

[PAB RESOLUTION NO. 01, S. 2010, June 29, 2010]

REVISED RULES OF THE POLLUTION ADJUDICATION BOARD (PAB) ON PLEADING, PRACTICE AND PROCEDURE IN POLLUTION CASES

The Pollution Adjudication Board pursuant to its powers and functions under Section 19 of Executive Order No. 192, Series of 1987, RESOLVES as it is hereby RESOLVED to promulgate and adopt the following Revised Rules on Pleading, Practice and Procedure in the adjudication of pollution cases.

RULE I

Title and Construction

SECTION 1. Title of the Rules. - These rules shall be known as the Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases.

SECTION 2. Applicability of the Rules. - These Rules shall apply to all pollution cases involving violation of pollution control laws and environmental laws and prohibited acts cognizable by the PAB for adjudication pursuant to RA 8749, RA 9275, PD 1586, RA 6969 and RA 9003 in relation to RA 9275, their implementing rules and regulations, DENR Administrative Orders, brought before the Board.

SECTION 3. Construction of the Rules. - These Rules shall be liberally construed in order to achieve the objectives of Pollution Control and Environmental Management Laws and to assist the parties in obtaining just, speedy and inexpensive disposition of pollution cases.

SECTION 4. Nature of Proceedings. - Subject to the basic requirements of due process, proceedings before the Board and in the Regional Offices shall be summary in nature. The technical rules on evidence obtaining in courts of law shall not bind the Board and the Regional Offices. The Rules of Court shall not apply in proceedings before the Board except by analogy or in a suppletory character and only whenever applicable.

RULE II

Definition of Terms

SECTION 1. Definition of Terms. - As used in these Rules:

(a) "Ability to pay" shall mean respondent's capability in paying the imposed fines as defined in PAB Resolution No. 4, Series of 2003. This is however, applicable only to those classified as to any of the categories, Micro, Cottage and Small Enterprises as defines by SMED (Small and Medium Enterprise Development) Council Resolution No. 3 Series of 1995 (Redefinition of Micro, Cottage and Medium Scale Enterprises) as stated in the said resolution. This definition shall be subjected to review and

upward adjustment by the SMED Council, as mandated under Republic Act No. 6977, as amended by Republic Act No. 8289.

(b) "Aquatic Life"¹ shall mean all organisms living in freshwater, brackish and marine environments.

(c) "Adjudication"² shall mean the determination of a controversy and a pronouncement of a judgment as soon as PAB acquires jurisdiction after satisfying the procedural requirements from the Regional level based on evidence presented, implies a final judgment of the court or other body deciding the matter, as opposed to a proceeding in which the merits of the cause of action were not reached.

(b) "Barangay Micro Business Enterprise" as referred to in Rule III, Section 3, refers to any business entity or enterprise engaged in the production, processing or manufacturing of products or commodities, including agro-processing, trading and services, whose total assets including those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, shall not be more than Three Million Pesos (PhP3,000,000.00). This definition shall be subjected to review and upward adjustment by the SMED Council, as mandated under Republic Act No. 6977, as amended by Republic Act No. 8289.

(d) "Board"³ shall mean the Pollution Adjudication Board created under Section 19 of Executive Order No. 192, Series of 1987.

(e) "Bureau" shall mean the Environmental Management Bureau.

(f) "Cease and Desist Order (CDO)" shall refer to a formal demand immediately directing a person, facility, or any business entity to stop or refrain from doing, conducting an act or continuing a particular activity or course of action in violation of environmental laws; such as but not limited to, the operation of a particular machine, equipment, process or activity or doing a particular act expressly prohibited by law.

(g) "CENRO" shall mean any of the Community Environment and Natural Resources Offices of the Department.

(h) "Clean-up operation"⁴ shall mean the activities involving the removal of pollutants discharged or spilled into a water body and its surrounding areas, or onto any land form and the restoration of the affected areas to their former physical, chemical and biological state or conditions.

(i) "Contamination"⁵ shall mean the introduction of substances not found in the natural composition of water or any land form, that make the water or land less desirable or unfit for its intended use.

(j) "Department" or "DENR" shall mean the Department of Environment and Natural Resources.

(k) "Discharge"⁶ includes, but is not limited to, the act of spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping of any material into a water body or onto land from which it might flow or drain into said water.

(l) "Dumping"⁷ shall mean any unauthorized or illegal disposal into any body of water or onto land of wastes or toxic or hazardous material: Provided, that it does

not mean a release of effluent coming from commercial, industrial, and domestic sources which is within the effluent standards.

(m) "Effluent"⁸ shall mean a discharge from a known source which is passed into any body of water or ONTO land or wastewater flowing [out] of a manufacturing plant, industrial plant or any domestic, commercial and recreational facility.

(n) "Effluent Standard"⁹ shall mean any legal restriction or limitation on quantities, rates, and/or concentrations or any combination thereof, of physical, chemical or biological parameters of effluent which a person or point source is allowed to discharge into a body of water or onto land.

(o) "Emission"¹⁰ shall refer to any air contaminant, pollutant, gas stream which is passed into the atmosphere.

(p) "Emission Standard"¹¹ shall mean a standard stipulated in Section 19 of the Clean Air Act and Rule XXV of its Implementing Rules and Regulations.

(q) "Formal Lifting Order (FLO)" shall refer to an Order from the Board permanently setting aside the Cease and Desist Order for a particular violation after satisfactory compliance with the conditions set by the Board.

(r) "Ground Water"¹² shall mean a subsurface water that occurs beneath a water table in soils and rocks, or in geological formations.

(s) "Hazardous wastes" shall mean/refer to:

A. Substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or brought from the country of origin for dumping or disposal into or in transit through any part of the territory of the Philippines;

B. By-products, side-products, process residues, spent reaction media, contaminated plant or equipment or other substances from manufacturing operations, and as consumer discards of manufactured products; or,

C. Solid waste or combination of solid waste which because of its quantity, concentration, or physical, chemical or infectious characteristics may: cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(t) "Managing Head"¹³ shall mean the president, managing director, managing partner, chief executive officer or highest executive officer of the respondent, if it be a corporation, partnership or other juridical person.

(u) "Notice of Violation (NOV)" refers to a document issued to a person, facility or business entity informing that person, facility or entity that certain acts or omissions in the course of its business operation or relating to the conduct of its business have

been committed or ARE continuously being committed in violation of pollution and environmental management law/s.

(v) "ORED" shall mean any of the Offices of Regional Executive Director of the Department.

(w) "PENRO"¹⁴ shall mean any of the Provincial Environment and Natural Resources Offices of the Department.

(x) "Person"¹⁵ or "Persons" shall include any being, natural or juridical, susceptible of rights and obligations or of being the subject of legal relations.

(y) "Pollution"¹⁶ shall mean any alteration of the physical, chemical or biological properties of any water, air and/or land resources of the Philippines, or any discharge or emission thereto of any liquid, gaseous or solid wastes as will be likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.

(z) "Pollution Control Facility" or "Pollution Control Device"¹⁷ shall mean any device or apparatus installed to prevent, control or abate pollution.

(aa) "Pollution cases" shall refer to controversies being resolved involving pollution control and environmental management laws.

(bb) "Pollution control and environmental management laws" shall refer to the relevant laws enacted by the executive branch of the Philippine Government.

(cc) "Regional Office"¹⁸ shall mean any of the Regional Offices of the Environmental Management Bureau.

(dd) "Small Business Enterprise" shall mean any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, is more than Three Million Pesos (P3,000,000.00) but not more than Fifteen Million Pesos (P15,000,000.00).

(ee) "Stationary source"¹⁹ refers to any building or fixed structure, facility or installation that emits or may emit any air pollutant.

(ff) "Technical Conference" shall refer to a meeting called OR CONVENED by the Regional Office or the Board for the purpose of: (1) giving the respondent or his duly authorized representative, the opportunity to contest the basis of A NOV as well as the basis of the applicable fines or penalties; (2) informing the respondent of the possibility of imposition and/or accrual of fines; and; (3) obtaining a commitment from the respondent to implement remedial measures to abate or mitigate the pollution complained of, or undertake to comply with required licensing or permitting conditions or requirement, or requirements of the regulations, as applicable, among others.

(gg) "Temporary Lifting Order (TLO)" shall mean an order issued by the Board, after a satisfactory showing of the respondent's compliance with specified conditions, to provisionally set aside the effect of a Cease and Desist Order and allow the limited operation of a facility or business but only for a specific purpose or for a limited period."

RULE III

Jurisdiction and Authority of the Board

SECTION 1. Jurisdiction of the Board. —

A. General Jurisdiction — The Board shall have exclusive jurisdiction over the adjudication of pollution cases, and all other matters related thereto, including the imposition of administrative sanctions.

Pursuant to Section 19 of Executive Order 192, the powers and functions may be delegated to the Regional Officers of the Department in accordance with rules and regulation to be formulated by the Board.

B. Specific Jurisdiction — Notwithstanding the general jurisdiction of the Board over adjudication of pollution cases, and all matters related thereto, the Board has specific jurisdiction, over the following cases:

1. Clean Air Act (R.A. 8749)

- a. For actual exceedance of air quality standards or limitations provided under the Clean Air Act;
- b. Any order, rule or regulation issued by the DENR with respect to such standard or limitation.

2. Clean Water Act (R.A. 9275)

The PAB has the exclusive and original jurisdiction with respect to adjudication of pollution cases based on exceedance of the DENR Effluent Standards and other acts defined as prohibited under Section 27 of R.A. 9275.

3. Establishing an Environmental Impact Statement System (P.D. 1586)

The PAB has jurisdiction to hear cases of violation of P.D. 1586 and its IRR as defined in Section 27 (h) of R.A. 9275.

4. Ecological Solid Waste Management Act (R.A. 9003)

The PAB has jurisdiction to hear cases of unauthorized transport and dumping into sea water solid waste as defined in R.A. 9003.

5. Toxic Substances and Hazardous Wastes Act (R.A. 6969)

The PAB has jurisdiction over cases of:

- a. Illegal transport or dumping or discharge of prohibited chemicals, substances or pollutants listed under R.A. 6969; and
- b. Operating facilities that discharges hazardous substances into water bodies.