Respondents in this case, was issued so as to properly ascertain who among these necessary parties is under obligation to secure the ECC. Respondents in this case was called to attend a technical conference on **14 August 2018**.

Accordingly, on **14 August 2018**, Respondents, each represented by their respective personnel, appeared before this Office for the conduct of the technical conference. Firstly, it was established that the Site Development, Concrete Road, and Drainage Construction for the proposed construction of the new UPVTC Campus is within the coverage and scope of the Philippine Environmental Impact Statement System.

Secondly, Respondent DPWH Regional Office No. VIII, represented by Engr. Rowena P. Purificacion and Engr. Toribio Odtuhan, revealed that in a memorandum of agreement entered into by the DPWH with the UPVTC, it is stated therein that it is the latter (UPVTC) that must secure the ECC. Engr. Purificacion volunteered to submit a copy of such memorandum of agreement to this Office.

On **15 August 2018**, this Office received a copy of the Memorandum of Agreement mentioned by Engr. Purificacion. A perusal of the said document revealed that **Section 1.3, Article I of the Memorandum of Agreement** provides that the University shall undertake the acquisition of the Road Right of Way (RROW) and application for the Environmental Compliance Certificate (ECC), with the assistance of the DPWH.

As such, the Hearing Officer has recommended in his Hearing Report to affirm the foregoing violation and impose upon the UPVTC the corresponding fine/penalty. Accordingly, after consideration of the criteria for penalty reduction provided for under EMB Memorandum Circular No. 002, Series of 2007 or the Revised Procedural Manual for DENR Administrative Order No. 2003-30, the imposition of a fine/penalty amounting to Thirty Two Thousand Five Hundred Pesos (P32, 500.00) was recommended.

RULING

This Office finds no cogent reason and legal justification to deviate from the recommendations of the Hearing Officer.

Generally, it is the owner of a project or the proponent thereof that must secure the Environmental Compliance Certificate (ECC). This is specifically so because it is the project proponent/owner that is under obligation to comply with the conditions of the ECC during the project operation. In certain cases, however, parties as in this case to a government construction project agrees to require another party, other than the end user, to secure the ECC. Ordinarily, this is specified in a Memorandum of Agreement entered into by the project proponent/owner and the primary implementing government agency in charge of the construction. In this case, **Section 1.3, Article I of the Memorandum of Agreement** entered into by the DPWH and the University of the Philippines, provides that the **University** shall undertake the acquisition of the Road Right of Way (RROW) and **application for the Environmental Compliance Certificate (ECC)**, with the assistance of the DPWH. The University of the Philippines-Visayas Tacloban College, therefore, should secure the ECC. By being the proper party that should secure the ECC, it is only proper that the UPVTC takes responsibility of any liability arising from the failure to secure the ECC, such as the payment of the corresponding fine/penalty.

Under Section 1 of EMB Memorandum Circular No. 2014-005², amending Section 2.1 of the Revised Procedural Manual for **DENR Administrative Order No. 2003-30**³, every proposed project or undertaking, which is projected to have a significant impact to the quality of the environment, is covered by the Philippine EIS System. To determine coverage, proposed projects or undertakings shall be screened according to categories (A, B, C, D) -----Category **B** are projects and undertakings which are not classified as Environmentally Critical Projects under Category **A**, but which are likewise deemed to significantly affect the quality of the environment by virtue of being located in Environmentally Critical Area⁴ as declared under proclamation No. 2146⁵ and the parameters set forth in the attached guidelines.

²Guidelines for Coverage Screening and Standardized Requirements under the Philippine Environmental Impact Statement System (PEISS) amending relevant portions of MC 2007-002.

³Implementing Rules and Regulations of Presidential Decree No. 1586, Establishing the Philippine Environmental Impact Statement System.

⁴Environmentally Critical Area- area delineated through presidential proclamation 2146 (1981) as environmentally sensitive such that significant environmental impacts are expected if certain types of proposed projects or programs are located, developed, or implemented in it. (EMB Memorandum Circular No. 2014-005)

⁵Proclamation No. 2146 Proclaiming Certain Areas And Types Of Projects As Environmentally Critical And Within The Scope Of The Environmental Impact Statement System Established Under Presidential Decree No. 1586.

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Section 5. *Environmentally Non-Critical Projects*. - All other projects, undertakings and areas not declared by the President as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The National Environmental Protection Council, thru the Ministry of Human Settlements may however require noncritical projects and undertakings to provide additional environmental safeguards as it may deem necessary. (Emphasis supplied)

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Further, Section 1.2 of EMB Memorandum Circular No. 2014-005 provides that to expediently screen proposed projects/undertakings that may be covered by the EIS System, **thus required to secure an ECC**, a ready matrix for determining the category in which proposed projects fall is described as **Annex A** (Project Thresholds for Coverage Screening and Categorization) in the same memorandum circular.

In the present case, it is well settled that the project occupies a total gross floor area of at least **One Hundred and Thirty (130) Hectares**. Upon review of the above-mentioned matrix, Respondent may be classified as falling under **Buildings including Housing, Storage Facilities and Other Structures** category. Under such project/description, determinative of whether or not Respondent is required to secure an ECC is the project size parameter, which considers the total/gross floor area (of structures) plus open areas and other facilities (e.g., landscape, parking, pools) of the project. In fine, even if the project is not environmentally critical and is not located within an environmentally critical area, the important element to consider, such as in this case, is the extent in totality of the area occupied by the project classified under the mentioned category.

Therefore, in establishing that Respondent UPVTC occupies a total gross floor area of at least **one hundred and thirty hectares**, Respondent is categorized under Category **B**, a Non Environmentally Critical Project that is required, by law, to secure an ECC.

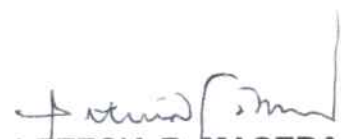
WHEREFORE, premises considered, this Office hereby affirms the obligation of the University of the Philippines to secure an Environmental Compliance Certificate for the Site Development, Concrete Road, and Drainage Construction for the proposed construction of the new UPVTC Campus in Barangay 107, Sta. Elena, Tacloban City and the violation for failure to secure the said ECC.

For purposes of computing the imposable fine/penalty, Respondent is admitted to two of the criteria for penalty reduction to wit **(1)** Project worth is more than Five Million Pesos, which has a corresponding penalty reduction of **Five Thousand Pesos (P5, 000.00)** and **(2)** Project does not cause adverse environmental impact, as supported by a certification issued by the barangay where the project is located, which has a corresponding penalty reduction of **Twelve Thousand Five Hundred Pesos (P12, 500.00)**. Thus, a total penalty reduction of **Seventeen Thousand Five Hundred Pesos (P17, 500.00)** is granted.

Accordingly, Respondent **University of the Philippines- Visayas Tacloban College** is ordered of the following:

1. To pay the corresponding fine/penalty of **THIRTY TWO THOUSAND FIVE HUNDRED PESOS (P32, 500.00)** within **THIRTY (30) DAYS FROM RECEIPT** of this Decision.
2. To secure an **Environmental Compliance Certificate (ECC)** from this Office.
3. To **CEASE AND DESIST** from further development and/or construction of structures, and such all other activities in relation to the project construction, while in the absence of an ECC and pending issuance of the same by this Office.

SO ORDERED. SEP 20 2018, Tacloban City, Philippines.


LETECIA R. MACEDA
Regional Director