




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

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

ENVIRONMENTAL MANAGEMENT BUREAU
RELEASED BY: 
DATE: 01/19/2022
TIME: 8:32am

-versus-

MALIPAYON SHORES

Brgy. Jubas, Libagon, Southern Leyte

Respondent

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DECISION

This resolves the **Notice of Violation** dated **14 September 2021** issued by this Office against Malipayon Shores, herein referred to as the "Respondent" for brevity, located in Brgy. Jubas, Libagon, Southern, Leyte for the following violation:

- a. Operating a resort project located in Brgy. Jubas, Libagon, Southern 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 **17 August 2021**, technical personnel from the Clearance and Permitting Division of this Office conducted a survey inspection upon herein respondent. The survey report provides that the respondent covers an area of more than two thousand square meters, which contains a swimming pool facility, another pool which is still under construction, five (5) cottages, nine (9) rooms for accommodation and a function hall.

Consequently, this Office issued a Notice of Violation dated 14 September 2021 against the respondent and the latter was called to attend a Technical Conference last **11 October 2021**.

On **06 October 2021**, the respondent submitted a position paper under which it admitted the violation while explaining that it has already undertaken the application for the ECC.

On **11 October 2021**, a virtual technical conference was conducted during which the respondent, thru owner Sulficia Endriga, admitted the violation and expressed willingness to settle the corresponding fine.

Consequently, 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 failure of the Respondent to secure Environmental Compliance Certificate (ECC) prior to implementation of the project.

After a review of the criteria for penalty reduction provided for under **DENR Administrative Order NO. 2003-30**, the respondent is entitled to a penalty reduction amounting to **Forty Thousand Pesos (P40, 000.00)** which will be deducted from the maximum imposable fine/penalty of Fifty Thousand Pesos (P50, 000.00) based on the following criteria, unless otherwise this Office finds reason to overrule the amount of reduction:

- 1) Proponent applied for an ECC prior to ECC issuance, with a corresponding penalty reduction of Twelve Thousand Five Hundred Pesos (**Php 12,500.00**)
- 2) Percentage Project completion – 25% complete, with corresponding penalty reduction of Five Thousand Pesos (**Php5,000.00**).
- 3) Project cost - less than 5 million Pesos, with corresponding penalty reduction of Ten Thousand Pesos (**Php10, 000.00**); and
- 4) Project shall not cause adverse environmental impact, with a corresponding penalty reduction of Twelve Thousand Five Hundred Pesos (**Php 12,500.00**)

Thus, a total imposable penalty of **TEN THOUSAND PESOS (P10, 000.00)** was recommended.

Issue

Whether or not Respondent is operating 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**¹, amending Section 2.1 of the Revised Procedural Manual for DENR Administrative Order No. 2003-30², 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*³ as declared under **Proclamation No. 2146**⁴ and the parameters set forth in attached guidelines.

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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.

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¹Guidelines for Coverage Screening and Standardized Requirements under the Philippine Environmental Impact Statement System (PEISS) amending relevant portions of MC 2007-002.

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

³Environmentally 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)

⁴Proclamation 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.

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 Resorts and other tourism/leisure projects. Under such project/description, determinative of whether 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 establishment.

In this case, it is settled that respondent occupies a total gross floor area of **more than 2,000 square meters**. Therefore, the 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.

WHEREFORE, premises considered, this Office finds the respondent liable for operating the project without first securing an **Environmental Compliance Certificate (ECC)**. Accordingly, after review of the criteria for penalty reduction, respondent is hereby ordered to pay the amount of **TEN THOUSAND PESOS (P10,000.00)** as fine/penalty to the subject violation.

Respondent is given **THIRTY (30) DAYS** from receipt of this Decision within which to settle the said amount.

SO ORDERED. JAN 18 2022. Tacloban City, Philippines.


ENGR. REYNALDO B. BARRA
OIC- Regional Director