



Republic of the Philippines
Department of Environment and Natural Resources
ENVIRONMENTAL MANAGEMENT BUREAU
Regional Office No. VIII
Tacloban City, Philippines

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ENVIRONMENTAL MANAGEMENT BUREAU
RELEASED BY: [Signature]
DATE: 01/24/2022
TIME: 3:26pm

**IN RE: VIOLATION OF ENVIRONMENTAL
COMPLIANCE CERTIFICATE GENERAL
CONDITION NO. 4, DENR ADMINISTRATIVE
ORDER NO. 2003-30, PRESIDENTIAL
DECREE NO. 1586**

EDITO L. GESITE INDUSTRIAL SAND AND GRAVEL PROJECT
Brgy. Barobo, Llorente, Eastern Samar

Respondent.

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DECISION

This resolves the **Notice of Violation** dated **21 September 2021** issued by this Office against Edito L. Gesite Industrial Sand and Gravel Extraction Project, herein referred to as the "Respondent", for brevity, located in Brgy. Barobo, Llorente, Eastern Samar for the following violation:

- a. Non-submission to this Office of the required semi-annual Compliance Monitoring Report (CMR), as required under ECC General Condition No. 4**

Statement of Facts

An **Environmental Compliance Certificate (ECC)** is a decision document issued to the Proponent after thorough review of the EIA Report. It 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 an ECC are conditions and restrictions, which the Proponent has conformed to implement mitigating measures for potentially negative impacts and/or

enhancement measures for potentially positive impacts as identified in the Environmental Impact Assessment Report.

On **23 April 2021**, technical personnel from the Provincial Environmental Management Unit- Eastern Samar conducted a compliance inspection upon herein Respondent. The inspection revealed the Respondent's non-compliance to the above-stated ECC Condition. Consequently, the inspecting personnel recommended the issuance by this Office of a Notice of Violation.

On **21 September 2021**, this Office issued a Notice of Violation upon Respondent, and the latter was called to attend a Technical Conference/Hearing on **25 October 2021**.

On **07 October 2021**, the Respondent personally appeared before this office to convey that it no longer intends to attend the scheduled technical conference. The Respondent instead submitted a position paper, under which it contended that the reason or delay in the non-submission of the compliance monitoring report is due to the LGU's denial of the necessary permit to operate/extract, thereby disallowing the respondent to engage in the business of Sand and Gravel Business. The respondent claims to have neither started the operation or initially started any sand and gravel extraction activity from the area. According to the respondent, it failed to operate in the supposed area subject of the ECC since the beginning.

Thereafter, the Hearing Officer submitted the case for the Decision of this Office and recommends dismissing the alleged violation as there is no necessity yet on the part of the Respondent to submit the report pursuant to existing rules and regulations.

Issue

Whether or not is under obligation to submit the CMR when it is yet to commence operation

Ruling

ECC General Condition No. 4 of ECC-RO8-1212-0170 requires the submission of a Compliance Monitoring Report to this Office semi-annually.

Under **Item no. 19** on the **Roles and Responsibilities** of the Project Proponents, **Section 2.3**, of **EMB Memorandum Circular No. 002, Series of 2007**¹, the **First CMR shall be submitted mid-year after the start of the project implementation**, except for ECC

¹ Revised Procedural Manual for DENR Administrative Order No. 30, Series of 2003.

Commitments/Conditions, which need to be submitted prior to project start-up.

In this case, an admission can be obtained from the explanation of the Respondent. However, the fact that the Respondent is yet to commence the project implementation relieves the Respondent from liability as the above-cited provision is clear that the obligation on the part of the proponent to submit the first CMR arises only from the time after the project commences implementation. Considering that the project is yet to be implemented, the Respondent is not yet under obligation to submit the CMR. Hence, the Respondent should be relieved from liability.

In addition, the inspecting personnel failed to establish by substantial evidence that the respondent commenced with the operation, when it has the burden of proof to establish the liability of the respondent, instead of the respondent proving its innocence.

WHEREFORE, premises considered, this Office finds the Respondent not liable to the violation. Accordingly, the Respondent is relieved from any liability. This is without prejudice to subsequent inspections where the respondent may be found to have actually operated the project in the past.

Nonetheless, it must be emphasized that other ECC conditions/restrictions bind the Respondent the moment the ECC is issued to the proponent, regardless of whether the project is yet to be implemented. Hence, the Respondent is enjoined of its compliance to the same. In the alternative, it may consider requesting for the cancellation of its ECC instead by this Office considering the circumstances mentioned by the Respondent. Otherwise, it must continue to be under obligation to comply with the said conditions/restrictions.

SO ORDERED. JAN 21 2022.

Tacloban City, Philippines.


ENGR. REYNALDO B. BARRA
OIC- Regional Director