



Department of Environment and Natural Resources
Environmental Management Bureau
MIMAROPA Region

**IN THE MATTER OF ENVIRONMENTAL
IMPACT ASSESSMENT LAW**

**EMB-MIMAROPA CASE NO.
ROM-059-23**

-vs-

**ALTAI PHILIPPINES
CORPORATION**

MINING

**FOR: VIOLATION OF P.D. 1586 AND
ITS IMPLEMENTING RULES AND
REGULATIONS**

Respondent


X-----X

NOTICE OF ISSUANCE OF ORDER

Please take notice that an Order was issued upon herein Respondent for
the above-entitled case, a copy of which is hereto attached.

Metro Manila, Philippines, APR 26 2023.

Very truly yours,


ATTY. ALESSA MAY V. ISMAEL
Chief, Legal Unit

Copy furnished:

**ENVIRONMENTAL MANAGEMENT SERVICES
ROMBLON**

PENRO Compound, Brgy. Tabing Dagat,
Odiongan, Romblon

HANNIEL T. NGO

Managing Head

ALTAI PHILIPPINES MINING CORPORATION

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O R D E R

For consideration is the Position Paper filed by the Respondent dated 08 February 2023 relative to the Notice of Violation (NOV) issued against the project dated 02 February 2023.

The facts of the case are as follows:

On 01 February 2023, this Office conducted a site inspection for new projects operating with/without ECC Applications.

During the inspection, it was discovered that the Respondent **ALTAI PHILIPPINES MINING CORPORATION (APMC)** is engaged in the operation/implementation of a causeway project located at Sitio Bato, Brgy. España, San Fernando, Sibuyan Island, Romblon, without a valid Environmental Compliance Certificate (ECC) issued by this Office.

Accordingly, a NOV was issued against Respondent for violating Section 4, P.D. 1586 on 02 February 2023. In addition, Respondent was also directed to attend a Technical Conference on 07 February 2023.

During the Technical Conference, the following agreements were reached:

1. APMC shall write to EMB – Central Office to clarify as to whether the ECC Application for the causeway project should be filed with the EMB Central Office or Regional Office;
2. APMC shall secure PRA Permit from the Philippine Reclamation Authority and Area Clearance from DENR;
3. APMC shall secure a clearance from the Office of the Secretary prior to the final approval of the technical scoping checklist as required under DENR Memorandum Order No. 2023-01 since a protected area (Mt. Guiting-Guting) is located within the province;



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4. APMC also committed to file a Position Paper within ten (10) days from the conduct of the Technical Conference;
5. APMC also expressed its willingness to comply with all the requirements pursuant to Presidential Decree 1586 and its Implementing Rules and Regulations.

In response to the NOV, Respondent filed a Position Paper dated 08 February 2023 wherein it has presented the following arguments, to wit:

1. APMC FILED AN ECC APPLICATION FOR ITS CAUSEWAY PROJECT.

APMC contends that the Company is a holder of a Mineral Production Sharing Agreement (MPSA) with Reference No. MPSA No. 304-2009-IVB dated 23 December 2009, approved Exploration Work Program without bulk sampling issued on 12 July 2022, approved Exploration Work Program with bulk sampling issued on 21 December 2022, and renewed Exploration Permit issued by DENR – MGB on 12 July 2022.

APMC further contends that the proposed causeway project located at Sitio Bato, Brgy. España, Sibuyan Island, San Fernando, Romblon, was designed as an integral component of the Sibuyan Nickel Project for its approved MPSA and has a target commencement of port construction in December 2022.

According to APMC, the causeway facility is intended to exclusively serve the shipment activities of APMC's nickel mining corporation, with an estimated loading capacity of 3,000,000 wet metric tons (WMT) per year and is designed to accommodate up to six (6) barges loading two (2) vessels at a time.

Respondent APMC argues that it has filed an Online ECC Application and as evidence of such, a public scoping was conducted by APMC on 19 January 2023 at San Fernando, Sibuyan Island, Romblon. However, the processing of APMC's ECC application was deferred pending resolution of the issue as to whether a separate ECC application must be filed for the causeway project and mine site considering that the causeway is being used in processing bulk metallurgical sampling of nickel ores.

Furthermore, pending the approval of APMC's Miscellaneous Lease Agreement/Contract ("MLA"), APMC filed before the Philippine Ports Authority (PPA), an Application to Develop and Construct (PDC) a Non-Commercial Port ("APMC Bato Causeway") and requested for the Temporary Use of the Causeway Project.



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Thereafter, PPA issued a letter dated 25 January 2023 allowing APMC to temporarily use its causeway for the loading of export cargo/laterite nickel ore on the vessel.

Respondent contends that it was their belief and good faith that these can serve as alternative permitting cover for their intended shipment as its MLA was not yet issued then and that the ECC is not a permit but a planning tool which can be secured before, during or after the construction of the causeway.

Nevertheless, APMC secured a Certificate of Non-Coverage for its Proposed APMC Bato Causeway (Reference No. CNC-OL-R4B-2022-10-01928) on 25 October 2022.

2. APMC IS CURRENTLY NOT ENGAGED IN ANY MINING ACTIVITIES.

Respondent APMC argues that the conduct of bulk metallurgical sampling is part of APMC's approved ExWP that will require the use of the causeway. Thereafter, the samples will be shipped abroad for testing, the result of which will be included in the Final Exploration Report and Declaration of Mining Project Feasibility Study for approval of DENR and shall be the basis for the issuance of a Notice to Proceed for mine development, production, and utilization in accordance with the MPSA. Respondent further argues that the exploration process is not mining or commercial operation.

3. APMC IS NOT AWARE OF THE INSPECTION CONDUCTED ON FEBRUARY 01, 2023 AND THUS IT WAS EFFECTIVELY DENIED OF DUE PROCESS. Respondent assailed the inspection that was conducted during the time when an ongoing barricade of anti-mining residents was being held at the port. Respondent contends that APMC was denied of due process when it was deprived of its right to be apprised of the inspection and the result which was not appended to the NOV. Moreover, APMC could not have reasonably addressed the violations without being apprised of the factual basis.

This Office now resolves whether Respondent should be held liable for violating Section 4 of P.D. 1586. Upon review and evaluation, this Office finds Respondent **LIABLE** for violating Section 4 of P.D. 1586, for operating/implementing a causeway project with reclamation component, without a valid ECC.

Section 4 of P.D. 1586, otherwise known as "Philippine Environmental Impact Statement System" provides that government and private entities are required to secure an Environmental Compliance Certificate (ECC) before starting a project falling under the system.



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Furthermore, Item No. 3.5.3 of EMB Memorandum Circular No. 2014-005 provides that causeway projects which involves a reclamation component is required to secure an ECC prior to project implementation.

It must also be emphasized that Proclamation No. 2146 classifies Resource Extractive Industries such as major mining and quarrying projects as Environmentally Critical Projects and as such is required to secure an ECC prior to project implementation.

It was acknowledged by the Respondent in their Position Paper that the project has already undergone the public scoping process as part of its ECC application. Hence, Respondent cannot avoid the fact that while an ECC is a planning tool, it is a prerequisite prior to project implementation.

In addition, the causeway project is a critical component of the entire project as it cannot transport the extracted samples or materials without the causeway.

Moreover, the act of subsequently securing a CNC for the Proposed Bato Causeway Project is a blatant act of contravening the process of securing an ECC in order to facilitate the immediate implementation of a critical component of the project.

The Revised Procedural Manual for DENR Administrative Order No. 2003-30, IRR of P.D. 1586 (DAO No. 2003-30) states that a Proponent which has secured a Certificate of Non-Coverage certifies that, based on the submitted Project Description Report, the project is not covered by the EIS System and is not required to secure an ECC.

Thus, the contradicting acts of the Respondent in securing a CNC while its ECC application remains ongoing clearly shows the absence of good faith.

As regards to its contention that APMC was deprived of due process as it was not apprised of the factual basis of the inspection and assailed the timing of the inspection, EMB Memorandum Circular No. 002, Series of 2017 provides that for Complaints filed with or endorsed to EMB Regional Office, the EMB Regional Director shall, within three (3) days, order the investigation of the complaint.

Thus, assailing the timing of the inspection lacks merit as this Office is only exercising its ministerial function of conducting inspections to validate the complaints filed before this Office.

The Supreme Court in the case of Republic vs. Dela Merced and Sons, Inc.¹ has ruled that,

¹ Republic of the Philippines vs. N. Dela Merced and Sons, Inc., G.R. No. 201501, 22 January 2018
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"As for the inspection, the EMB-NCR was only performing its mandated duty under R.A. 9275 and the IRR thereof when it inspected the premises of the Guadalupe Commercial Complex. Clearly, the EMB had legal authority when it conducted the inspection.

The specific claims of denial of due process are belied by the records of the case. We quote with approval the findings of the CA on this matter:

[The opportunity to be heard] was made completely available to petitioner [Dela Merced & Sons] who participated in all stages of the administrative proceeding before the DENR-PAB. x x x, [T]he respondent [PAB] after issuing the notice of violation and possible imposition of fines to the petitioner, gave it time to comply with the requirements of the environmental laws. The petitioner even requested for extension of time to comply with the requirements which the respondent granted. But a subsequent inspection of the facility showed that the petitioner still failed to comply with the DENR effluent standards despite the extension given by respondent. Thus, the respondent was compelled to issue a cease and desist order."²

The Revised Procedural Manual for DENR Administrative Order No. 2003-30, IRR of P.D. 1586 expressly provides that for projects operating without ECC, the sum of Php 50,000.00 is set as reduced at the discretion of the Regional Director, considering the circumstances of each case.

Section 9 of P.D. 1586 states that, *"any person, corporation, or partnership found violating Section 4 of this Decree, xxxxxx shall be punished the suspension or cancellation of his/its certificate and/or a fine in an amount not to exceed FIFTY THOUSAND PESOS (Php 50,000.00) for every violation thereof, xxxxxxxx"*

WHEREFORE, in view of the foregoing, Respondent is hereby directed to pay the fine amounting to **FIFTY THOUSAND PESOS (PHP 50,000.00)** for operating/implementing its Causeway Project with reclamation component, without a valid ECC, to be settled within fifteen **(15) days** from receipt hereof.

Furthermore, Respondent is hereby directed to **SUSPEND** its operations **EFFECTIVE IMMEDIATELY** until and unless a valid ECC has been secured for the project.

Pursuant to Section VI, EMB Memorandum Circular No. 2021-10, Respondent may avail of staggered payment scheme provided that an application letter manifesting such intent must be filed within fifteen (15) days from receipt of Order subject to 20% initial payment upon the filing of an application for the

² Id.



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required permit and the balance may be paid on a twelve months (12) installment basis payable in either cash or by issuing post-dated Manager/Cashier's checks for the corresponding months.

Failure to pay at least one (1) month installment or if the issued post-dated Manager/Cashier's check is dishonored by the bank due to insufficient funds, the full amount shall immediately be due and demandable without prejudice to the filing of a criminal case pursuant to applicable penal laws.

The **Chief, EMS - Romblon** or his duly authorized representative is directed to serve this Order within seventy-two (72) hours from receipt hereof. A report shall likewise be submitted to the undersigned within forty-eight (48) hours upon execution thereof stating the proceedings taken therein.

SO ORDERED.

Manila, APR 26 2023


JOE AMIL M. SALINO
Regional Director



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