

**[DENR ADMINISTRATIVE ORDER NO. 2005-07,
April 14, 2005]**

**AMENDMENTS TO CHAPTER XVIII OF DENR ADMINISTRATIVE
ORDER NO. 96-40, AS AMENDED, PROVIDING FOR THE
ESTABLISHMENT OF A FINAL MINE REHABILITATION AND
DECOMMISSIONING FUND**

Consistent with the basic policy of the Government to ensure that mining activities attendant to permits, agreements and leases shall be managed in a technically, financially, socially, culturally and environmentally responsible manner to promote the general welfare of the country as well as to the concept of *planning for mine closure/integrated mine closure planning* where the environmental, social and economic considerations associated with a mining project are integrated into every stage of mining operation, especially during the mine closure process, Sections 180, 181, 182, 184, 187, 193, 195, 196, 197 of Chapter XVIII (Contingent Liability and Rehabilitation Fund) of DENR Administrative Order (DAO) No. 96-40 and Section 9.4 of DAO 2003-30, Implementing Rules and Regulations for the Philippine Environmental Impact System, are hereby amended for the guidance and compliance of all concerned.

SECTION 1. Chapter XVIII of DAO 96-40 is hereby amended to read as follows:

"SECTION 180. Contingent Liability and Rehabilitation Fund

Cognizant of the need to ensure just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse effect a mining operation or activity may cause, the Department through the Bureau shall institutionalize an environmental guarantee fund mechanism to be known collectively as the Contingent Liability and Rehabilitation Fund (CLRF).

The CLRF shall be in the form of the Mine Rehabilitation Fund, the *Mine Waste and Tailings Fees* and the *Final Mine Rehabilitation and Decommissioning Fund* and shall be administered by the CLRF Steering Committee as provided for in Section 193 hereof.

SECTION 181. Mine Rehabilitation Fund

A Mine Rehabilitation Fund (MRF) shall be established and maintained by each operating Contractor/Permit Holder as a reasonable environmental deposit to ensure availability of funds for the satisfactory compliance with the commitments and performance of the activities stipulated in the EPEP/AEPEP during specific project phase. The MRF shall be deposited as a Trust Fund in a Government depository bank and shall be 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.

The MRF shall be in two forms, namely:

a. Monitoring Trust Fund (MTF) - This Fund shall be initiated by the Contractor/Permit Holder and shall be deposited in a mutually acceptable Government depository bank for the exclusive use in the monitoring program approved by the MRF Committee.

The MTF shall be in cash and in an amount to be determined by the MRF Committee which shall not be less than the amount of One Hundred Fifty Thousand Pesos (P150,000.00) to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work and other reasonable expenses incurred by the monitoring team: Provided, That the Secretary shall be authorized to increase the said amount when national interest and public welfare so require, upon the recommendation of the Director. The Contractor/Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

Authorization for the disbursement from the MTF shall only be given by the designated representatives of both the MRF Committee and the Contractor/Permit Holder. Replenishment of this amount shall be done quarterly to correspond to the expenses incurred by the monitoring team.

b. Rehabilitation Cash Fund - The Contractor/Permit Holder shall set up a Rehabilitation Cash Fund (RCF) for a designated amount to ensure compliance with the approved rehabilitation activities and schedules, including research programs, as defined in the EPEP/AEPEP. The RCF shall be equivalent to ten percent (10%) of the total amount needed to implement the EPEP or Five Million Pesos (P5,000,000.00), whichever is lower. The RCF shall be deposited as a Trust Fund in a mutually agreed Government depository bank; Provided, That said amount shall be deposited in four (4) equal quarterly deposits within fifteen (15) calendar

days from the beginning of each quarter of the first year following the approval of the EPEP.

A request for withdrawal and disbursement from said amount(s) by the Contractor/Permit Holder shall be based on its EPEP/AEPEP and shall be submitted to the MRF Committee for consideration and approval, copy furnished the CLRF Steering Committee.

In the event of withdrawals from the RCF, the Contractor shall annually replenish the RCF so as to maintain the minimum required amount thereof.

Upon written notification by the Contractor/Permit Holder to the Chair of the MRF Committee that the mine has reached the end of its operating life, the RCF shall, after payment of all outstanding obligations, be terminated and the remaining amount therein, including interests, shall be returned to the Contractor/Permit Holder. In lieu thereof, the Final Mine Rehabilitation and Decommissioning Fund (FMRDF), as stipulated in Section 187-B of these rules and regulations, shall be utilized to fund all decommissioning and/or rehabilitation activities contained in the approved Final Mine Rehabilitation and/or Decommissioning Plan (FMR/DP) for the succeeding years until the objectives of mine closure have been achieved.

SECTION 182. The Mine Rehabilitation Fund Committee

A Mine Rehabilitation Fund (MRF) Committee shall be created in each Region where acting mining operations exist and shall have the following duties and responsibilities:

- a. Conducts preliminary evaluation on the submitted EPEP and consults with credible experts, as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures: Provided, That the MRF Committee shall evaluate and approve/disapprove the submitted EPEP for Industrial Sand and Gravel Permit and Quarry Permit;
- b. Manages, operates, monitors and looks after the safety of the MRFs and FMRDFs and that shall be established and deposited in a Government depository bank in accordance with the provisions of these implementing rules and regulations;
- c. Resolves issues involving the progressive mine rehabilitation programs that shall be implemented;

- d. Hires credible experts to do independent studies and researches on the environmental, engineering and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- e. Ensures that the approved EPEPs/AEPEPs shall be strictly implemented by the Contractors/Permit Holders;
- f. Deputizes a Multipartite Monitoring Team (MMT) to serve as its monitoring arm with the Regional Office concerned taking the lead role;
- g. Monitors and evaluates the performance of the MMTs and reports its assessments to the CLRF Steering Committee;
- h. Ensures that the MTFs, RCFs and FMRDFs shall be kept separate and distinct from one another and maintains independent and specific books of records for all transactions of the said funds of each Contractor/Permit Holder;
- i. In the absence of fraud, bad faith or gross negligence on the part of the MRF Committee or any person acting on its behalf, the said Committee shall be liable for any loss or impairment of the MRFs arising out or in connection with any act done or performed or caused to be done or performed by the said Committee pursuant to the provisions of these implementing rules and regulations;
- j. Prepares and submits to the Secretary/Director, within thirty (30) calendar days after the end of each year, an annual report of accomplishments, including audited financial statements and such periodic reports of activities as may be required; and
- k. Performs other functions as may be assigned by the Secretary/Director.

SECTION 183. Composition of the MRF Committee - The Mine Rehabilitation Fund Committee shall be composed of the following:

- a. Regional Director as Chair;
- b. Regional Executive Director (RED) of the Department as Co-Chair;
- c. Regional Director of the Environmental Management Bureau (EMB) as Member;
- d. Representative of the Autonomous Regional Government, where this is applicable, as Member;
- e. Representative from the Local Government Unit as Member;
- f. Representative from the local NGOs and community organizations, including People's Organizations, church or civic organizations, as Member; and
- g. Representative of the Contractor/Permit Holder as Member.

In case the Regional Director and/or the Regional Executive Director could not personally attend a meeting or functions of the MRF Committee, he/she shall designate or appoint a representative who shall be duly authorized in writing to have full power and authority to act in his/her behalf.

The Regional Office shall provide the technical, secretariat and administrative supports, as may be deemed necessary, to the Committee.

SECTION 184. Meetings of the MRF Committee - The Committee shall hold quarterly meetings: Provided, That any member of the Committee may call a special meeting as he/she may deem necessary: Provided, further, That notices of the meetings stating the date, time, place and agenda therefore shall be sent by the Committee Chair or Co-Chair to all members at least ten (10) working days before the intended date of the meetings.

In all meetings, the presence of at least four (4) members shall constitute a quorum to conduct business. The meetings shall be presided by the Chair or, in his/her absence, by the Co-Chair. In the absence of the Chair and the Co-Chair, the meetings shall be presided by either of their representatives. Unless otherwise provided herein, a majority vote of the members present in the meeting shall be required to give effect to any resolutions or decisions of the Committee. The presiding officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie.

The Committee shall provide the CLRF Steering Committee with a copy of the minutes of its meetings within seven (7) working days after.

SECTION 185. The Multipartite Monitoring Team - A Multipartite Monitoring Team (MMT) shall be deputized by the MRF Committee, as provided for in Section 182 hereof, to serve as the monitoring arm of said Committee and shall be composed of the following:

- a. Representative from MGB Regional Office as Head;
- b. Representative from Department Regional Office as Member;
- c. Representative from the EMB Regional Office as Member;
- d. Representative of the Contractor/Permit Holder as Member;
- e. Representative from the affected community(ies) as Member;
- f. Representative from the affected Indigenous Cultural