



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

-o0o-

**IN RE: VIOLATION OF SECTION 4,
PRESIDENTIAL DECREE NO. 1586**

ENVIRONMENTAL MANAGEMENT BUREAU
RELEASED BY: [Signature]
DATE: 01/06/2022
TIME: 8:37am

-versus-

CNE CONSTRUCTION

Lot 14, Block 2, Phase 1, V&G Subdivision, Tacloban City, Philippines
Respondent

X-----X

DECISION

This resolves the **Notice of Violation** dated **22 June 2021** issued by this Office against CNE Construction, herein referred to as the "Respondent" for brevity, located in Lot 14, Block 2, Phase 1, V&G Subdivision, Tacloban City, Philippines for the following violation:

- a. Undertaking a sand and gravel extraction activity in Brgy. Mahayahay & Hiluctogan, Mahaplag, Leyte without first securing an Environmental Compliance Certificate, in **violation of Section 4, P.D 1586.**

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.

One of the salient features of an ECC are conditions and restrictions, which the Proponent must undertake before and during the operation of a project, and in some cases, during abandonment phase, to mitigate adverse environmental impacts.

On **15-16 April 2021**, technical and legal personnel from this Office conducted an investigation upon several sand and gravel extraction projects in Mahaplag, Leyte, one of which is herein Respondent. The findings of the investigation allege the Respondent's undertaking of a sand and gravel extraction activity in Brgys. Mahayahay and Hiluctogan, Mahaplag, Leyte without first securing an Environmental Compliance Certificate. Consequently, the investigating

personnel recommended the issuance by this Office of a Notice of Violation.

On **22 June 2021**, this Office issued a Notice of Violation against the respondent and the latter was called to attend a Technical Conference last **19 July 2021**. The Respondent, however, failed to appear before this Office during the scheduled technical conference but submitted a position paper.

Under the said position paper, the respondent admitted that it did conduct an extraction [of sand and gravel materials] over the subject area. But only as a buyer from one Aida Dizon, a Sand and Gravel Permit Holder. According to the respondent, while its equipment and trucks were utilized for extraction, there is no existing operating agreement between it and Ms. Aida Dizon. Moreover, the respondent added that the agreement between it and Ms Dizon is only as a "seller and vendor." But since Ms. Dizon does not own equipment for extraction and transport, the respondent claims to have voluntarily hauled and transport the purchased aggregates under the presence and monitoring of Ms. Dizon or her representatives.

The respondent further argued that there being no operating agreement between the permit holder and the hauler, Ms. Dizon maybe the person tasked to submit the reports or compliance periodically as mandated by DENR Policies, not CNE Construction. It also argued that it is not mandated to secure ECC for purchasing aggregates from a permit holder. Had there been operating agreement, according to the respondent, this Office would have known.

In addition, the respondent asserts **DENR Memorandum Circular No. 006, Series of 2016**¹, one provision of which states that an ECC may only be issued to an entity or corporation whose name appears on the government issued Mineral Production Sharing Agreement (MPSA) or the Financial or Technical Assistance Agreement (FTAA). According to the respondent, this requirement shall apply to all applications for ECC for the operation of Sand and Gravel or Industrial Sand and Gravel duly approved by the Provincial Mining and Regulatory Board and/or the Mines and Geosciences Bureau Regional Office, respectively.

Evidently, according to the respondent, it is not involved in an MPSA or FTAA in the extraction at Brgy. Mahayahay and Hiluctogan, Mahaplag, Leyte. The ECC is issued only to those applicants who are permit holder and extracting personally [on] the area and those with current agreement with the permit holder by way of [an] operating agreement, and the respondent has not entered in "operation contract" with Ms. Dizon, it claims.

¹ ECC Applicants for Mining Projects including Sand and Gravel Quarry Projects

The respondent also claims that the provisions of **DENR Administrative Order No. 2003-30**² and **EMB Memorandum Circular No. 2014-005**³ providing that all extractions of non-metallic minerals, such as aggregates, is only applicable to those under an MPSA or FTAA of the government, and in relation to the investigation, only applicable to permit holder Ms. Aida Dizon.

The respondent then prayed for the dismissal of the Notice of Violation. Thereafter, the Hearing Officer submitted the case for the decision of this Office while recommending that the violation should be affirmed, in view of the apparent undertaking of the sand and gravel extraction activity without an Environmental Compliance Certificate (ECC) as admitted by no less than the respondent.

Issue

Whether the respondent has undertaken a sand and gravel extraction activity without an Environmental Compliance Certificate (ECC)

Ruling

This Office finds no cogent reason or legal justification to deviate from the recommendations of the Hearing Officer. Accordingly, the same recommendations are hereby adopted.

Section 4 of Presidential Decree No. 1586, in part, provides that:

"No persons, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate." Emphasis ours

Under **Section 1 of EMB Memorandum Circular No. 2014-005**⁴, amending Section 2.1 of the Revised Procedural Manual for DENR Administrative Order No. 2003-30⁵, 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 Area*⁶ as

²Implementing Rules and Regulations of Presidential Decree No. 1586, Establishing the Philippine Environmental Impact Statement System

³Guidelines for Coverage Screening and Standardized Requirements under the Philippine Environmental Impact Statement System (PEISS) amending relevant portions of MC 2007-002.

⁴Guidelines for Coverage Screening and Standardized Requirements under the Philippine Environmental Impact Statement System (PEISS) amending relevant portions of MC 2007-002.

⁵Implementing Rules and Regulations of Presidential Decree No. 1586, Establishing the Philippine Environmental Impact Statement System.

⁶Environmentally 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)

declared under **Proclamation No. 2146⁷** and the parameters set forth in attached guidelines.

XXX

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.

XXX

An area is environmentally critical if it exhibits any of the characteristics enumerated under **Table 1, Section 3-b of EMB Memorandum Circular No. 2014-005** and/or falls within the ECA as mapped by the EMB. In accordance with Presidential Proclamation No. 2146, series of 1981, Table 1 enumerates **Twelve (12) main categories of Environmentally Critical Areas**. One of the ECA Categories described are areas that are **frequently visited and or hard-hit by natural calamities which shall be so characterized if the area is frequently visited or hard-hit by typhoons**, among other conditions. For purposes of coverage, depressions, storms and typhoons will be covered in such a category. This shall also refer to **all provinces** in the country affected by a tropical cyclone in the past, which necessarily include the location where herein project is situated.

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)** on the same memorandum circular.

Based on the said matrix, the Respondent is classified under the **Resource Extractive Industries as a Mining and Quarrying Project extracting non-metallic minerals** (Section 2.1.3). Based on this categorization, **ALL QUARRY OPERATIONS**, regardless of extraction rate and or project area must secure an ECC, **EXCEPT**, for "dredging" of rivers, bays, and other natural water bodies as an environmental enhancement.

⁷Proclamation 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.

Therefore, respondent is categorized under Category **B**, a Non-Environmentally Critical Project but is in an environmentally critical area that is required, by law, to secure an ECC.

Here, the respondent admitted having conducted an extraction over the subject area. It argued, however, that it cannot be held liable for it has only extracted as buyer from Ms. Aida Dizon who is the actual permit holder. It argued further that there is no operating agreement between the respondent and Ms. Aida Dizon, thus, the latter should be the one to submit the reports or comply periodically under existing DENR Policies.

This Office, however, strongly disagrees with the highly illogical insistence of the respondent. If it is not under an operating agreement with Ms. Aida Dizon-- the Permit and ECC holder, the respondent has no business at all in conducting an extraction activity on the area. It has no legal personality to perform the act of the extraction.

From the respondent's own assertions, it is not in possession of any document authorizing it to perform an extraction. Why then did it involve itself from the act of actually extracting the materials when it is conscious of the fact that there is no authority granted to it by any document?

It is highly preposterous for the respondent to suggest that there was nothing illegal of its extraction activities on the area when as a matter of truth, the activity is outrightly and manifestly illegal precisely for the simple reason that the respondent is not a permittee, not an ECC Holder, not an MPSA or FTAA Holder, and not whatsoever. The respondent has absolutely no business to be there, much less to conduct an extraction without any document allowing it to do so. If its personality is limited to a buyer, it must remain as a buyer and not as an extractor. It must not arrogate unto itself the authority to do the extraction even if the permit holder is incapable of conducting the extraction herself. Instead of finding comfort with the fact that there is no operating agreement between the respondent and Ms. Aida Dizon, the respondent instead should have endeavored to secure one with Ms. Dizon to legalize its interests.

It is correct that Ms. Dizon is the one under obligation to submit or comply with the requirements under the ECC issued to her. But the fact in issue in this case is not whether who is under obligation to comply with these requirements, but whether the respondent extracted sand and gravel materials on the area without an Environmental Compliance Certificate. It admitted that it did conduct an extraction on the area. It is also obvious that it is not in possession of an ECC under its name. Therefore, the respondent's conduct of extraction activity on the subject area without an ECC is

illegal especially since there is no operating agreement between the respondent and Ms. Aida Dizon.

It is also correct that the respondent is not mandated to secure an ECC for purchasing materials from the permit holder. But what is mandated of the respondent is to secure an ECC the moment it took upon itself to conduct the extraction or the moment it went outside the scope of its being a mere purchaser. A purchaser and an extractor are two different concepts. For simply having been caught in the act of extraction at the time of the investigation, it is being accused of undertaking sand and gravel extraction activity without first securing an ECC. Under the circumstances of this case, there is no way that the respondent can be spared from liability.

Under **DENR Memorandum Circular No. 006, Series of 2016**, it is correct that no new applications for ECC shall be processed and issued in the name of any applicant unless the same applicant shall be the entity or corporation as reflected in an MPSA or FTAA. The requirement simply provides that whenever a new ECC Application is filed, it cannot be processed or issued if the applicant is not the same applicant reflected in the MPSA or FTAA. This must not be taken to mean, however, that those whose name does not reflect on an MPSA or FTAA cannot be the proper subject of a violation for extracting without an ECC.

Under **EMB MC 2014-005**, all quarry operations must secure an ECC, such that, when found operating without the same, there is a corresponding legal liability. But whether a quarry operation can actually secure an ECC, *vis-à-vis* the requirement of **DENR MC No. 006- Series of 2016** is an entirely different agenda.

For example, X can be held liable for extracting without an ECC because a law requires that all quarry operations must secure an ECC, but it does not necessarily and automatically follow that X can be able to actually secure the ECC later on even if found liable to the violation because there is another law requiring that only those whose name appears on the MPSA or FTAA shall be the proper party in an application for ECC. If X's name is not reflected in an MPSA or FTAA for whatever reasons, it cannot secure an ECC. If it cannot secure an ECC, it must not undertake to extract sand and gravel materials on an area without an ECC.

Applying the foregoing analogy in this case, the respondent can be held liable for operating without an ECC because the law requires that all quarry operations must secure an ECC. But whether it can actually secure an ECC later on is of a different agenda for another law requires that the respondent's name must be reflected in an MPSA or FTAA before an ECC can be processed and issued.

DECISION

In re violation of the provisions of P.D 1586
vs CNE CONSTRUCTION- MAHAPLAG, LEYTE

WHEREFORE, premises considered, this Office finds the respondent liable for undertaking a sand and gravel extraction activity without an **Environmental Compliance Certificate (ECC)**. Accordingly, after review of the criteria for penalty reduction provided for under existing guidelines, the respondent is hereby ordered to pay the amount of **THIRTY-FIVE THOUSAND PESOS (P35, 000.00)** as fine/penalty for the subject violation.

Respondent is given **THIRTY (30) DAYS** from receipt of this Decision within which to settle the said amount. In addition, the respondent is hereby ordered to **CEASE-AND-DESIST** from further extracting sand and gravel materials over the project area of Ms. Aida Dizon, without an Environmental Compliance Certificate issued in its favor or an Operating Agreement executed between the relevant parties.

Otherwise, any future similar violation shall be dealt with severely by law or shall warrant the appropriate legal action in court.

SO ORDERED. JAN 04 2022

Tacloban City, Philippines.


ENGR. REYNALDO B. BARRA
OIC- Regional Director