Republic Act No. 8749 June 23, 1999

AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::

Chapter 1
General Provisions

Article One
Basic Air Quality Policies

Section 1. ***Short Title.*** - This Act shall be known as the **"*Philippine Clean Air Act of 1999*."**

Section 4. ***Recognition of Rights*.** - Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:

(a) The right to breathe clean air;

(b) The right to utilize and enjoy all natural resources according to the principles of sustainable development;

(c) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;

(d) The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health;

(e) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;

(f) The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act;

(g) The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and

(h) The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

Article Two
Definition of Terms

Section 5. ***Definitions*. -** As used in this Act:

a) "*Air pollutant*" means any matter found in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, and the inert gases in their natural or normal concentrations, that is detrimental to health or the environment, which includes but not limited to smoke, dust, soot, cinders, fly ash, solid particles of any kind, gases, fumes, chemical mists, steam and radio-active substances;

b) "*Air pollution*" means any alteration of the physical, chemical and biological properties of the atmospheric air, or any discharge thereto of any liquid, gaseous or solid substances that will or is likely to create or to render the air resources of the country 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;

i) "*Greenhouse gases*" mean those gases that can potentially or can reasonably be expected to induce global warming, which include carbon dioxide, methane, oxides of nitrogen, chlorofluorocarbons, and the like;

j) "*Hazardous substances*" mean those substances which present either: (1) short-term acute hazards such as acute toxicity by ingestion, inhalation, or skin absorption, corrosivity or other skin or eye contact hazard or the risk of fire explosion; or (2) longterm toxicity upon repeated exposure, carcinogenicity (which in some cases result in acute exposure but with a long latent period), resistance to detoxification process such as biodegradation, the potential to pollute underground or surface waters;

r) "*Ozone Depleting Substances* (ODS)" means those substances that significantly deplete or otherwise modify the ozone layer in a manner that is likely to result in adverse effects of human health and the environment such as, but not limited to, chloroflourocarbons, halons and the like;

s) "*Persistent Organic Pollutants* (POPs)" means the organic compounds that persist in the environment, bioaccumulate through the food web, and pose a risk of causing adverse effects to human health and the environment. These compounds resist photolytic, chemical and biological degradation, which shall include but not be limited to dioxin, furan, Polychlorinated Biphenyls (PCBs), organochlorine pesticides, such as aldrin, dieldrin, DDT, hexachlorobenzene, lindane, toxaphere and chlordane;

t) "*Poisonous and toxic fumes*" means any emissions and fumes which are beyond internationally - accepted standards, including but not limited to the World Health Organization (WHO) guideline values;

w) "*Standard of performance*" means a standard for emissions of air pollutant which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirement which the Department determines, and adequately demonstrates; and

Chapter 2
Air Quality Management System

Article One
General Provisions

Section 13. *Emission Charge System*. - The Department, in case of industrial dischargers, and the Department of Transportation and Communication (DOTC), in case of motor vehicle dischargers, shall, based on environmental techniques, design, impose on and collect regular emission fees from said dischargers as part of the emission permitting system or vehicle registration renewal system, as the case may be. The system shall encourage the industries and motor vehicles to abate, reduce, or prevent pollution. The basis of the fees include, but is not limited to, the volume and toxicity of any emitted pollutant. Industries, which shall install pollution control devices or retrofit their existing facilities with mechanisms that reduce pollution shall be entitled to tax incentives such as but not limited total credits and/or accelerated depreciation deductions.

Section 14. *Air Quality Management Fund*. - An Air Quality Management Fund to be administered by the Department as a special account in the National Treasury is hereby established to finance containment, removal, and clean-up operations of the Government in air pollution cases, guarantee restoration of ecosystems and rehabilitate areas affected by the acts of violators of this Act, to support research, enforcement and monitoring activities and capabilities of the relevant agencies, as well as to provide technical assistance to the relevant agencies. Such fund may likewise be allocated per airshed for the undertakings herein stated.

The Fund shall be sourced from the fines imposed and damages awarded to the Republic of the Philippines by the Pollution Adjudication Board (PAB), proceeds of licenses and permits issued by the Department under this Act, emission fees and from donations, endowments and grants in the forms of contributions. Contributions to the Fund shall be exempted from donor taxes and all other taxes, charges or fees imposed by the Government.

Article Two
Air Pollution Clearances and Permits for Stationary Sources

Section 16. *Permits*. - Consistent with the provisions of this Act, the Department shall have the authority to issue permits as it may determine necessary for the prevention and abatement of air pollution.

Said permits shall cover emission limitations for the regulated air pollutants to help attain and maintain the ambient air quality standards. These permits shall serve as management tools for the LGUs in the development of their action plan.

Section 18. ***Financial Liability for Environmental Rehabilitation*****.** - As part of the environmental management plan attached to the environmental compliance certificate pursuant to Presidential Decree No. 1586 and rules and regulations set therefor, the Department shall require program and project proponents to put up financial guarantee mechanisms to finance the needs for emergency response, clean-up rehabilitation of areas that may be damaged during the program or project's actual implementation. Liability for damages shall continue even after the termination of a program or project, where such damages are clearly attributable to that program or project and for a definite period to be determined by the Department and incorporated into the environmental compliance certificate.

Financial liability instruments may be in the form a trust fund, environmental insurance, surety bonds, letters of credit, as well as self-insurance. The choice of the guarantee instruments shall furnish the Department with evidence of availment of such instruments.

Article Three
Pollution from Stationary Sources

Section 20. ***Ban on Incineration*****.** - Incineration, hereby defined as the burning of municipal, biomedical and hazardous waste, which process emits poisonous and toxic fumes is hereby prohibited; *Provided, however*, That the prohibition shall not apply to traditional small-scale method of community/neighborhood sanitation "siga", traditional, agricultural, cultural, health, and food preparation and crematoria; *Provided, Further*, That existing incinerators dealing with a biomedical wastes shall be out within three (3) years after the effectivity of this Act;*Provided, Finally*, that in the interim, such units shall be limited to the burning of pathological and infectious wastes, and subject to close monitoring by the Department.

Local government units are hereby mandated to promote, encourage and implement in their respective jurisdiction a comprehensive ecological waste management that includes waste segregation, recycling and composting.

With due concern on the effects of climate change, the Department shall promote the use of state-of-the-art, environmentally-sound and safe non-burn technologies for the handling, treatment, thermal destruction, utilization, and disposal of sorted, unrecycled, uncomposted, biomedical and hazardous wastes.

Article Four
Pollution from Motor Vehicles

Section 22. ***Regulation of All Motor Vehicles and Engines*****.** - Any imported new or locally-assembled new motor vehicle shall not be registered unless it complies with the emission standards set pursuant to this Act, as evidenced by a Certificate of Conformity (COC) issued by the Department.

Any imported new motor vehicle engine shall not be introduced into commerce, sold or used unless it complies with emission standards set pursuant to this Act.

Any imported used motor vehicle or rebuilt motor vehicle using new or used engines, major parts or components shall not be registered unless it complies with the emission standards.

In case of non-compliance, the importer or consignee may be allowed to modify or rebuild the vehicular engine so it will be in compliance with applicable emission standards.

No motor vehicle registration (MVR) shall be issued unless such motor vehicle passes the emission testing requirement promulgated in accordance with this Act. Such testing shall be conducted by the DOTC or its authorized inspection centers within sixty (60) days prior to date of registration.

The DTI shall promulgate the necessary regulations prescribing the useful life of vehicles and engines including devices in order to ensure that such vehicles will conform to the emissions which they were certified to meet. These regulations shall include provisions for ensuring the durability of emission devices.

Section 23. ***Second-Hand Motor Vehicle Engines*****.** - Any imported second-hand motor vehicle engine shall not be introduced into commerce, sold or used unless it complies with emission standards set pursuant to this Act.

Section 24. ***Pollution from smoking*****.** - Smoking inside a public building or an enclosed public place including public vehicles and other means of transport or in any enclosed area outside of one's private residence, private place of work or any duly designated smoking area is hereby prohibited under this Act. This provision shall be implemented by the LGUs.

Chapter 3
Fuels, Additives, Substances and Pollutants

Article One
Fuels, Additives and Substances

Section 28. ***Misfueling*****.** - In order to prevent the disabling of any emission control device by lead contamination, no person shall introduce or cause or allow the introduction of leaded gasoline into any motor vehicle equipped with a gasoline tank filler inlet and labeled "unleaded gasoline only". This prohibition shall also apply to any person who knows or should know that such vehicle is designed solely for the use of unleaded gasoline.

Section 29. ***Prohibition on Manufacture, Import and Sale of leaded Gasoline and of Engines and/or Components Requiring Leaded Gasoline*****.** - Effective not later than eighteen (18) months after the enactment of this Act, no person shall manufacture, import, sell, offer for sale, introduce into commerce, convey or otherwise dispose of, in any manner, leaded gasoline and engines and components requiring the use of leaded gasoline.

For existing vehicles, the DTI shall formulate standards and procedures that will allow non-conforming engines to comply with the use of unleaded fuel within five(5) years after the effectivity of this Act.

Article Two
Other Pollutants

Section 30. ***Ozone-Depleting Substances*****.** - Consistent with the terms and conditions of the Montreal Protocol on Substances that Deplete the Ozone Layer and other international agreements and protocols to which the Philippines is a signatory, the Department shall phase out ozone-depleting substances.

Within sixty (60) days after the enactment of this Act, the Department shall publish a list of substances which are known to cause harmful effects on the stratospheric ozone layer.

Section 31. ***Greenhouse Gases*****.** - The Philippine Atmospheric, Geophysical and Astronomical Service

Administration (PAGASA) shall regularly monitor meteorological factors affecting environmental conditions including ozone depletion and greenhouse gases and coordinate with the Department in order to effectively guide air pollution monitoring and standard-setting activities.

The Department, together with concerned agencies and local government units, shall prepare and fully implement a national plan consistent with the United Nations Framework Convention on Climate Change and other international agreements, conventions and protocols on the reduction of greenhouse gas emissions in the country.

Section 32. ***Persistent Organic Pollutants*****.** - The Department shall, within a period of two (2) years after the enactment of this Act, establish an inventory list of all sources of Persistent Organic Pollutants (POPs) in the country. The Department shall develop short-term and long-term national government programs on the reduction and elimination of POPs such as dioxins and furans. Such programs shall be formulated within a year after the establishment of the inventory list.

Section 33. ***Radioactive Emissions*****.** - All projects which will involve the use of atomic and/or nuclear energy, and will entail release and emission of radioactive substances into the environment, incident to the establishment or possession of nuclear energy facilities and radioactive materials, handling, transport, production, storage, and use of radioactive materials, shall be regulated in the interest of public health and welfare by the Philippine

Nuclear Research Institute (PNRI), in coordination with Department and other appropriate government agencies.

Section 34. ***Lead Agency*****.** - The Department, unless otherwise provided herein, shall be the primary government agency responsible for the implementation and enforcement of this Act. To be more effective in this regard, The Department's Environmental Management Bureau (EMB) shall be converted from a staff bureau to a line bureau for a period of no more than two (2) years, unless a separate, comprehensive environmental management agency is created.

Section 36. ***Role of Local Government Units*****.** - Local Government Units (LGUs) shall share the responsibility in the management and maintenance of air quality within their territorial jurisdiction. Consistent with Sections 7, 8 and 9 of this Act, LGUs shall implement air quality standards set by the Board in areas within their jurisdiction;*Provided, however*, That in case where the board has not been duly constituted and has not promulgated its standards, the standards set forth in this Act shall apply.

The Department shall provide the LGUs with technical assistance, trainings and a continuing capability-building program to prepare them to undertake full administration of the air quality management and regulation within their territorial jurisdiction.

Section 37. ***Environmental and Natural Resources Office*****.** - There may be established an Environment and Natural Resources Office in every province, city, or municipality which shall be headed by the environment and natural resources officer and shall be appointed by the Chief Executive of every province, city or municipality in accordance with the provisions of Section 484 of Republic Act No. 7160. Its powers and duties, among others, are:

a) To prepare comprehensive air quality management programs, plans and strategies within the limits set forth in Republic act. No. 7160 and this Act which shall be implemented within its territorial jurisdiction upon the approval of the sanggunian;

b) To provide technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and the provision of adequate facilities relative to air quality;

c) To take the lead in all efforts concerning air quality protection and rehabilitation;

d) To recommend to the Board air quality standards which shall not exceed the maximum permissible standards set by rational laws;

e) To coordinate with other government agencies and non-governmental organizations in the implementation of measures to prevent and control air pollution; and

f) Exercise such other powers and perform such duties and functions as may be prescribed by law or ordinance: *Provided*, *however*, That in provinces/cities/municipalities where there are no environment and natural resources officers, the local executive concerned may designate any of his official and/or chief of office preferably the provincial, city or municipal agriculturist, or any of his employee: *Provided, Finally*, That in case an employee is designated as such, he must have sufficient experience in environmental and natural resources management, conservation and utilization.

Chapter 5
Actions

Section 40. ***Administrative Action*****.** - Without prejudice to the right of any affected person to file an administrative action, the Department shall, on its own instance or upon verified complaint by any person, institute administrative proceedings against any person who violates:

(a) Standards or limitation provided under this Act; or

(b) Any order, rule or regulation issued by the Department with respect to such standard or limitation.

Section 41. ***Citizen Suits*****.** - For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

(a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or

(b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or

(c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: *Provided, however*, That no suit can be filed until thirty-day (30) notice has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days, the court shall make a determination if the compliant herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

Section 42. ***Independence of Action*****.** - The filing of an administrative suit against such person/entity does not preclude the right of any other person to file any criminal or civil action. Such civil action shall proceed independently.

Section 43. ***Suits and Strategic Legal Actions Against Public Participation and the Enforcement of This Act*****.** - Where a suit is brought against a person who filed an action as provided in Sec. 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, their being no grave abuse of authority, and done in the course of enforcing this Act.

Section 44. ***Lien Upon Personal and Immovable Properties of Violators*****.** - Fines and penalties imposed pursuant to this Act shall be liens upon personal or immovable properties of the violator. Such lien shall, in case of insolvency of the respondent violator, enjoy preference to laborer's wages under Articles 2241 and 2242 of Republic Act No. 386, otherwise known as the New Civil Code of the Philippines.

Chapter 6
Fines and Penalties

Section 45. ***Violation of Standards for Stationary Sources*****.** - For actual exceedance of any pollution or air quality standards under this Act or its rules and regulations, the Department, through the Pollution Adjudication Board (PAB), shall impose a fine of not more than One hundred thousand pesos (P100,000.00) for every day of violation against the owner or operator of a stationary source until such time that the standards have been complied with.

For purposes of the application of the fines, the PAB shall prepare a fine rating system to adjust the maximum fine based on the violator's ability to pay, degree of willfulness, degree of negligence, history of non-compliance and degree of recalcitrance: *Provided,* That in case of negligence, the first time offender's ability to pay may likewise be considered by the Pollution Adjudication Board: *Provided, Further*, That in the absence of any extenuating or aggravating circumstances, the amount of fine for negligence shall be equivalent to one-half of the fine for willful violation.

The fines herein prescribed shall be increased by at least ten percent (10%), every three (3) years to compensate for inflation and to maintain the deterrent function of such fines.

In addition to the fines, the PAB shall order closure, suspension of development, construction, or operations of the stationary sources until such time that proper environmental safeguards are put in place: *Provided,* That an establishment liable for a third offense shall suffer permanent closure immediately. This paragraph shall be without prejudice to the immediate issuance of an ex parte order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case upon prima facie evidence that their is imminent threat to life, public health, safety or general welfare, or to plant or animal life, or whenever there is an exceedance of the emission standards set by the Department and/or the Board and/or the appropriate LGU.

Section 46. ***Violation of Standards for Motor Vehicles*****.** - No motor vehicle shall be registered with the DOTC unless it meets the emission standards set by the Department as provided in Sec. 21 hereof.

Any vehicle suspected of violation of emission standards through visual signs, such as, but not limited to smoke-belching, shall be subjected to an emission test by a duly authorized emission testing center. For this purpose, the DOTC or its authorized testing center shall establish a roadside inspection system. Should it be shown that there was no violation of emission standards, the vehicle shall be immediately released. Otherwise, a testing result indicating an exceedance of the emission standards would warrant the continuing custody of the impounded vehicle unless the appropriate penalties are fully paid, and the license plate is surrendered to the DOTC pending the fulfillment of the undertaking by the owner/operator of the motor vehicle to make the necessary repairs so as to comply with the standards. A pass shall herein be issued by the DOTC to authorize the use of the motor vehicle within a specified period that shall not exceed seven (7) days for the sole purpose of making the necessary repairs on the said vehicle. The owner/operator of the

vehicle shall be required to correct its defects and show proof of compliance to the appropriate pollution control office before the vehicle can be allowed to be driven on any public or subdivision roads.

In addition, the driver and operator of the apprehended vehicle shall undergo a seminar on pollution control management conducted by the DOTC and shall also suffer the following penalties:

a) First Offense - a fine not to exceed Two Thousand Pesos (P2,000.00);

b) Second Offense - a fine not less than Two Thousand Pesos (P2,000.00) and not to exceed Four Thousand Pesos (P4,000.00); and

c) Third offense - one (1) year suspension of the Motor Vehicle Registration (MVR) and a fine of not less than Four Thousand Pesos (P4,000.00) and not more than Six thousand pesos (P6,000.00).

Any violation of the provisions of Sec. 21 paragraph (d) with regard to national inspection and maintenance program, including technicians and facility compliance shall penalized with a fine of not less than Thirty Thousand Pesos (P30,000.00) or cancellation of license of both the technician and the center, or both, as determined by the DTI.

All law enforcement officials and deputized agents accredited to conduct vehicle emissions testing and apprehensions shall undergo a mandatory training on emission standards and regulations. For this purpose, the Department, together with the DOTC, DTI, DOST, Philippine National Police (PNP) and other concerned agencies and private entities shall design a training program.

Section 47. ***Fines and Penalties for Violations of Other Provisions in the Act*****.** - For violations of all other provisions provided in this Act and of the rules and regulations thereof, a fine of not less than Ten thousand pesos (P10,000) but not more than One Hundred thousand Pesos (P100,000) or six (6) months to six (6) years imprisonment or both shall be imposed. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

Section 48. ***Gross Violations*****.** - In case of gross violation of this Act or its implementing rules and regulations, the PAB shall recommend to the proper government agencies to file the appropriate criminal charges against the violators. The PAB shall assist the public prosecutor in the litigation of the case. Gross violation shall mean:

(a) three (3) or more specific offenses within a period of one (1) year;

(b) three (3) or more specific offenses with three (3) consecutive years;

(c) blatant disregard of the orders of the PAB, such s but not limited to the breaking of seal, padlocks and other similar devices, or operation despite the existence of an order for closure, discontinuance or cessation of operation; and

(d) irreparable or grave damage to the environment as a consequence of any violation of the provisions of this Act.

Offenders shall be punished with imprisonment of not less than six (6) years but not more than ten (10) years at the discretion of the court. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

REPUBLIC ACT 9003 January 26, 2001

Section 1. *Short Title* - This Act shall be known as the "Ecological Solid Waste Management Act of 2000."

Article 2
Definition of Terms

Section 3. *Definition of Terms* - For the purposes of this Act:

(h) Controlled dump shall refer to a disposal site at which solid waste is deposited in accordance with the minimum prescribed standards of site operation;

(j) Disposal shall refer to the discharge, deposit, dumping, spilling, leaking or placing of any solid waste into or in an land;

(k) Disposal site shall refer to a site where solid waste is finally discharged and deposited;

(l) Ecological solid waste management shall refer to the systematic administration of activities which provide for segregation at source, segregated transportation, storage, transfer, processing, treatment, and disposal of solid waste and all other waste management activities which do not harm the environment;

(m) Environmentally acceptable shall refer to the quality of being re-usable, biodegradable or compostable, recyclable and not toxic or hazardous to the environment;

(p) Hazardous waste shall refer to solid waste management or combination of solid waste which because of its quantity, concentration or physical, chemical or infectious characteristics may:

(1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;

(q) Leachate shall refer to the liquid produced when waste undergo decomposition, and when water percolate through solid waste undergoing decomposition. It is contaminated liquid that contains dissolved and suspended materials;

(r) Materials recovery facility - includes a solid waste transfer station or sorting station, drop-off center, a composting facility, and a recycling facility;

(s) Municipal waste shall refer to wastes produced from activities within local government units which include a combination of domestic, commercial, institutional and industrial wastes and street litters;

(t) Open dump shall refer to a disposal area wherein the solid wastes are indiscriminately thrown or disposed of without due planning and consideration for environmental and Health standards;

(z) Recyclable material shall refer to any waste material retrieved from the waste stream and free from contamination that can still be converted into suitable beneficial use or for other purposes, including, but not limited to, newspaper, ferrous scrap metal, non-ferrous scrap metal, used oil, corrugated cardboard, aluminum, glass, office paper, tin cans and other materials as may be determined by the Commission;

(aa) Recycled material shall refer to post-consumer material that has been recycled and returned to the economy;

(bb) Recycling shall refer to the treating of used or waste materials through a process of making them suitable for beneficial use and for other purposes, and includes any process by which solid waste materials are transformed into new products in such a manner that the original product may lose their identity, and which maybe used as raw materials for the production of other goods or services: *Provided*, That the collection, segregation and re-use of previously used packaging material shall be deemed recycling under this Act;

(ff) Sanitary landfill shall refer to a waste disposal site designed, constructed, operated and maintained in a manner that exerts engineering control over significant potential environment impacts arising from the development and operation of the facility;

(kk) Solid waste shall refer to all discarded household, commercial waste, non-hazardous institutional and industrial waste, street sweepings, construction debris, agricultural waste, and other non-hazardous/non-toxic solid waste.

CHAPTER II
INSTITUTIONAL MECHANISM

Section 4. *National Solid Waste Management Commission* - There is hereby established a National Solid Waste Management Commission, hereinafter referred to as the Commission, under the Office of the President. The Commissioner shall be composed of fourteen (14) members from the government sector and three members from the private sector. The government sector shall be represented by the heads of the following agencies in their *ex officio* capacity:

(1) Department of Environment and Natural Resources (DENR);

(2) Department of the Interior and Local Government (DILG);

(3) Department of Science and Technology (DOST);

(4) Department of Public Works and Highways (DPWH);

(5) Department of Health (DOH);

(6) Department of Trade and Industry (DTI);

(7) Department of Agriculture (DA);

(8) Metro Manila Development Authority (MMDA);

(9) League of provincial governors;

(10) League of city mayors;

(11) League of municipal mayors;

(12) Association of barangay councils;

(13) Technical Education and Skills Development Authority (TESDA); and

(14) Philippine Information Agency.

The private sector shall be represented by the following:

(a) A representative from nongovernment organizations (NGOs) whose principal purpose is to promote recycling and the protection of air and water quality;

(b) A representative from the recycling industry; and

(c) A representative from the manufacturing or packaging industry;

The Commission may, from time to time, call on any other concerned agencies or sectors as it may deem necessary.

Provided, That representatives from the NGOs, recycling and manufacturing or packaging industries shall be nominated through a process designed by themselves and shall be appointed by the President for a term of three (3) years.

Provided, *further,* That the Secretaries of the member agencies of the Commission shall formulate action plans for their respective agencies to complement the National Solid Waste Management Framework.

The Department Secretary and a private sector representative of the Commission shall serve as chairman and vice chairman, respectively. The private sector representatives of the Commission shall be appointed on the basis of their integrity, high decree of professionalism and having distinguished themselves in environmental and resource management. The members of the Commission shall serve and continue to hold office until their successors shall have been appointed and qualified. Should a member of the Commission fail to complete his/her term, the unexpired portion of the term. Finally, the members shall be entitled to reasonable traveling expenses and honoraria.

The Department, through the Environmental Management Bureau, shall provide secretariat support to the Commission. The Secretariat shall be headed by an executive director who shall be nominated by the members of the Commission and appointed by the chairman.

Section 5. *Powers and Functions of the Commission* - The Commission shall oversee the implementation of solid waste management plans and prescribe policies to achieve the objectives of this Act. The Commission shall undertake the following activities.

(a) Prepare the national solid waste management framework;

(b) Approve local solid waste management plans in accordance with its rules and regulations;

(c) Review and monitor the implementation of local solid waste management plans;

(d) Coordinate the operation of local solid waste management boards in the provincial and city/municipal levels;

(e) To the maximum extent feasible, utilizing existing resources, assist provincial, city and municipal solid waste management plans;

(f) Develop a model provincial, city and municipal solid waste management plan that will establish prototypes of the content and format which provinces, cities and municipalities may use in meeting the requirements of the National Solid Waste Management Framework;

(g) Adopt a program to provide technical and other capability building assistance and support to local government units in the development and implementation of source reduction programs;

(h) Develop and implement a program to assist local government units in the identification of markets for materials that are diverted from disposal facilities through re-use, recycling, and composting, and other environment-friendly methods;

(i) Develop a mechanism for the imposition of sanctions for the violations environmental rules and regulations;

(j) Manage the Solid Waste Management Fund;

(k) Develop and prescribe procedures for the issuance of appropriate permits and clearances.

(l) Review the incentives scheme for effective solid waste management, for purpose of ensuring relevance and efficiency in achieving the objectives of this Act;

(m) Formulate the necessary education promotion and information campaign strategies;

(n) Establish, after notice and hearing of the parties concerned, standards, criteria, guidelines, and formula that are fair, equitable and reasonable, in establishing tipping charges and rates that the proponent will charge in the operation and management of solid waste management facilities and technologies.

(o) Develop safety nets and alternative livelihood programs for small recyclers and other sectors that will be affected as a result of the construction and/or operation of solid waste management recycling plant or facility.

(p) Formulate and update a list of non-environmentally acceptable materials in accordance with the provisions of this Act. For this purpose, it shall be necessary that proper consultation be conducted by the Commission with all concerned industries to ensure a list that is based on technological and economic viability.

(q) Encourage private sector initiatives, community participation and investments resource recovery-based livelihood programs for local communities.

(r) Encourage all local government agencies and all local government units to patronize products manufactured using recycled and recyclable materials;

(s) Propose and adopt regulations requiring the source separation and post separation collection, segregated collection, processing, marketing and sale of organic and designated recyclable material generated in each local government unit; and

(t) Study and review of the following:

(i) Standards, criteria and guidelines for promulgation and implementation of an integrated national solid waste management framework; and

(ii) Criteria and guidelines for siting, design, operation and maintenance of solid waste management facilities.

Section 8. *Role of the Departmen.* - For the furtherance of the objectives of this Act, the Department shall have the following functions:

(a) Chair the Commission created pursuant to this Act;

(b) Prepare an annual National Solid Waste Management Status Report;

(c) Prepare and distribute information, education and communication materials on solid waste management;

(d) Establish methods and other parameters for the measurement of waste reduction, collection and disposal;

(e) Provide technical and other capability building assistance and support to the LGUs in the development and implementation of local solid waste management plans and programs;

(f) Recommend policies to eliminate barriers to waste reduction programs;

(g) Exercise visitorial and enforcement powers to ensure strict compliance with this Act;

(h) Perform such other powers and functions necessary to achieve the objectives of this Act; and

(i) Issue rules and regulations to effectively implement the provisions of this Act.

Section 9. *Visitorial Powers of the Department.* - The Department or its duly authorized representative shall have access to, and the right to copy therefrom, the records required to be maintained pursuant to the provisions of this Act. The Secretary or the duly authorized representative shall likewise have the right to enter the premises of any generator, recycler or manufacturer, or other facilities any time to question any employee or investigate any fact, condition or matter which may be necessary to determine any violation, or which may aid in the effective enforcement of this Act and its implementing rules and regulations. This Section shall not apply to private dwelling places unless the visitorial power is otherwise judicially authorized.

Section 10. *Role of LGUs in Solid Waste Management* - Pursuant to the relevant provisions of R.A. No. 7160, otherwise known as the Local government code, the LGUs shall be primarily responsible for the implementation and enforcement of the provisions of this Act within their respective jurisdictions.

Segregation and collection of solid waste shall be conducted at the barangay level specifically for biodegradable, compostable and reusable wastes: *Provided*, That the collection of non-recyclable materials and special wastes shall be the responsibility of the municipality or city.

Section 20. *Establishing Mandatory Solid Waste Diversion* - Each LGU plan shall include an implementation schedule which shows that within five (5) years after the effectivity of this Act, the LGU shall divert at least 25% of all solid waste from waste disposal facilities through re-use, recycling and composting activities and other resource recovery activities; *Provided*, That the waste diversion goals shall be increased every three (3) years thereafter;*Provided*, *further*, That nothing in this Section prohibits a local government unit from implementing re-use, recycling, and composting activities designed to exceed the goal.

Article 2
Segregation of Wastes

Section 21. *Mandatory Segregation of Solid Wastes* - The LGUs shall evaluate alternative roles for the public and private sectors in providing collection services, type of collection system, or combination of systems, that best meet their needs: *Provided*, That segregation of wastes shall primarily be conducted at the source, to include household, institutional, industrial, commercial and agricultural sources: *Provided*, *further*; That wastes shall be segregated into the categories provided in Sec. 22 of this Act.

For premises containing six (6) or more residential units, the local government unit shall promulgate regulations requiring the owner or person in charge of such premises to:

(a) provide for the residents a designated area and containers in which to accumulate source separated recyclable materials to be collected by the municipality or private center; and

(b) notify the occupants of each buildings of the requirements of this Act and the regulations promulgated pursuant thereto.

Section 22. *Requirements for the Segregation and Storage of Solid Waste* - The following shall be the minimum standards and requirements for segregation and storage of solid waste pending collection:

(a) There shall be a separate container for each type of waste from all sources: *Provided*, That in the case of bulky waste, it will suffice that the same be collected and placed in a separate designated area; and

(b) The solid waste container depending on its use shall be properly marked or identified for on-site collection as "compostable", "non-recyclable", "recyclable" or "special waste", or any other classification as may be determined by the Commission.

Section 27. *Requirement for Eco-Labeling* - The DTI shall formulate and implement a coding system for packaging materials and products to facilitate waste and recycling and re-use.

Section 29. *Non-Environmentally Acceptable Products* - Within one (1) year from the effectivity of this Act, the Commission shall, after public notice and hearing, prepare a list of nonenvironmentally acceptable products as defined in this Act that shall be prohibited according to a schedule that shall be prepared by the Commission:*Provided*, *however*, That non-environmentally acceptable products shall not be prohibited unless the Commission first finds that there are alternatives available which are available to consumers at no more than ten percent (10%) greater cost than the disposable product.

Notwithstanding any other provisions to the contrary, this section shall not apply to:

(a) Packaging used at hospitals, nursing homes or other medical facilities; and

(b) Any packaging which is not environmentally acceptable, but for which there is no commercially available alternatives as determined by the Commission.

The Commission shall annually review and update the list of prohibited non-environmentally acceptable products.

Section 30. *Prohibition on the Use of Non-Environmentally Acceptable Packaging* - No person owning, operating or conducting a commercial establishment in the country shall sell or convey at retail or possess with the intent to sell or convey at retail any products that are placed, wrapped or packaged in or on packaging which is not environmentally acceptable packaging: *Provided*, That the Commission shall determine a phaseout period after proper consultation and hearing with the stakeholders or with the sectors concerned. The presence in the commercial establishment of non-environmentally acceptable packaging shall constitute a rebuttable presumption of intent to sell or convey the same at retail to customers.

Any person who is a manufacturer, broker or warehouse operator engaging in the distribution or transportation of commercial products within the country shall file a report with the concerned local government within one (1) year from the effectivity of this Act, and annually thereafter, a listing of any products in packaging which is not environmentally acceptable. The Commission shall prescribe the form of such report in its regulations.

A violation of this Section shall be sufficient grounds for the revocation, suspension, denial or non-renewal of any license for the establishment in which the violation occurs.

Section 37. *Prohibition Against the Use of Open Dumps for Solid Waste* - No open dumps shall be established and operated, nor any practice or disposal of solid waste by any person, including LGUs, which constitutes the use of open dumps for solid wastes, be allowed after the effectivity of this Acts: *Provided*, That within three (3) years after the effectivity of this Act, every LGU shall convert its open dumps into controlled dumps, in accordance with the guidelines set in Sec. 41 of this Act: *Provided*, *further*, That no controlled dumps shall be allowed five (5) years following the effectivity of this Act.

Section 38. *Permit for Solid Waste Management Facility Construction and Expansion* - No person shall commence operation, including site preparation and construction of a new solid waste management facility or the expansion of an existing facility until said person obtains an Environment Compliance Certificate (ECC) from the Department pursuant to P.D. 1586 and other permits and clearances form concerned agencies.

Section 48. *Prohibited Acts* - The following acts are prohibited:

(1) Littering, throwing, dumping of waste matters in public places, such as roads, sidewalks, canals, esteros or parks, and establishment, or causing or permitting the same;

(2) Undertaking activities or operating, collecting or transporting equipment in violation of sanitation operation and other requirements or permits set forth in established pursuant;

(3) The open burning of solid waste;

(4) Causing or permitting the collection of non-segregated or unsorted wastes;

(5) Squatting in open dumps and landfills;

(6) Open dumping, burying of biodegradable or non-biodegradable materials in flood prone areas;

(7) Unauthorized removal of recyclable material intended for collection by authorized persons;

(8) The mixing of source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal;

(9) Establishment or operation of open dumps as enjoined in this Act, or closure of said dumps in violation of Sec. 37;

(10) The manufacture, distribution or use of non-environmentally acceptable packaging materials;

(11) Importation of consumer products packaged in non-environmentally acceptable materials;

(12) Importation of toxic wastes misrepresented as "recyclable" or "with recyclable content";

(13) Transport and dumplog in bulk of collected domestic, industrial, commercial, and institutional wastes in areas other than centers or facilities prescribe under this Act;

(14) Site preparation, construction, expansion or operation of waste management facilities without an Environmental Compliance Certificate required pursuant to Presidential Decree No. 1586 and this Act and not conforming with the land use plan of the LGU;

(15) The construction of any establishment within two hundred (200) meters from open dumps or controlled dumps, or sanitary landfill; and

(16) The construction or operation of landfills or any waste disposal facility on any aquifer, groundwater reservoir, or watershed area and or any portions thereof.

Section 49. *Fines and Penalties* -

(a) Any person who violates Sec. 48 paragraph (1) shall, upon conviction, be punished with a fine of not less than Three hundred pesos (P300.00) but not more than One thousand pesos (P1,000.00) or render community service for not less than one (1) day to not more than fifteen (15) days to an LGU where such prohibited acts are committed, or both;

(b) Any person who violates Sec. 48, pars. (2) and (3), shall, upon conviction be punished with a fine of not less than Three hundred pesos (P300.00) but not more than One thousand pesos (P1,000.00) or imprisonment of not less than one (1) day but to not more than fifteen (15) days, or both;

(c) Any person who violates Sec. 48, pars. (4), (5), (6) and (7) shall, upon conviction, be punished with a fine of not less than One thousand pesos (P1,000.00) but not more than Three thousand pesos (P3,000.00) or imprisonment of not less than fifteen (15) day but to not more than six (6) months, or both;

(d) Any person who violates Sec. 48, pars (8), (9), (10) and (11) for the first time shall, upon conviction, pay a fine of Five hundred thousand pesos (P500,000.00) plus and amount not less than five percent (5%) but not more than ten percent (10%) of his net annual income during the previous year.

The additional penalty of imprisonment of a minimum period of one (1) year but not to exceed three (3) years at the discretion of the court, shall be imposed for second or subsequent violations of Sec. 48, pars. (9) and (10).

(e) Any person who violates Sec. 48, pars. (12) and (13) shall, upon conviction, be punished with a fine not less than Ten thousand pesos (P10,000.00) but not more than Two hundred thousand pesos (P200,000.00) or imprisonment of not less than thirty (30) days but not more than three (3) years, or both;

(f) Any person who violates Sec. 48, pars. (14), (15) and (16) shall, upon conviction, be punished with a fine not less than One hundred thousand pesos (P100,000.00) but not more than One million pesos (P1,000,000.00), or imprisonment not less than one (1) year but not more than six (6) years, or both.

If the offense is committed by a corporation, partnership, or other juridical identity duly recognized in accordance with the law, the chief executive officer, president, general manager, managing partner or such other officer-in-charge shall be liable for the commission of the offense penalized under this Act.

If the offender is an alien, he shall, after service of the sentence prescribed above, be deported without further administrative proceedings.

The fines herein prescribed shall be increased by at lest ten (10%) percent every three (3) years to compensate for inflation and to maintain the deterrent functions of such fines.

Section 50. *Administrative Sanctions* - Local government officials and officials of government agencies concerned who fail to comply with and enforce rules and regulations promulgated relative to this Act shall be charged administratively in accordance with R.A. 7160 and other existing laws, rules and regulations

CHAPTER VII
MISCELLANEOUS PROVISIONS

Section 51. *Mandatory Public Hearings* - Mandatory public hearings for national framework and local government solid waste management plans shall be undertaken by the Commission and the respective Boards in accordance with process to be formulated in the implementing rules and regulations.

Section 52. *Citizens Suits* - For the purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:

(a) Any person who violates or fails to comply with the provisions of this Act its implementing rules and regulations; or

(b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or

(c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any many improperly performs his duties under this Act or its implementing rules and regulations;*Provided*, *however*, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.

The Court shall exempt such action from the payment of filing fees and statements likewise, upon *prima facie*showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of preliminary injunction.

In the event that the citizen should prevail, the Court shall award reasonable attorney's fees, moral damages and litigation costs as appropriate.

Section 53. *Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act*- Where a suit is brought against a person who filed an action as provided in Sec. 52 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the Court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the Court shall dismiss the complaint and award the attorney's fees and double damages.

G.R. No. 158290 October 23, 2006

HILARION M. HENARES, JR., VICTOR C. AGUSTIN, ALFREDO L. HENARES, DANIEL L. HENARES, ENRIQUE BELO HENARES, and CRISTINA BELO HENARES, petitioners,
vs.

LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD and DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, respondents.

Facts:

Petitioners challenge this Court to issue a writ of mandamus commanding respondents Land Transportation Franchising and Regulatory Board (LTFRB) and the Department of Transportation and Communications (DOTC) to require public utility vehicles (PUVs) to use compressed natural gas (CNG) as alternative fuel.

According to petitioners, CNG is a natural gas comprised mostly of methane which although containing small amounts of propane and butane, is colorless and odorless and considered the cleanest fossil fuel because it produces much less pollutants than coal and petroleum; produces up to 90 percent less CO compared to gasoline and diesel fuel.

Asserting their right to clean air, petitioners contend that the bases for their petition for a writ of mandamus to order the LTFRB to require PUVs to use CNG as an alternative fuel, lie in Section 16, Article II of the 1987 Constitution, our ruling in *Oposa v. Factoran, Jr.,* and Section 4 of Republic Act No. 8749 otherwise known as the "Philippine Clean Air Act of 1999."

LTFRB and DOTC, the Solicitor General, cites Section 3, Rule 65 of the Revised Rules of Court and explains that the writ of mandamus is not the correct remedy since the writ may be issued only to command a tribunal, corporation, board or person to do an act that is required to be done, when he or it unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, there being no other plain, speedy and adequate remedy in the ordinary course of law.

According to the Solicitor General, Rep. Act No. 8749 does not even mention the existence of CNG as alternative fuel and avers that unless this law is amended to provide CNG as alternative fuel for PUVs, the respondents cannot propose that PUVs use CNG as alternative fuel.

The Solicitor General also adds that it is the DENR that is tasked to implement Rep. Act No. 8749 and not the LTFRB nor the DOTC. Moreover, he says, it is the Department of Energy (DOE), under Section 26 of Rep. Act No. 8749, that is required to set the specifications for all types of fuel and fuel-related products to improve fuel compositions for improved efficiency and reduced emissions. He adds that under Section 21 of the cited Republic Act, the DOTC is limited to implementing the emission standards for motor vehicles, and the herein respondents cannot alter, change or modify the emission standards. The Solicitor General opines that the Court should declare the instant petition for mandamus without merit.

Issues:

I. WHETHER OR NOT THE PETITIONERS HAVE THE PERSONALITY TO BRING THE PRESENT ACTION

III. WHETHER OR NOT THE RESPONDENT IS THE AGENCY RESPONSIBLE TO IMPLEMENT THE SUGGESTED ALTERNATIVE OF REQUIRING PUBLIC UTILITY VEHICLES TO USE COMPRESSED NATURAL GAS (CNG)

IV. WHETHER OR NOT THE RESPONDENT CAN BE COMPELLED TO REQUIRE PUBLIC UTILITY VEHICLES TO USE COMPRESSED NATURAL GAS THROUGH A WRIT OF MANDAMUS

Held:

The petition for the issuance of a writ of mandamus is **DISMISSED** for lack of merit.

I.

Undeniably, the right to clean air not only is an issue of paramount importance to petitioners for it concerns the air they breathe, but it is also impressed with public interest. The consequences of the counter-productive and retrogressive effects of a neglected environment due to emissions of motor vehicles immeasurably affect the well-being of petitioners. On these considerations, the legal standing of the petitioners deserves recognition.

III.

In Rep. Act No. 8749, the Philippine Clean Air Act of 1999. Paragraph (a), Section 21 of the Act specifically provides that when PUVs are concerned, the responsibility of implementing the policy falls on respondent DOTC. It provides as follows:

> SEC 21. *Pollution from Motor Vehicles*. – a) **The DOTC** shall implement the emission standards for motor vehicles set pursuant to and as provided in this Act. To further improve the emission standards, the Department [DENR] shall review, revise and publish the standards every two (2) years, or as the need arises. It shall consider the maximum limits for all major pollutants to ensure substantial improvement in air quality for the health, safety and welfare of the general public.

Paragraph (b) states:

> b) The Department [DENR] in collaboration with the **DOTC,** DTI and LGUs, shall **develop an action plan for the control and management of air pollution from motor vehicles** consistent with the Integrated Air Quality Framework . . . . (Emphasis supplied.)

There is no dispute that under the Clean Air Act it is the DENR that is tasked to set the emission standards for fuel use and the task of developing an action plan. As far as motor vehicles are concerned, it devolves upon the DOTC and the line agency whose mandate is to oversee that motor vehicles prepare an action plan and implement the emission standards for motor vehicles, namely the LTFRB.

IV.

Our next concern is whether the writ of mandamus is the proper remedy, and if the writ could issue against respondents.

Under Section 3, Rule 65 of the Rules of Court, mandamus lies under any of the following cases: (1) against any tribunal which unlawfully neglects the performance of an act which the law specifically enjoins as a duty; (2) in case any corporation, board or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust, or station; and (3) in case any tribunal, corporation, board or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is legally entitled; and there is no other plain, speedy, and adequate remedy in the ordinary course of law.

Regrettably, however, the plain, speedy and adequate remedy herein sought by petitioners, *i.e.*, a writ of mandamus commanding the respondents to require PUVs to use CNG, is unavailing. Mandamus is available only to compel the doing of an act specifically enjoined by law as a duty. Here, **there is no law that mandates the respondents LTFRB and the DOTC to order owners of motor vehicles to use CNG.**

Further, mandamus will not generally lie from one branch of government to a coordinate branch, for the obvious reason that neither is inferior to the other. The need for future changes in both legislation and its implementation cannot be pre-empted by orders from this Court, especially when what is prayed for is procedurally infirm. Besides, comity with and courtesy to a coequal branch dictate that we give sufficient time and leeway for the coequal branches to address by themselves the environmental problems raised in this petition.

PROVINCE OF RIZAL v. EXECUTIVE SECRETARY, SECRETARY OF ENVIRONMENT & NATURAL RESOURCES
G.R. No. 129546 December 13, 2005

Facts:

At the height of the garbage crisis plaguing Metro Manila and its environs, parts of the Marikina Watershed Reservation were set aside by the Office of the President, through Proclamation No. 635 dated 28 August 1995, for use as a sanitary landfill and similar waste disposal applications. In fact, this site, extending to more or less 18 hectares, had already been in operation since 19 February 1990 for the solid wastes of Quezon City, Marikina, San Juan, Mandaluyong, Pateros, Pasig, and Taguig.

This is a petition filed by the Province of Rizal, the municipality of San Mateo, and various concerned citizens for review on *certiorari* of the Decision of the Court of Appeals in CA-G.R. SP No. 41330, denying, for lack of cause of action, the petition

for *certiorari*, prohibition and *mandamus* with application for a temporary restraining order/writ of preliminary injunction assailing the legality and constitutionality of Proclamation No. 635.

The petioners opposed the implementation of said order since the creation of dump site under the territorial jurisdiction would compromise the health of their constituents. More so, the dump site is to be constructed in Watershed reservation.

Through their concerted efforts of the officials and residents of Province of Rizal and Municipality of San Mateo, the dump site was closed. However, during the term of President Estrada in 2003, the dumpsite was re-opened.

A temporary restraining order was then filed. Although petitioners did not raised the question that the project was not consulted and approved by their appropriate Sanggunian, the court take it into consideration since a mere MOA does not guarantee the dump site's permanent closure.

Issue:

Whether or not the consultation and approval of the Province of Rizal and municipality of San Mateo is needed before the implementation of the project.

Ruling:

The petition is GRANTED.

We acknowledge that these are valid concerns. Nevertheless, the lower court should have been mindful of the legal truism that it is the legislature, by its very nature, which is the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law.

Moreover, these concerns are addressed by Rep. Act No. 9003. Approved on 26 January 2001, "The Ecological Solid Waste Management Act of 2000" was enacted pursuant to the declared policy of the state "to adopt a systematic, comprehensive and ecological solid waste management system which shall ensure the protection of public health and environment, and utilize environmentally sound methods that maximize the utilization of valuable resources and encourage resource conservation and recovery**." It requires the adherence to a Local Government Solid Waste Management Plan with regard to the collection and transfer, processing, source reduction, recycling, composting and final disposal of solid wastes, the handling and disposal of special wastes, education and public information, and the funding of solid waste management projects.**

The said law mandates the formulation of a National Solid Waste Management Framework, which should include, among other things, the method and procedure for the phase-out and the eventual closure within eighteen months from effectivity of the Act in case of existing open dumps and/or **sanitary landfills located within an aquifer, groundwater reservoir or watershed area**. Any landfills subsequently developed must comply with the minimum requirements laid down in Section 40, specifically that the site selected **must be consistent with the overall land use plan of the local government unit**, and that the site ***must be located in an area where the landfill's operation will not detrimentally affect environmentally sensitive resources such as aquifers, groundwater reservoirs or watershed areas***.

This writes *finis* to any remaining aspirations respondents may have of reopening the San Mateo Site. Having declared Proclamation No. 635 illegal, we see no compelling need to tackle the remaining issues raised in the petition and the parties' respective memoranda.

A final word. Laws pertaining to the protection of the environment were not drafted in a vacuum. Congress passed these laws fully aware of the perilous state of both our economic and natural wealth. It was precisely to minimize the adverse impact humanity's actions on all aspects of the natural world, at the same time maintaining and ensuring an environment under which man and nature can thrive in productive and enjoyable harmony with each other, that these legal safeguards were put in place. They should thus not be so lightly cast aside in the face of what is easy and expedient.

AGL 2013

2nd outline

DAR ADMINISTRATIVE ORDER NO. 02-03

SUBJECT : ***2003 RULES AND PROCEDURES GOVERNING LANDOWNER RETENTION RIGHTS***

Pursuant to Presidential Decree (PD) No. 27, Section 6 of Republic Act (RA) No. 6657, and in view of the Supreme Court's ruling in Association of Small Landowners in the Philippines Incorporated versus Secretary of Agrarian Reform (G.R. No. 78742 [14 July 1989]), the rules and procedures governing the exercise of retention rights under PD 27 and RA 6657 by landowners are hereby revised as follows:

ARTICLE I

Preliminary Provisions

SECTION 1. *Coverage* — These rules and procedures shall apply to all applications for retention under PD 27 and RA 6657. TAScID

SECTION 2. *Statement of Policies* — The exercise of retention right by landowners shall be governed by the following policies:

2.1. The landowner has the right to choose the area to be retained by him which shall be compact and contiguous, and which shall be least prejudicial to the entire landholding and the majority of the farmers therein.

2.2. The landowner shall exercise the right to retain by signifying his intention to retain within sixty (60) days from receipt of notice of coverage. Failure to do so within the period shall constitute a waiver of the right to retain any area.

2.3. Upon manifestation of the landowner's intention to retain, he shall indicate the exact location thereof within thirty (30) days from manifestation date. Failure to do so shall authorize the Municipal Agrarian Reform Officer (MARO) to choose said retention area.

2.4. The landowner has the obligation to cultivate the land directly or thru labor administration and thereby make the area he retains productive.

2.5. In all cases, all rights previously acquired by the tenant farmers under PD 27 and the security of tenure of the farmers or farmworkers on the land prior to the approval of RA 6657 shall be respected. Furthermore, actual tenant farmers in the landholdings shall not be ejected or removed therefrom.

2.6. The sale, disposition, lease or transfer of private lands by the original landowner in violation of RA 6657shall be null and void. Transactions executed prior to RA 6657 shall be valid only when registered with the Register of Deeds within a period of three (3) months after 15 June 1988 in accordance with Section 6 of RA 6657.

ARTICLE II

Exercise Of Retention Right

SECTION 3. *Who May Apply for Retention*

3.1. Any person, natural or juridical, who owns agricultural lands with an aggregate area of more than five (5) hectares may apply for retention area. However, a landowner who exercised his right of retention under PD 27 may no longer exercise the same right under RA 6657. Should he opt to retain five (5) hectares in his other agricultural lands, the seven (7) hectares previously retained by him shall be immediately placed under CARP coverage.

3.2. A landowner who owns five (5) hectares or less, of land which are not yet subject of coverage based on the schedule of implementation provided in Section 7 of RA 6657, may also file an application for retention and a Certification of Retention shall be issued in his favor.

3.3. The right of retention of a deceased landowner may be exercised by his heirs provided that the heirs must first show proof that the decedent landowner had manifested during his lifetime his intention to exercise his right of retention prior to 23 August 1990 (finality of the Supreme Court ruling in the case of Association of Small Landowners in the Philippines Incorporated versus the Honorable Secretary of Agrarian Reform).

SECTION 4. *Period to Exercise Right of Retention under RA 6657*

4.1. The landowner may exercise his right of retention at any time before receipt of notice of coverage.

4.2. Under the Compulsory Acquisition (CA) scheme, the landowner shall exercise his right of retention within sixty (60) days from receipt of notice of coverage.

4.3. Under the Voluntary Offer to Sell (VOS) and the Voluntary Land Transfer (VLT)/Direct Payment Scheme (DPS), the landowner shall exercise his right of retention simultaneously at the time of offer for sale or transfer.

SECTION 5. *Where to File Application* — Any duly completed application for retention may be filed with the office of the Regional Director or the Provincial Agrarian Reform Officer (PARO). The receiving office shall forward the application to the MARO with jurisdiction over the landholding after assigning a docket number.

SECTION 6. *Waiver of the Right of Retention*. — The landowner waives his right to retain by committing any of the following act or omission:

6.1. Failure to manifest an intention to exercise his right to retain within sixty (60) calendar days from receipt of notice of CARP coverage.

6.2. Failure to state such intention upon offer to sell or application under the VLT/DPS scheme.

6.3. Execution of any document stating that he expressly waives his right to retain. The MARO and/or PARO and/or Regional Director shall attest to the due execution of such document.

6.4. Execution of a Landowner Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) or Application to Purchase and Farmer's Undertaking (APFU) covering subject property.

6.5. Entering into a VLT/DPS or VOS but failing to manifest an intention to exercise his right to retain upon filing of the application for VLT/DPS or VOS.

6.6. Execution and submission of any document indicating that he is consenting to the CARP coverage of his entire landholding.

6.7. Performing any act constituting estoppel by laches which is the failure or neglect for an unreasonable length of time to do that which he may have done earlier by exercising due diligence, warranting a presumption that he abandoned his right or declined to assert it.

ARTICLE III

Award Of Retention Area

SECTION 7. *Criteria/Requirements for Award of Retention* — The following are the criteria in the grant of retention area to landowners:

7.1. The land is private agricultural land;

7.2. The area chosen for retention shall be compact and contiguous and shall be least prejudicial to the entire landholding and the majority of the farmers therein; TSHEIc

7.3. The landowner must execute an affidavit as to the aggregate area of his landholding in the entire Philippines; and

7.4. The landowner must submit a list of his children who are fifteen (15) years old or over as of 15 June 1988 and who have been actually cultivating or directly managing the farm since 15 June 1988 for identification as preferred beneficiaries, as well as evidence of such.

7.5. The landowner must execute an affidavit stating the names of all farmers, agricultural lessees and share tenants, regular farmworkers, seasonal farmworkers, other farmworkers, actual tillers or occupants, and/or other persons directly working on the land; if there are no such persons, a sworn statement attesting to such fact.

SECTION 8. *Retention Area* — The area allowed to be retained by the landowner shall be as follows:

8.1. Landowners covered by PD 27 are entitled to retain seven (7) hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). An owner of tenanted rice and corn lands may not retain those lands under the following cases:

8.1.1. If he, as of 21 October 1972, owned more than twenty-four (24) hectares of tenanted rice and corn lands; or

8.1.2. By virtue of Letter of Instruction (LOI) No. 474, if he, as of 21 October 1976, owned less than twenty-four (24) hectares of tenanted rice and corn lands but additionally owned the following:

8.1.2.1. other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

8.1.2.2. lands used for residential, commercial, industrial or other urban purposes from which he derives a dequate income to support himself and his family.

8.2. Landowners affected by PD 27 who filed their applications for retention before 27 August 1985, the deadline set by the DAR AO No. 1, Series of 1985, may retain not more than seven (7) hectares of their landholdings regardless of whether or not they complied with LOI 41, 45, and 52.

8.3. Also entitled to such seven (7) hectare retention area under PD 27 are landowners who filed their application after 27 August 1985 but complied with LOI 41, 45, and 52, which provide for the submission of sworn statements containing the following information:

8.3.1. List of agricultural lands owned by him throughout the country, indicating therein the area and location of each parcel;

8.3.2. Principal crops to which each parcel of land is devoted. For those areas devoted primarily to rice and/or corn, the landowners shall indicate:

8.3.2.1. the portions actually cultivated by tenants;

8.3.2.2. the names of such tenants; and

8.3.2.3. the area tilled by each tenant as of 21 October 1972;

8.3.3. The average gross harvest of each tenant (on a parcel of rice/corn land) during the three (3) crop years immediately preceding 21 October 1972; and

8.3.4. Liens and/or encumbrances, if any, the amounts thereof, and the names and addresses of the parties who have liens and/or encumbrances over such properties as of 21 October 1972.

8.4. Landowners who filed their applications after the 27 August 1985 deadline and did not comply with LOI 41,45, and 52 shall be entitled only to a maximum of five (5) hectares as retention area.

8.5. Landowners who failed to apply for retention under PD 27, and who did not comply with the 27 August 1985 deadline, shall be allowed to retain a maximum of five (5) hectares in accordance with RA 6657 except those who under PD 27 are disqualified to retain:

8.5.1. If he, as of 21 October 1972, owned more than twenty-four (24) hectares of tenanted rice and corn lands; or

8.5.2. By virtue of Letter of Instruction (LOI) No. 474, if he, as of 21 October 1972, owned less than twenty-four (24) hectares of tenanted rice and corn lands but additionally owned the following:

8.5.2.1. other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

8.5.2.2. lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family.

8.6 A landowner whose landholdings are covered under CARP may retain an area of not more than five (5) hectares thereof. In addition, each of his children, whether legitimate, illegitimate, or legally adopted, may be awarded an area of not more than three (3) hectares as preferred beneficiary, provided that the child is at least fifteen (15) years old as of 15 June 1988 and that he is actually tilling the land or directly managing the farmholding from 15 June 1988 up to the filing of the application for retention and/or the time of the acquisition of the landholding under CARP.

8.7. The original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of RA 6657 may retain the same area as long as they continue to cultivate the said homestead.

8.8. For marriages covered by the New Civil Code, in the absence of the agreement for the judicial separation of property, spouses who own only conjugal properties may retain a total of not more than five (5) hectares of such properties. However, if either or both of them are landowners in their respective rights (capital and/or paraphernal), they may retain not more than five (5) hectares of their respective landholdings. In no case, however, shall the total retention of such couple exceed ten (10) hectares.

8.9. For marriages covered by the Family Code, which took effect on 3 August 1988, a husband owning capital property and/or a wife owning a paraphernal property may retain not more than five (5) hectares each, provided they executed a judicial separation of properties prior to entering into such marriage. In the absence of such an agreement, all properties (capital, paraphernal and conjugal) shall be considered to be held in absolute community, i.e., the ownership relationship is one, and, therefore, only a total of five (5) hectares may be retained. cDCEHa

ARTICLE IV

Effects Of The Exercise Of Retention Right

SECTION 9. *When Retained Area is tenanted*

9.1. In case the area selected by the landowner or awarded for retention by the DAR is tenanted, the tenant shall have the option to choose whether to remain therein as lessee or be a beneficiary in the same or another agricultural land with similar or comparable features.

9.2. In case the tenant declines to enter into leasehold and there is no available land to transfer, or if there is, the tenant refuses the same, he may choose to be paid disturbance compensation by the landowner in such amount as may be agreed between the parties taking into consideration the improvements made on the land. However, in no case shall the agreed amount be less than five (5) times the average gross harvest on their landholding during the last five (5) preceding calendar years pursuant to Section 36 of RA 3844, as amended by Section 7 of RA 6389. If the parties fail to agree on the amount of disturbance compensation, either party may file a petition for fixing disturbance compensation with the appropriate Provincial Agrarian Adjudicator (PARAD). In the latter case, the petitioner must show proof that earnest efforts were exerted by the parties to fix the amount of disturbance compensation, which efforts proved unsuccessful, before the same was filed with the PARAD. The tenant shall not be dispossessed or ejected from the landholding, unless disturbance compensation is paid and proof thereof is submitted to the MARO.

9.3. The tenant must exercise his option within one (1) year from the time the landowner manifests his choice of the area for retention, or from the time the MARO has chosen the area to be retained by the landowner, or from the time an order is issued granting the retention.

9.4. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be an Agrarian Reform Beneficiary (ARB) under CARP. In this case, the required lease agreement shall be executed in accordance with relevant issuances on the matter.

9.5. The provisions on preemption and redemption under RA 3844, as amended, shall apply to the lessee.

DOJ OPINION NO. 044, s. 1990
March 16, 1990

Secretary Florencio Abad
Department of Agrarian Reform
Diliman, Quezon City

S i r :

This refers to your letter of the 13th instant stating your "position that prior to the passage of R.A. 6657, the Department of Agrarian Reform had the authority to classify and declare which agricultural lands are suitable for non-agricultural purposes, and to approve or disapprove applications for conversion from agricultural to non-agricultural uses."

In support of the foregoing view, you contend that under R.A. No. 3844, as amended, the Department of Agrarian Reform (DAR) is empowered to "determine and declare an agricultural land to be suited for residential, commercial, industrial or some other urban purpose" and to "convert agricultural land from agricultural to non-agricultural purposes"; that P.D. No. 583, as amended by P.D. No. 815 "affirms that the conversion of agricultural lands shall be allowed only upon previous authorization of the [DAR]; with respect to tenanted rice and corn lands"; that a Memorandum of Agreement dated May 13, 1977 between the DAR, the Department of Local Government and Community Development and the then Human Settlements Commission "further affirms the authority of the [DAR] to allow or disallow conversion of agricultural lands"; that E.O. No. 129-A expressly invests the DAR with exclusive authority to approve or disapprove conversion of agricultural lands for residential, commercial, industrial and other land uses'; and that while in the final version of House Bill 400, Section 9 thereof provided that lands devoted to "residential, housing, commercial and industrial sites classified as such by the municipal and city development councils as already approved by the Housing and Land Use Regulatory Board, in their respective zoning development plans" be exempted from the coverage of the Agrarian Reform program, this clause was deleted from Section 10 of the final version of the consolidated bill stating the exemptions from the coverage of the Comprehensive Agrarian Reform Program.

We take it that your query has been prompted by the study previously made by this Department for Executive Secretary Catalino Macaraig Jr. and Secretary Vicente Jayme (Memorandum dated February 14, 1990) which upheld the authority of the DAR to authorize conversions of agricultural lands to non-agricultural uses as of June 15, 1988, the date of effectivity of the Comprehensive Agrarian Reform Law (R.A. No. 6657). it is your position that the authority of DAR to authorize such conversion existed even prior to June 15, 1988 or as early as 1963 under the Agricultural Land Reform Code (R.A. No. 3844; as amended).

It should be made clear at the outset that the aforementioned study of this Department was based on facts and issues arising from the implementation of the Comprehensive Agrarian Reform Program (CARP). While there is no specific and express authority given to DAR in the CARP law to approve or disapprove conversion of agricultural lands to non- agricultural uses, because Section 65 only refers to conversions effected after five years from date of the award, we opined that the authority of the DAR to approve or disapprove conversions of agricultural lands to non-agricultural uses applies only to conversions made on or after June 15, 1988, the date of effectivity of R.A. No. 6657, solely on the basis of our interpretation of DAR's mandate and the comprehensive coverage of the land reform program. Thus, we said:

> "Being vested with exclusive original jurisdiction over all matters involving the implementation of agrarian reform, it is believed to be the agrarian reform law's intention that any conversion of a private agricultural land to non- agricultural uses should be cleared beforehand by the DAR. True, the DAR's express power over land use conversion is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes. But to suggest that these are the only instances when the DAR can require conversion clearances would open a loophole in the R.A. No. 6657, which every landowner may use to evade compliance with the agrarian reform program. Hence, it should logically follow from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land as a residential, commercial or industrial property should first be cleared by the DAR."

It is conceded that under the laws in force prior to the enactment and effective date of R.A. No. 6657, the DAR had likewise the authority, to authorize conversions of agricultural lands to other uses, but always in coordination with other concerned agencies. Under R.A. No. 3344, as amended by R.A. No. 6389, an agricultural lessee may, by order of the court, be dispossessed of his landholding if after due hearing, it is shown that the "landholding is declared by the [DAR] *upon the recommendation of the National Planning Commission* to be suited for residential, commercial, industrial or some other urban purposes."

Likewise, under various Presidential Decrees (P.D. Nos. 583, 815 and 946) which were issued to give teeth to the implementation of the agrarian reform program decreed in P.D. No. 27, the DAR was empowered to authorize conversions of*tenanted agricultural lands*, specifically those *planted to rice and/or corn*, to other agricultural or to non-agricultural uses, "*subject to studies on zoning of the Human Settlements Commissions*" (HSC). This *non-exclusive authority* of the DAR under the aforesaid laws was, as you have correctly pointed out, recognized and reaffirmed by other concerned agencies, such as the Department of Local Government and Community Development (DLGCD) and the then Human Settlements Commission (HSC) in a Memorandum of Agreement executed by the DAR and these two agencies on May 13, 1977, which is an admission that with respect to land use planning and conversions, the authority is not exclusive to any particular agency but is a coordinated effort of all concerned agencies.

It is significant to mention that in 1978, the then Ministry of Human Settlements was granted authority to *review and ratify land use plans and zoning ordinance of local governments* and to approve development proposals which include land use conversions (see LOI No. 729 [1978]). This was followed by P.D. No. 648 (1981) which conferred upon the Human Settlements Regulatory

Commission (the predecessors of the Housing and Land Use Regulatory Board [HLURB] the authority to promulgate zoning and other land use control standards and guidelines which shall govern land use plans and zoning ordinances of *local governments*, subdivision or estate development projects of both the public and private sector and urban renewal plans, programs and projects; as well as to review, evaluate and approve or disapprove comprehensive land use development plans and zoning components of civil works and infrastructure projects, of national, regional and local governments, subdivisions, condominiums or estate development projects including industrial estates.

P.D. No. 583, as amended by P.D. No. 815, and the 1977 Memorandum of Agreement, abovementioned, cannot therefore, be construed as sources of authority of the DAR; these issuances merely affirmed whatever power DAR had at the time of their adoption.

With respect to your observation that E.O. No. 129-A also empowered the DAR to approve or disapprove conversions of agricultural lands into non-agricultural uses as of July 22, 1987, it is our view that E.O. No. 129-A likewise did not provide a new source of power of DAR with respect to conversion but it merely recognized and reaffirmed the existence of such power as granted under existing laws. This is clearly inferrable from the following provision of E.O. No. 129-A to wit:

> "Sec. 5. *Powers and Functions*. Pursuant to the mandate of the Department, and in order to ensure the successful implementation of the Comprehensive Agrarian Reform Program, the Department is hereby authorized to:
>
> 1) Have exclusive authority to approve or disapprove conversion of agricultural lands for residential, commercial, industrial and other land uses *as may be provided by law*" (Emphasis supplied.)

Anent the observation regarding the alleged deletion of residential, housing, commercial and industrial sites classified by the HLURB in the final version of the CARP bill, we fail to see how this circumstances could substantiate your position that DAR's authority to reclassify or approve conversions of agricultural lands to non-agricultural uses already existed prior to June 15, 1988. Surely, it is clear that the alleged deletion was necessary to avoid a redundancy in the CARP law whose coverage is expressly limited to "all public and private *agricultural lands*" and "other lands of the *public domain suitable for agriculture"* (Sec. 4, R.A. No. 6657). Section 3(c) of R.A. No. 6657 defines "agricultural land" as that "devoted to agricultural activity as defined in the Act *and not classified as mineral forest, residential, commercial or industrial land*."

Based on the foregoing premises, we reiterate the view that with respect to conversions of agricultural lands covered by R.A. No. 6657 to non-agricultural uses, the authority of DAR to approve such conversions may be exercised from the date of the law's effectivity on June 15, 1988. This conclusion is based on a liberal interpretation of R.A. No. 6657 in the light of DAR's mandate and the extensive coverage of the agrarian reform program.

Very truly yours,

FRANKLIN M. DRILON
Secretary

DAR ADMINISTRATIVE ORDER NO. 13-90

RULES AND PROCEDURES GOVERNING EXEMPTION OF LANDS FROM CARP COVERAGE UNDER SECTION 10, R.A. 6657

I. *Legal Mandate*

The general policy under CARP is to cover as much lands suitable for agriculture as possible. However, Section 10, R.A. 6657 excludes and exempts certain types of lands from the coverage of CARP, to wit:

A. Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings

research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers; and

B. All lands with eighteen percent (18%) slope and over, except those already developed.

January 16, 2003

DAR ADMINISTRATIVE ORDER NO. 04-03

SUBJECT : ***2003 Rules on Exemption of Lands from CARP Coverage under Section 3 (c) of Republic Act No. 6657 and Department of Justice (DOJ) Opinion No. 44, Series of 1990.***

I. *PREFATORY STATEMENT*

Republic Act (RA) 6657 or the Comprehensive Agrarian Reform Law (CARL), Section 3, Paragraph (c) defines "agricultural land" as referring to "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land."

Department of Justice Opinion No. 44, Series of 1990, (or "DOJ Opinion 44-1990" for brevity) and the case of Natalia Realty versus Department of Agrarian Reform (12 August 1993, 225 SCRA 278) opines that with respect to the conversion of agricultural lands covered by RA 6657 to non-agricultural uses, the authority of the Department of Agrarian Reform (DAR) to approve such conversion may be exercised from the date of its effectivity, on 15 June 1988. Thus, all lands that are already classified as commercial, industrial or residential before 15 June 1988 no longer need any conversion clearance.

However, the reclassification of lands to non-agricultural uses shall not operate to divest tenant-farmers of their rights over lands covered by Presidential Decree (PD) No. 27, which have been vested prior to 15 June 1988.

In order to implement the intent and purpose of the provisions of the aforecited laws, these guidelines are hereby issued.

May 10, 1995

DAR ADMINISTRATIVE ORDER NO. 03-95

RULES AND REGULATIONS GOVERNING THE EXEMPTION/EXCLUSION OF FISHPOND AND PRAWN FARMS FROM THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM LAW (CARL), PURSUANT TO REPUBLIC ACT (R.A.) NO. 6657, AS AMENDED BY R.A. NO. 7881

I. *PREFATORY STATEMENT*

Section 1 of R.A. No. 7881 amends Section 3-b of R.A. No. 6657, as it pertains to the definition of agricultural activity. Section 2 of the same law amends Section 10 of the CARL by exempting private lands actually, directly and exclusively used for prawn farms and fishponds as of March 12, 1995 (Effectivity date of R.A. No. 7881, 15 days after publication in two national newspapers of general circulation), provided that said lands have not been distributed and no Certificate of Land Ownership Awards (CLOAs) have been issued to Agrarian Reform Beneficiaries (ARBs). Section 3 of the same law amends Section 11 of R.A. No. 6657 by excluding commercial livestock, poultry and swine raising and aquaculture, including fishponds and prawn farms from the classification of

commercial farms that are due for coverage under the Comprehensive Agrarian Reform Program (CARP) after a ten-year deferment period. ISCTcH

Furthermore, Section 4 of R.A. No. 7881 incorporates a new provision under Section 32 of R.A. No. 6657. Section 32-A of the same law mandates the individuals or entities owning or operating fishponds and prawn farms to execute within six (6) months from the effectivity of R.A. No. 7881, a Profit Incentive Plan providing their regular fishpond or prawn farm workers with seven-and-a-half percent (7.5%) share of the net profit before tax from the operation of the fishponds or prawn farms. The incentive shall be distributed within sixty (60) days at the end of the fiscal year over and above the compensation they currently receive.

To effectively carry out the intent and purposes of R.A. No. 7881, these rules and regulations are hereby prescribed. AEIDTc

II. *POLICY STATEMENT*

A. In general, private agricultural lands owned by individuals or entities actually, directly and exclusively used for prawn farms and fishponds as of March 12, 1995 shall be exempt from the coverage of CARP.

B. Lands devoted to prawn or fishponds which have already been distributed to ARBs with the corresponding CLOAs issued, being a consummated transaction, shall no longer be exempt from coverage under the CARP.

C. Fishponds or prawn farms which have already been subjected to the CARL by Voluntary Offer to Sell (VOS) or are under Commercial Farm Deferment (CFD) or for which Notices of Acquisition (NOA) have already been issued to the landowner under the Compulsory Acquisition Scheme, shall be exempt from CARP coverage only upon the consent of a simple and absolute majority of the actual regular workers or tenants within one (1) year from March 12, 1995.

In case the said workers or tenants object to the exemption, the subject fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same. The Land Bank of the Philippines (LBP) shall extend financial assistance to the said cooperatives or associations through its countryside loan assistance program.

In the event that the one-year period has elapsed and the required consent has not been obtained, the property becomes subject to CARL.

D. Acts of harassment by landowners intended to eject or remove the workers or tenants or the loss of their rights, benefits and privileges to which they are entitled shall be sanctioned and dealt with under existing laws, rules and regulations.

E. Fishpond or prawn farm workers affected by exemption/exclusion have the option to remain as workers or become beneficiaries in other agricultural lands.

A worker who chooses to remain in the exempted area shall remain therein and shall be entitled to such rights, benefits and privileges granted to farm workers under existing laws, decrees and executive orders.

However, a worker who chooses to become a beneficiary of agricultural land may be awarded other lands covered by the CARP.

F. Individuals or entities owning or operating fishponds and prawn farms shall execute, within six (6) months from the effectivity of R.A. No. 7881, an incentive plan for their regular fishpond or prawn farm workers or their organization, if any.

A profit sharing incentive plan of seven-and-a-half percent (7.5%) of the net profit before tax derived from the operation of fishponds and prawn farms are to be given to regular workers over and above the compensation they currently receive based on the audited financial statements of the enterprise. This shall be distributed to the workers within sixty (60) days from the end of the fiscal year.

G. The books of the fishpond or prawn farm owners shall be subject to periodic audit or inspection by a Certified Public Accountant to be chosen by the fishpond or prawn farm workers to safeguard their rights.

III. *COVERAGE*

These guidelines shall cover all private lands owned by individuals or entities actually, directly, and exclusively used for fishponds or prawn farms as of March 12, 1995.