

**[DENR ADMINISTRATIVE ORDER NO. 2010-13,
May 05, 2010]**

**AMENDMENTS TO SECTION 16 (ANCESTRAL LANDS) AND TO
CHAPTER XIV (DEVELOPMENT OF MINING COMMUNITIES,
SCIENCES AND MINING TECHNOLOGY) OF DENR
ADMINISTRATIVE ORDER NO. 96-40, AS AMENDED, THE
REVISED IMPLEMENTING RULES AND REGULATIONS OF
REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE
"PHILIPPINE MINING ACT OF 1995"**

Pursuant to Section 8 of Republic Act (R.A.) No. 7942, otherwise known as the "Philippine Mining Act of 1995", and Section 275 of DENR Administrative Order (D.A.O.) No. 96-40, entitled "Revised Implementing Rules and Regulations of Republic Act No. 7942, otherwise known as the 'Philippine Mining Act of 1995", and in line with the policy of the Government to continuously provide for a responsive regulatory framework, the following Sections of D.A.O. No. 96-40, as amended, are hereby further amended for the guidance and compliance of all concerned:

Section 1. Section 16 of the said D.A.O. is hereby amended to read as follows:

"Section 16. Ancestral Lands

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The implementation of this Section shall be in accordance with Republic Act No. 8371, otherwise known as "The Indigenous Peoples Rights Act of 1997" and other pertinent laws."

Section 2. Sections 134 to 136-D of the said D.A.O. are hereby further amended to read as follows:

"Section 134. Development of Mining Community, Mining Technology and Geosciences, and Institutionalization of Public Awareness and Education on Mining and Geosciences

a. The Contractor/Permit Holder/Lessee shall assist in the development of the host and neighboring communities in accordance with its Social Development and Management Program (SDMP) to promote the general welfare of the inhabitants living therein. Host community refers to the barangay(s) where the mining area is located, and neighboring community refers to the barangay(s) adjacent to the host community;

b. The Contractor/Permit Holder/Lessee shall develop a program for the advancement of mining technology and

geosciences to build up resources and mineral discoveries, improve operational efficiency and resource recovery, and enhance environmental protection and mine safety;

c. The Contractor/Permit Holder/Lessee shall develop and institutionalize an Information, Education and Communication (IEC) Program for greater public awareness and understanding of responsible mining and geosciences; and

d. The Contractor/Permit Holder/Lessee shall allot annually a minimum of one and a half percent (1.50%) of the operating costs necessary to implement Subsections (a), (b) and (c) of this Section. Provided that of this amount, 1.125% (75% of 1.50%) shall be apportioned to implement the SDMP in Subsection (a) hereof, 0.150% (10% of 1.50%) for the implementation of Program for the Development of Mining Technology and Geosciences in Subsection (b) hereof and 0.225% (15% of 1.50%) for the implementation of IEC Program in Subsection (c) hereof. Provided, further, That any unspent amount and/or savings, for any given year, allotted for the implementation of the various programs shall be added to the succeeding year's allotment and may be re-programmed after consultations with host and neighboring communities.

For the purpose of this D.A.O., the term Operating Cost shall mean the specific costs of producing a saleable product on a commercial scale incurred in the calculation of the net income before tax, as confirmed by the Bureau/Regional Office. This shall include all costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management.

The Contractor/Permit Holder/Lessee shall submit to the Regional Office concerned a sworn statement of its previous year's operating costs within sixty (60) days after the end of each calendar year as basis for the implementation of Subsections (a), (b), and (c) hereof in the case of an operating mine: Provided, That, in the case of new mining operations, the basis for the initial SDMP implementation shall be the operating costs estimates contained in the approved Mining Project Feasibility Study: Provided, further, That the expenditures for the implementation of Subsections (a), (b), and (c) hereof shall not be credited to the royalty payment for Indigenous Peoples/Indigenous Cultural Communities per Section 16 hereof.

Section 135. Credited Activities or Expenditures

Programs/Projects/Activities (P/P/As) under the following areas of concern shall be considered as creditable activities or expenditures:

a. For the development of the host and neighboring communities:

1. Human Resource Development and Institutional Building – P/P/As geared towards strengthening existing local institutions, fostering the creation of new community organizations, and providing marginalized/disadvantaged groups the opportunity to participate fully in the development of their communities. These shall include, but not limited to, capacity- and capability-building on project management, organizational development, entrepreneurship, and skills development/training;

2. Enterprise Development and Networking – P/P/As geared towards the development and promotion of economically viable community enterprises by providing members of the community access to capital and thereby enhance and stimulate existing livelihood industries and other income generating activities, help create new ones, and develop market diversification. These shall include income generating activities, such as animal husbandry, provision of farm implements, establishment of small/micro-businesses, such as household-based food processing, horticulture and agronomy, traditional handicrafts, support to small local businesses through preferential procurement of goods and services from local sources, as well as cooperative development, market linking and networking, among others;

3. Assistance to Infrastructure Development and Support Services – P/P/As geared towards stimulating and facilitating other forms of economic activity, such as the development, construction, improvement, and/or maintenance of farm-to-market roads, water systems, post-harvest facilities, bridges, and electric power, among others;

4. Access to Education and Education Support Programs – P/P/As geared towards providing educational opportunities to members of the community, including scholarships from primary to tertiary education, technical/vocational education, provision of apprenticeship programs, construction/repair/improvement of school buildings and related facilities, provision of school furniture and fixtures, and subsidy to teachers, among others;

5. Access to Health Services, Health Facilities and Health Professionals – P/P/As geared towards achieving overall improvement in the living conditions and health of the host and neighboring communities, such as the provision of health facilities, access to health services, medicines and professionals, health education and preventive measures, training of health paraprofessionals, maternal-child health care and family planning, provision of health insurance, establishment of nutrition and immunization programs, access to clean and potable water, and provision of waste and sewage disposal facilities, among others;

6. Protection and Respect of Socio-Cultural Values – P/P/As geared towards safeguarding the existing socio-cultural values of the host and neighboring communities to promote social cohesion and cultural awareness, and to instill community pride; and

7. Use of facilities/services within the mine camp or plant site, such as hospitals, schools, among others, by members of the host and neighboring communities, the expenditures of which shall be apportioned pro-rata according to the number of people from said communities accommodated in such facilities.

Provided, That expenditures for P/P/As for the mine camp accruing to the Contractors'/Permit Holders'/Lessees' employees and their families shall not be included in the computation of the cost of the SDMP.

b. For the development of mining technology and geosciences:

1. Basic and applied research on mining technology, geosciences, and related subjects such as, but not limited to, the socioeconomics related to mining operations, environmental protection, mineral economics, among others;

2. Advanced studies, related to mining which are conducted by qualified researchers who are not employees of the mine, following current guidelines by the Department of Science and Technology, including the cost of publication thereof in refereed technical journals or monographs accessible to the local scientific community;

3. Expenditures for scholars, fellows and trainees, including grants for dissertations, on mining technology and geosciences and related subjects; and

4. Expenditures on equipment and capital outlay as assistance for research and/or educational institutions which serve as a venue for developing mining technology and geosciences.

Provided, further, That the Provincial and Municipal Governments concerned shall be consulted in the determination of beneficiaries of scholarships and trainings, as well as the subject of researches and training programs.

c. For the promotion of public awareness and education on mining technology and geosciences:

1. Establishment/enhancement/maintenance of information and publicity centers where stakeholders can access information on the performance of a mining project;

2. Publication of IEC materials on social environmental and other issues/ concerns relative to mineral resources development and responsible mining operations;

3. Expenditures for continuing public awareness and education campaigns such as radio and web-based broadcasts, publications, and other forms of mass communication, on mining-related information, issues and concerns; and

4. Expenditures on equipment and capital outlay as assistance to the institutionalization of public awareness and education on mining technology and geosciences.

Section 136. Duties and Responsibilities of the Contractor/Permit Holder/ Lessee on the Development of the Host and Neighboring Communities

a. Coordinate with proper authorities in the provision and implementation of development plans for the host and neighboring communities;

b. Promote community service and volunteerism by encouraging members of the host and neighboring communities to impart time, knowledge, skills and talents in the development and implementation of community P/P/As as a way of instilling community ownership and achieving a more cohesive and stronger community;

c. Help create self-sustaining income generating activities such as, but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income generating activities are identified to be present within the host and/or neighboring communities, the Contractor/Permit Holder/ Lessee shall work with such communities towards the preservation and/or enhancement of such activities; and,

d. Give preference to qualified Filipino citizens in the hiring of personnel for its mining operations, the majority of which shall originate according to priority from the host and neighboring communities, the host municipality and province where mine is located: Provided, That the Contractor/Permit Holder/Lessee shall organize, at its own expense, skills enhancement programs in the absence of the needed skills: Provided, further, That it shall give its firm commitment to skills re-formation and entrepreneurship development for people in the mining communities as an integral part of the mine closure process.

Section 136-A. Social Development and Management Program and Community Development Program

All Contractors/Permit Holders/Lessees shall prepare an SDMP, in consultation and in partnership with the host and neighboring communities. The SDMP shall be actively promoted and shall cover and include all P/P/As towards enhancing the development of the host and neighboring communities in accordance with Sections 135 and 136 hereof. To meet the changing needs and demands of the communities, the Contractor/Permit Holder/Lessee engaged in mining operations shall submit every five (5) years an SDMP to the Regional Office for approval as provided for in Section 136-B hereof.