



# Columbia Center on Sustainable Investment

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## Water Risks in the Mining Sector Philippines

*As of April 2016*

### 1. Overview of legal system in the Philippines<sup>1</sup>

The Philippines has a mixed legal system largely influenced by Roman civil law and Anglo-American common law. Islamic law and customary/indigenous law are also being practiced in some areas of the country. It has a unitary form of government with a multi-tiered structure, comprised of a central government and several layers of local government units. Most regulations, including those on mining and water, are enacted and enforced by the central government. However, enforcement of environmental laws and regulation of small-scale mining and quarry/sand and gravel mining operations have been shared with local government units for a more effective and efficient execution of the said laws and delivery of services needed for the said operations.

*Please see the Annexures for a description of the relevant legislation and institutions regulating water use.*

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<sup>1</sup> This project was managed by CCSI Senior Legal Researcher, Sophie Thomashausen. Research was conducted by Joanna Eileen Capones, an LLM candidate at Columbia Law School and peer reviewed by Patricia A. O. Bunye, Senior Partner, Cruz Marcelo & Tenefrancia, Manila, Philippines.



## 2. Regulation of water use in the mining sector in the Philippines

Water Quantity questions		
No	Question	Answer
1.	<b>Which authority is responsible for water allocation?</b>	The National Water Resources Board (“NWRB”)
2.	<b>Water allocation process</b> - How is water granted to a mining concessionaire/ permit holder? Is there a water licensing/ permitting process? A water market?	<p>A water right, or the privilege granted by the government to appropriate and use water, may be granted to a mining concessionaire/permit holder through the issuance of a water permit by the NWRB.</p> <p>The application is filed with the NWRB Office in Manila. However, if the point of water diversion or abstraction is located in a province, the application can also be filed with the Office of the Department of Public Works and Highways (“DPWH”) District Engineer, the National Irrigation Authority (“NIA”) Provincial Irrigation Engineer, National Power Corporation (“NPC”) Regional Manager or the Local Water Utilities Administration (“LWUA”) Water District General Manager, whichever is designated as agent by the NWRB in that province.</p> <p>[PD 1067, Amended Implementing Rules and Regulations]</p>
3.	<b>Scope of a water allocation permit/ license</b>	
	<b>(a) Requirements for separate water permit</b> – is a separate water permit required? What is the process for obtaining the permit?	<p>Yes, a separate water permit needs to be obtained, as follows:</p> <ol style="list-style-type: none"> <li><b>Screening, Payment of fees and Filing:</b> An application undergoes an initial screening to check for completion of requirements before the same is filed with the Records Section of the NWRB. Proponent is also required to pay a filing fee.</li> <li><b>Endorsement and Posting of Notices:</b> The application is endorsed to the nearest DPWH Engineering District Office or the NIA Provincial Irrigation Office where the water source is located. Notices are also sent to local government units and</li> </ol>



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Water Quantity questions			
			<p>other government agencies, including the DENR for posting.</p> <p>3. <b>Field Investigation:</b> Water Rights Investigator of the DPWH Engineering District or NIA Provincial Office, or in some instances, NWRB staff, conducts site ocular inspection and prepares report.</p> <p>4. <b>Protest:</b> After 30 days of posting the notices, another 30 days is allocated for affected parties (i.e., any person who may be adversely affected by the proposed appropriation) to file formal opposition to the application. If a protest is filed, a hearing officer is assigned who conducts the hearing and recommends resolution.</p> <p>5. <b>Evaluation:</b> The application is evaluated by the Board or its designated agent in the province by considering the water requirement, water availability, capacity of the water source and effect to other users.</p> <p>6. <b>Recommendation and approval:</b> Applications are either approved, deferred, or denied. If approved, a conditional water permit (“<b>CWP</b>”) is assigned to the project. After all conditions imposed in the CWP are complied with, a water permit is prepared and released.</p> <p>[PD 1067, Amended Implementing Rules and Regulations]</p>
		<b>(b) Time required to obtain permits – how long does it generally take?</b>	It usually takes around 180 days to obtain a water permit from the NWRB.
		<b>(c ) Duration of water permit</b>	<p>A water permit is valid for as long as the water is beneficially used, or until revocation or cancellation by the NWRB. <i>The NWRB may also, after due notice and hearing, revoke the permit in favor of projects for greater beneficial use or for multi-purpose development, subject to compensation in proper cases.</i></p> <p>A water permit may be suspended on the grounds of: (i) non-compliance with approved plans and specifications or schedules of water distribution; (ii) use of water for a</p>



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Water Quantity questions		
		<p>purpose other than that for which it was granted; (iii) non-payment of water charges; (iv) wastage; (v) failure to keep records of water diversion, when required; (vi) and violation of any term or condition of any permit or rules and regulations promulgated by the Board.</p> <p>[PD 1067, Amended Implementing Rules and Regulations]</p>
	<b>(d) Process for permit renewal</b>	N/A
4.	<b>How does the process of securing a water allocation relate to the general mining permit approval process</b> (i.e. is a water permit required before a mining permit, or is information about water use required for an EIA which is required for a mining permit)?	<p>Under the Water Code, water may be appropriated for use in industrial purposes such as in an industrial plant and in mines. Before appropriation, however, a water permit must be secured. In determining whether to grant or deny a water permit application, the NWRB will consider the possible adverse effects of the grant and other relevant factors.</p> <p>To determine whether the grant will have adverse effects, the Water Code Implementing Rules require that an environmental compliance certificate “<b>ECC</b>” must be submitted to the NWRB together with the water permit application. Hence, the EIS process must be commenced before the water permit process.</p> <p>[PD 1067, Amended Implementing Rules and Regulations]</p>
5.	<b>Tariffs for water use</b> Do mines have to pay for water usage? If yes, who sets the tariffs?	<p>Yes, mines have to pay for water usage. The NWRB sets the tariffs.</p> <p>[PD 1067, Amended Implementing Rules and Regulations]</p>
6.	<b>Requirements for recycling water</b>	None
7.	<b>What rights, if any, does the relevant Authority have to change the amount of water allotted to a mine? Is the mining company allowed compensation for such changes?</b>	<p>The Water Code of the Philippines allows the NWRB, after due notice and hearing, to reduce the quantity of water or adopt a system of apportionment, distribution, or rotation thereof, when the facts and circumstances in any situation would warrant the same, subject to payment of compensation in proper cases, to serve the interest of the public/or legal appropriations.</p> <p>As stated above, the NWRB may also revoke the permit in favor of projects for greater beneficial use or for multi-purpose development after due notice and hearing, subject to compensation in proper cases.</p>



Water Quantity questions	
	[PD 1067, Amended Implementing Rules and Regulations]

### 3. Regulation of water quality and waste water discharge in the mining sector in the Philippines

Water Quality questions		
No	Topic	Answer
1.	<p><b>Requirements for a permit for mine waste discharge</b></p> <p>Does a mine have to apply for a permit to discharge waste/ waste water into surrounding water courses? If so, what permits are required? What is the permitting process?</p>	<p>Yes, a mine is required to obtain a wastewater discharge permit from the relevant Regional Office of the Environmental Management Bureau (“<b>EMB</b>”).</p> <p>The applicant must submit such documents, information and data as may be required by the EMB Regional Office including, but not limited to the following, to be contained in a verified Engineer's Report prepared by a registered chemical or sanitary engineer or pollution control officer:</p> <ol style="list-style-type: none"> <li>a) Vicinity map identifying the street address, location or plant premise;</li> <li>b) The nature of project or business;</li> <li>c) Production capacity; quantity or volume and the generic name(s) of product(s);</li> <li>d) The nature and character of the applicant's wastewater and its physical and chemical composition;</li> <li>e) The total daily volume of discharge of raw wastewater;</li> <li>f) The treatment process and estimated treatment efficiency;</li> <li>g) The total daily volume of water consumption and discharge of final treated wastewater or effluent;</li> <li>h) The name of receiving body of water and its official water classification and in case of land discharge, the nearest receiving body of water and its official water classification;</li> <li>i) Information on flow measurement equipment and procedure;</li> <li>j) Pollution prevention/Environmental Management System plan or program;</li> </ol>



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Water Quality questions	
	<p>k) DENR ID Number as hazardous waste generator (if applicable);</p> <p>l) Statement of the cost incurred in the installation and maintenance of wastewater treatment facility, if any;</p> <p>m) Quality and quantity of abstracted water; and</p> <p>n) A copy of the Environmental Compliance Certificate (“ECC”) from the Department or Certificate of Non-Coverage (“CNC”), as applicable.</p> <p>The EMB Regional Office is required to act on the application within 30 working days from receipt of the requirements. In the event that the EMB Regional Office is not able to act on the application within such period, there is no adverse effect on the application itself, but the erring official may be subjected to administrative sanctions. In practice, it takes around two (2) months for the permit to be issued due to the volume of the applications received by the EMB Regional Office.</p> <p>The permit is valid for a maximum period of five years from the date of its issuance, renewable for 5-year periods. The permit may be renewed for a longer period if the applicant has adopted waste minimization and waste treatment technologies, consistent with current incentives provided that permit fees are paid on time.</p> <p>[DENR Administrative Order No. 10, s. 2005]</p>
	<p><b>Other licensing/permitting processes that cover water quality/discharge</b></p> <p>An ECC is also required under the EIS system, as discussed below.</p>
<p><b>3. Nexus with environmental impact assessments/ statements</b></p> <p>What is the process for obtaining an environmental impact assessment? At which stage of the mining process must it be obtained? To what extent are water issues covered in it?</p>	<p>An ECC is required prior to the commencement of mineral activities past the exploration stage. ECC processing requirements focus on information needed to assess critical environmental impacts of projects. Processing requirements is customized based on the project categories.</p> <p>The ECC is issued after successful completion of the EIA process, as follows:</p> <ol style="list-style-type: none"> <li><b>1. Screening:</b> The mining company consults with the EMB. If the mine is an environmentally critical project (“ECP”) or is located in an environmentally critical</li> </ol>



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## Water Quality questions

area (“**ECA**”), the main EMB Office facilitates the EIA. Otherwise, the relevant EMB Regional Office will facilitate. Note that major mining projects are cited as environmentally critical projects in Proclamation 2146.

- 2. Scoping:** This is a mining company-driven process that identifies the most significant issues of the project. It includes Public Scoping with the local community and Technical Scoping with a third party Environmental Impact Assessment Review Committee (“**EIARC**”) created by the EMB.
- 3. EIA Study and Report Preparation:** The mining company prepares the EIS which must include, among others, a description of the proposed project and its alternatives; characterization of the project environment; impact identification and prediction; evaluation of impact significance; impact mitigation; formulation of Environmental Management and Monitoring Plan; with corresponding cost estimates; and institutional support commitment.
- 4. EIA Report Review and Evaluation:** This step involves the reconvening of the EIARC to review the EIS. The EMB also typically holds site visits and public consultations or public hearings as part of the evaluation process. The review of the EIS by the EMB is guided by three general criteria: (1) that environmental considerations are integrated into the overall project planning; (2) that the assessment is technically sound and proposed environmental mitigation measures are effective; and (3) that social acceptability is based on informed public participation.
- 5. Decision Making:** The EMB is given 120 days to make a decision, after which the EIS will be deemed approved unless expressly rejected by the EMB. When approved, a covered project is issued an ECC.

[DENR Administrative Order No. 2003-30]



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Water Quality questions		
		Among the stated objectives of the environmental protection regulations are preservation of downstream freshwater quality and preservation of sea water quality and natural habitats for marine life. Hence, water issues should be significantly covered by the EIA process.
4.	<b>Are there regulations regarding the storage of tailings/ waste water by mines? <sup>2</sup></b>	<p>Yes - The DENR-issued Memorandum Order No. 99-32, which sets forth guidelines on site selection, design, construction, operation and rehabilitation/decommissioning of mine wastes storage.</p> <p>Mine wastes and mill tailings storage structures also need to be covered by a current and valid ECC issued by the DENR and an Authority to Construct and Operate (“<b>ACO</b>”) issued by the relevant EMB Regional Office. [DENR Administrative Order No. 2000-101]</p> <p>Moreover, mine waste and tailings fees are collected semi-annually from the mining company based on the amount of waste and tailings it generated for the said period. The fees will accrue to a Mine Waste and Tailings Fees Reserve Fund (“<b>MWTRF</b>”), which will be used for payment of compensation for any damage caused by mining operations. It shall be deposited in a government depository bank.</p>
5.	<b>Acid mine drainage regulations</b>	<p>Mine waste storage must not be located on areas that might promote the generation of acid mine drainage.</p> <p>Acid rock drainage (ARD) potential of mine wastes for impoundment must be established. Mine waste characterized with ARD potential and/or classified as hazardous or with toxic leachates must be stored separately from materials with no or lower potential ARD or non-toxic leachates. It must also be neutralized or treated by blending with waste materials of higher neutralizing potential or less hazardous materials/toxic leachates.</p> <p>Tailings must be stored so as to prevent the generation of ARD. Any generated acidic drainage from tailings ponds must be treated and neutralized before allowing to flow to the</p>

<sup>2</sup> Tailing are crushed rock particles that are transported hydraulically in a slurry form to a tailing impoundment or storage facility. The tailing solids are a mixture of sand, silt, and clay size particles. Tailings are sent to a tailing impoundment for disposition.



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Water Quality questions		
		natural water systems. [DENR Memorandum Order No. 99-32]
6.	<b>Recycling requirements</b> – Are there any requirements/incentives for mines to recycle water/ minimize water discharge?	<p>There are generally no requirements for recycling or minimizing water discharge, but the same may be required under the ECC.</p> <p>The Clean Water Act provides for fiscal and non-fiscal incentive schemes to encourage enterprises to develop or undertake an effective water quality management or actively participate in any program geared towards the promotion thereof. The incentives are as follows:</p> <p><b>A. Non-fiscal Incentives</b></p> <ol style="list-style-type: none"> <li>1. Industrial wastewater treatment and/or the adoption of water pollution control technology or cleaner production and waste minimization technology are classified as preferred areas of investment under the Investments Priority Plan, and therefore enjoy fiscal and non-fiscal incentives under the Omnibus Investment Code</li> </ol> <p><b>B. Fiscal Incentives</b> (insofar as the activities relate to wastewater treatment/collection):</p> <ol style="list-style-type: none"> <li>1. Tax and Duty Exemption on Imported Capital Equipment;</li> <li>2. Tax Credit on Domestic Capital Equipment; and</li> <li>3. Tax and Duty Exemption of Donations, Legacies and Gifts.</li> </ol> <p>[DENR Administrative Order No. 10, s. 2005]</p>
7.	<b>Any specific regulation of waste for copper and/or gold mining?</b>	None



#### 4. Monitoring Requirements

General questions		
No	Question	Answer
1.	Who monitors a mining operation's water quality to ensure compliance with legislation? And how often does such monitoring occur?	<p>Proponents are required to submit Self-Monitoring Reports (“SMR”) every quarter under the EIS system.</p> <p>The creation of a multipartite monitoring team (“MMT”) is also required under the EIS system. It is tasked to monitor project compliance with the ECC, Environmental Management Plan, Environmental Monitoring Plan, and other related permits. It is also tasked to validate the SMRs and to submit its own monitoring and validation reports every quarter.</p> <p>The MMT must be composed of representatives of the mining company and of stakeholder groups, including representatives from concerned LGU's, locally accredited NGOs/POs, the community, relevant EMB Regional Office, relevant government agencies, and other sectors that may be identified during the negotiations. The team will be tasked to undertake monitoring of compliance with ECC conditions as well as the EMP. The MMT shall submit a semi-annual monitoring report within January and July of each year.</p> <p>[Sec. 9, DENR Administrative Order No. 2003-30]</p> <p>Further, the mining company should comply with the submitted Environmental Protection and Enhancement Program (“EPEP”). The EPEP is a program which provides the operational link between the environmental protection and enhancement commitments under the Mining Act and its IRR, as well as those stipulated in the ECC and the mining contractor's plan of mining operation. The EPEP shall include monitoring of mining operations to ensure compliance with Philippine environmental laws. Hence, the monitoring of a mining operation's water quality also depends on what is stated on the submitted EPEP.</p> <p>[DENR Administrative Order 2010-21]</p>



## 5. Regulation of water issues post-mine closure

Post-mine closure questions		
No	Question	Answer
1.	<b>Requirements for closure</b>	
	<b>(a) Closure plan: What are the requirements for a closure plan?? Who approves it, if anybody?</b>	<p>Five years before the final decommissioning, a mining company submit its Final Mine Rehabilitation and/or Decommissioning Plan (“<b>FMRDP</b>”). [Sec. 187, DENR Administrative Order No. 96049]</p> <p>Using risk-based methodologies/approaches, the FMRDP will consider all mine closure scenarios and associated cost estimates for its implementation, taking into consideration expected inflation, technological advances, the unique circumstances faced by the mining operation, among others. The cost estimates for the mine closure, including residual care, must cover a 10-year period.</p> <p>Stakeholders that will be directly affected by the mining operation and by the eventual closure of the mine should be involved throughout the development of the FMRDP.</p> <p>The FMRDP is subject to pre-evaluation by the Mine Rehabilitation Fund Committee<sup>3</sup> and to final approval by the Contingent Liability and Rehabilitation Fund Steering Committee.<sup>4</sup></p>
	<b>(b) Bond requirements</b>	<p>The mining company must set up a Final Mine Rehabilitation and Decommissioning Fund (“<b>FMRDF</b>”) based on the cost of implementing the FMRDP. It must be deposited as a trust fund in a government depository bank and must be used solely for the implementation of the FMRDP.</p>

<sup>3</sup> The Mine Rehabilitation Fund Committee is composed of the following: DENR-MGB Regional Director, DENR Regional Executive Director, representative from LGU, people’s organization, church or civic organization, representative from the company and representative from autonomous region, if applicable.

<sup>4</sup> The Rehabilitation and Decommissioning Fund is composed of the following: Director of MGB, Director of EMB, Director of Land Management Bureau, Director of Forest Management Bureau, Director of Bureau of Soils & Water Management, Director of Plant Industry, Director of Bureau of Fisheries & Aquatic Resources and the Administrator of National Irrigation Authority.



Post-mine closure questions		
		<p>The mining company is also required to set-up a Contingent Liability and Rehabilitation Fund (“<b>CLRF</b>”) to ensure just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse mining operation or activity may cause. The CLRF is composed of the (i) Mine Rehabilitation Fund (“<b>MRF</b>”) and (ii) MWTFR, as discussed in Part 3, No. 4.</p> <p>Like the MWTFR, the MRF shall be deposited as a trust fund in a government depository bank. It shall be used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. It comes in two forms, namely:</p> <ol style="list-style-type: none"> <li>1. Monitoring Trust Fund – amount to be determined by the MRF Committee which shall not be less than fifty thousand pesos (Php 50,000)</li> <li>2. Rehabilitation Cash Fund – equivalent to ten percent (10%) of the total amount needed to implement the Environmental Protection and Enhancement Program (“<b>EPEP</b>”), which is an environmental work program required for the issuance of an ECC, or five million pesos (Php 5,000,000), whichever is lower. [DENR Administrative Order No. 2005-27]</li> </ol>
	<b>(c) Water quality/ Tailings dam requirements</b>	Determination of water quality/tailings dam standards is part of the EIA/FMRDP process. These standards must be in accordance with the effluent standards set forth by the DENR under the Clean Water Act.
<b>2.</b>	<b>Post-mine closure monitoring requirements</b>	<p>The MRF Committee, through the MMT, the CLRF Steering Committee and the MGB shall monitor and/or audit the implementation of the FMRDP. [DENR Administrative Order No. 2005-27]</p> <p>The FMRDP is also reviewed by the MRF Committee and/or revised at a date not exceeding two years after its approval and every two years thereafter.</p>
<b>3.</b>	<b>Liability period - For how long, if at all, is a mine liable for water</b>	Under mining regulations, a mining company will remain liable only for as long as the Certificate of Final Relinquishment has not been issued by the CLRF Steering



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Post-mine closure questions	
	<p>contamination after a mine has closed?</p>
	<p>Committee. Once the Certificate of Final Relinquishment has been issued, the mining company is freed from any further obligations insofar as the rehabilitated area is concerned.</p> <p>The Certificate will only be issued after the approval of the Final Rehabilitation Report with third party Environmental Audit submitted by the mining company. The MRF Committee and/or CLRF Steering Committee may conduct field validation, recommend revisions, and/or require additional rehabilitation works to be undertaken prior to approval.</p> <p>However, the Clean Water Act provides that any person who causes pollution in or pollutes water bodies in excess of the applicable and prevailing standards shall be responsible to contain, remove and clean-up any pollution incident at his own expense to the extent that the same water bodies have been rendered unfit for utilization and beneficial use. Action to enforce the liability herein does not seem to be foreclosed by the issuance of a Certificate of Final Relinquishment as discussed above.</p>
<b>4.</b>	<p><b>Are there any reporting requirements in relation to a mine's preparation for post-closure?</b></p>
	<p>The mining company is required to submit progress reports, containing details of fully, partially and on-going rehabilitation activities relative to the implementation of the FMRDP. The report shall be submitted to the MRF Committee for review and evaluation within 30 days from the end of the term of the preceding work and financial plan, if applicable. [DENR Administrative Order No. 2010-21]</p>

## 6. Enforcement/ Regulatory Actions



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General questions		
No	Topic	Answer
1.	<b>Enforcement actions available to the government/ public authorities/ citizens take for breach of any of the relevant laws/ regulations</b>	<p>Civil, criminal, and/or administrative cases may be filed for violations of the relevant laws.</p> <p>The following provisional remedies are available:</p> <ol style="list-style-type: none"><li>1. <b>Environmental Protection Order (“EPO”)</b> – In deciding a case, the court may issue an EPO directing any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.</li><li>2. <b>Temporary Protection Order (“TEPO”)</b> – If it appears from the verified complaint that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the court may issue <i>ex parte</i> a TEPO effective for seventy-two (72) hours from date of the receipt of the TEPO by the person enjoined.</li><li>3. <b>Ocular Inspection Order</b> – The court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon if it is shown that such is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.</li><li>4. <b>Production Order</b> - The court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.</li></ol> <p>The following special civil actions are also available:</p>



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## General questions

1. **A writ of kalikasan** is available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.
2. **A writ of continuing mandamus** is available when any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law.

The Supreme Court may apply the precautionary principle in issuing the said writs. The **precautionary principle** states that "when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat." Hence, when there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court will err on the side of caution and apply the precautionary principle in resolving the case. In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.



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General questions		
		[A.M. No. 09-6-8-SC, Rules of Procedure for Environmental Cases]
2.	<b>Bodies responsible for regulatory enforcement and associated procedures</b>	<p>The EMB is in charge of implementing environmental laws, while the MGB is in charge of mining laws. Both agencies can initiate civil, criminal or administrative cases for violations of the respective laws they implement.</p> <p>The PAB has exclusive jurisdiction over the adjudication of pollution cases, and all other matters related thereto, including the imposition of administrative sanctions. The PAB also has specific jurisdiction over, among others the following cases:</p> <ol style="list-style-type: none"> <li>1. <b>Clean Water Act (RA 9275):</b> The PAB has the exclusive and original jurisdiction with respect to adjudication of pollution cases based on exceedance of the DENR Effluent Standards and other acts defined as prohibited under Section 27 of R.A. 9275.</li> <li>2. <b>Establishing an Environmental Impact Statement System (P.D. 1586):</b> The PAB has jurisdiction to hear cases of violation of P.D. 1586 and its IRR as defined in Section 27 (h) of R.A. 9275</li> <li>3. <b>Ecological Solid Waste Management Act (RA 9003):</b> The PAB has jurisdiction to hear cases of unauthorized transport and dumping into sea water solid waste as defined in R.A. 9003.</li> <li>4. <b>Toxic Substances and Hazardous Wastes Act RA 6969:</b> The PAB has jurisdiction over cases of:               <ol style="list-style-type: none"> <li>a. Illegal transport or dumping or discharge of prohibited chemicals, substances or pollutants listed under R.A. 6969; and</li> <li>b. Operating facilities that discharge hazardous substances into water bodies. [Sec. 1, Rule III, Revised Rules of the PAB (2010)]</li> </ol> </li> </ol>
3.	<b>Is there an online database of penalties/fines related to water use in the mining sector</b>	None



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General questions	
4.	<p><b>What is the procedure for bringing a case?</b></p> <p><b>Civil cases involving enforcement or violations of environmental and other related laws</b>, including the Water Code and the Philippine Mining Act, are initiated by the filing of a verified complaint in the trial court. The plaintiff shall attach to the verified complaint all evidence proving or supporting the cause of action, including affidavits of witnesses, documentary evidence, and if possible, object evidence. Plaintiff may pray for the issuance of an EPO and, when there is extreme urgency, a TEPO.</p> <p>On the other hand, <b>criminal cases</b> are initiated by the filing of a complaint before the prosecutor or municipal trial court judge. When there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.</p> <p><b>A petition for a writ of kalikasan</b> is filed directly with the Supreme Court or with any of the stations of the Court of Appeals. There are no docket fees for this type of petition.</p> <p><b>A petition for a writ of continuing mandamus</b> is filed either with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or with the Supreme Court.</p> <p><b>An action with the PAB</b> is deemed commenced: (a) upon the filing of a complaint with the Board or with the Regional Office, Provincial Environment and Natural Resources Office (“<b>PENRO</b>”) or DENR Community Environment and Natural Resources Office (“<b>CENRO</b>”), or (b) by the issuance of a Notice of Violation by the Department, Regional Office, PENRO or CENRO.</p> <p>For complaints filed directly with the PAB, the PAB may choose to assume jurisdiction over the case at once or remand the case to the Regional Office.</p> <p>All complaints filed with the PENRO or CENRO, and all Notices of Violation issued by them, shall be endorsed to</p>



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	<p>the Regional Office within three (3) days for disposition in accordance with these Rules.</p> <p>Copies of all complaints filed or endorsed to the Regional Office, and all Notices of Violation issued by it, shall be furnished the appropriate PENROs and CENROs. [Sec. 2, Rule IV, Revised Rules of the PAB (2010)]</p>
5.	<p><b>Who has standing to bring a case?</b></p> <p>Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law. [Sec. 4, Rule 2, A.M. No. 09-6-8-SC]</p> <p>Moreover, any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. [Sec. 5, Rule 2, A.M. No. 09-6-8-SC; See also <i>Oposa v. Factoran</i>, G.R. No. 101083, July 30, 1993]</p> <p>On the other hand, any offended party, peace officer or any public officer charged with the enforcement of an environmental law may file a criminal case for violation of environmental laws. [Sec. 1, Rule 9, A.M. No. 09-6-8-SC]</p> <p>Any person, party, entity who has an interest in the subject of the action may be a party to a case or proceeding before the Board or the Regional Office.</p> <p>[Sec. 1, Rule IV, Revised Rules of the PAB (2010)]</p>
6.	<p><b>Statute of limitations</b></p> <p><b>Actions for offenses that are punishable under the Water Code</b> by a fine of not more than Three Thousand Pesos (P3,000.00) or by an imprisonment of not more than three (3) years, or both such fine and imprisonment, shall prescribe in <b>five (5) years</b>; those punishable by a fine exceeding Three Thousand Pesos (P3,000.00) but not more than Six Thousand Pesos (P6,000.00) or an imprisonment exceeding three (3) years but not more than six (6) years, or both such fine and imprisonment, shall prescribe in <b>seven (7) years</b>; and those punishable by a fine exceeding Six Thousand Pesos (P6,000.00) but not more than Ten Thousand Pesos (P10,000.00) or an imprisonment exceeding six (6) years but not more than <b>twelve (12) years</b>, or both such fine and imprisonment,</p>



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		<p>shall prescribe in <b>ten (10) years</b>. [P.D. 1607, Water Code of the Philippines]</p> <p><b>Actions for offenses punishable under the Clean Water Act, Mining Act, and Ecological Solid Waste Management Act</b> will prescribe in accordance with the following rules: (a) after <b>one year</b> for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after <b>four years</b> for those punished by imprisonment for more than one month, but less than two years; (c) after <b>eight years</b> for those punished by imprisonment for two years or more, but less than six years; and (d) after <b>twelve years</b> for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years.</p> <p>The period begins to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment. [Section 2, Act 3326, “An Act to Establish Periods of Prescription for Violations Penalized By Special Acts and Municipal Ordinances”].</p> <p>Civil liability based on an environmental tort will prescribe after <b>four years</b> from the time the right accrues, based on Art. 1146 of the Philippine Civil Code.</p>
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## Annexures

### A. Relevant Legislation (policies, laws, and regulations) governing water use and discharge in the mining sector in Philippines

No.	Name of Legislation	Brief description of how it applies
1.	<a href="#">1987 Constitution</a> of the Philippines	The Constitution provides that all waters are owned by the State and, as such, all exploration, development and utilization of water resources shall be under the full control and supervision of the State; also provides that in cases of water rights for irrigation, water supply, fisheries or industrial uses other than development of waterpower, beneficial use may be the measure and limit of the grant.
2.	<a href="#">Presidential Decree No. 1067, as amended</a> (“Water Code of the Philippines of 1976”)	The Water Code governs the use and ownership of water resources; requires any person appropriating or using natural bodies of water to secure a water permit. It also prohibits any person from building any works that may produce dangerous or noxious substances or performing any act which may result in the introduction of sewage, industrial waste, or any pollutant into any source of water supply without the prior permission of the Environmental Management Board (“EMB”).
3.	<a href="#">Republic Act No. 9275, as amended</a> (“Philippine Clean Water Act of 2004”)	The Clean Water Act provides for a comprehensive water quality management in all water bodies, water quality standards and regulations, and civil liability and penalties for violations. It prohibits the discharge of any substance in any form that would cause pollution of the ground water or any other body of water.
4.	<a href="#">DENR Administrative Order No. 10, s. 2005</a> (Implementing Rules and Regulations of the Philippine Clean Water Act of 2004)	Requires any person who will discharge industrial or commercial wastewater into Philippine waters to secure a wastewater discharge permit from the Regional Office of the EMB and to pay a wastewater discharge permit fee.
5.	<a href="#">Republic Act No. 7942, as amended</a> (Philippine Mining Act of 1995)	Section 73 of the Act provides that a contractor shall have water rights for mining operations upon approval of its application with the appropriate government agency in accordance with existing water laws, rules and regulations. The same section provides that the Government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof.



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No.	Name of Legislation	Brief description of how it applies
6.	<a href="#">DENR Administrative Order No. 21, s. 2010</a> (Implementing Rules and Regulations of the Philippine Mining Act)	Section 167 of the IRR provides that the quality of surface and ground water emanating from the exploration or contract/lease areas shall be maintained at acceptable levels.
7.	<a href="#">Presidential Decree No. 1586</a> (Environmental Impact Statement System) and its Implementing Rules and Regulations <a href="#">DENR Administrative Order No. 2003-30</a>	Requires proponents carrying out environmentally critical projects, such as mining projects, to obtain an environmental compliance certificate (“ECC”) prior to the commencement of the project.
8.	<a href="#">Ecological Solid Waste Management Act 2001</a>	Prohibits construction or operation of any landfills or waste disposal facility on any area or portion of an aquifer, water reservoir or watershed
9.	<a href="#">Presidential Decree 984 of 1976</a> (“Pollution Control Law of 1976”)	Prohibits discharge of any organic or inorganic matter or any substance in gaseous or liquid form that shall cause water, air or land pollution and requires a permit for the construction, installation or operation of any industrial or commercial establishment, the operation of which would cause an increase in the discharge of waste directly into water, air or land.
10.	<a href="#">Republic Act No. 7160, as amended</a> (“Local Government Code of 1991”)	Requires the national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, among others, to consult with the local government units, nongovernmental organizations, and other sectors concerned.
11.	<a href="#">Republic Act No. 9003</a> (“Ecological Solid Waste Management Act of 2000”)	Prohibits dumping of waste matters in public places, such as roads, sidewalks, canals, esteros, or parks, and the undertaking of activities in violation of sanitation operations.
12.	<a href="#">DENR Administrative Order No. 2015-02</a>	Harmonization of the Implementation of the Philippine Environmental Impact Statement System and the Philippine Mining Act of 1995 in Relation to Mining Projects
13.	<a href="#">DENR Memorandum Order No. 99-32 s. 1999</a>	Policy Guidelines and Standards for Mine Wastes and Mill Tailings Management
14.	<a href="#">DENR Administrative Order No. 34, s. 1990</a>	Provides guidelines for Water Usage and Classification and Water Quality Criteria. Its main objective is to maintain the minimum conditions necessary to assure the suitability of water for its designated use or classification.
15.	<a href="#">DENR Administrative Order No. 35, s. 1990</a>	Provides guidelines regarding industrial and municipal wastewater effluents.



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No.	Name of Legislation	Brief description of how it applies
16.	<a href="#">Proclamation No. 2146 of 1981</a>	Specified activities that would constitute environmentally critical projects and environmentally critical areas



**B. List of relevant authorities involved in the regulation of water in the mining sector in the Philippines**

No.	Name (In English and local language)	Brief description of its role
1.	<a href="#"><u>Department of Environment and Natural Resources</u></a> (“DENR”)	Lead agency in environmental protection and administration.
2.	<a href="#"><u>Environmental Management Bureau</u></a> (“EMB”)	Bureau under the DENR that implements environmental laws, including the Environmental Impact Statement (“EIS”) system.
3.	<a href="#"><u>Pollution Adjudication Board</u></a> (“PAB”)	A government agency under the EMB which is responsible for the adjudication of pollution cases and all other matters related thereto, including imposition of administrative sanctions.
4.	<a href="#"><u>Mines and Geosciences Bureau</u></a> (“MGB”)	Bureau under the DENR that implements the Mining Act and its implementing rules.
5.	<a href="#"><u>National Water Resources Board</u></a> (“NWRB”)	The lead government agency in the Philippine water sector, conferred with policy-making, regulatory and quasi-judicial functions. The NWRB is responsible for ensuring the optimum exploitation, utilization, development, conservation and protection of the country's water resources. Its powers include the approval of water permits and the setting of tariffs for water use.
6.	<a href="#"><u>Laguna Lake Development Authority</u></a> (“LLDA”)	A quasi-government agency under the DENR which is responsible for the development and preservation of the Laguna de Bay and its surrounding provinces. This includes Metro Manila, Laguna, Rizal, Batangas, Cavite, and Quezon.
7.	<b>Local Government Units</b> (“LGUs”)	LGUs grant business permits to mining operators (after issuance of an environmental compliance certificate (“ECC”) and water permit). LGUs share the responsibility in the management and improvement of water quality within their respective jurisdictions.
8.	<a href="#"><u>Local Water Utilities Administration</u></a> (“LWUA”)	A government-owned and controlled corporation (GOCC) with a specialized lending function mandated by law to promote and oversee the development of water supply systems in provincial cities and municipalities outside of Metropolitan Manila. The LWUA also funds and supports watershed projects of local water districts, and takes action in relation to mining activities in watersheds.



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No.	Name (In English and local language)	Brief description of its role
9.	<a href="#">National Irrigation Administration</a> (“NIA”)	A GOCC primarily responsible for irrigation development and management. Its operation and maintenance activities comprise of, among others, operation of storage and diversion dams; running of pumps; operation of gates, turnouts and drainage ditches; preparation and implementation of cropping and irrigation schedules; maintenance of the physical facilities including service and access roads, and repairs on minor damages caused by floods and typhoons.