

# **DENR Administrative Order No. \_\_\_\_\_**

**Series of 2008**

## **SUBJECT: CITIZEN SUIT POLICY ENFORCEMENT GUIDELINES**

### **Section 1.     *Legal Basis.***

Pursuant to Section 41 of Republic Act No. 8749, also known as the “Philippine Clean Air Act of 1999”, and Rule LII of DAO 2000-81, the Department of Environment and Natural Resources (DENR) hereby promulgates the following guidelines for the operationalization of the citizen suit provision thereof.

### **Section 2.     *Objectives.***

This Order is being issued for the purpose of establishing a system for the implementation and operationalization of the citizen suit policy in the Philippine Clean Air Act. The citizen suit policy seeks to achieve the following:

- (a) promote the participation of the citizens in the enforcement of the Act;
- (b) serve as a stimulus to government officials to take the necessary and appropriate action to abate and/or control pollution; and
- (c) maximize the value of public pressure to promote a shift in the behavior of polluters.

### **Section 3.     *Definition of Terms.***

For purposes of this Order, the following terms shall mean:

1. *Citizen Suit* refers to a proceeding brought before the proper forum by citizen(s) who seek to enforce the rights or obligations created under the Philippine Clean Air Act.
2. *Civil action* refers to one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.
3. *Criminal action* refers to one by which the State prosecutes a person for an act or omission punishable by law.
4. *Department* refers to the Department of Environment and Natural Resources.
5. *Notice of Intent to Sue* refers to the 30-day notice given by any citizen who intends to file citizen suit against any violator of the Philippine Clean Air Act.
6. *Officer* as distinguished from "clerk" or "employee" refers to a person whose duties, not being of a clerical or manual in nature, involves the exercise of discretion in the performance of the functions of the government. When used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, "officer" includes any government employee, agent or body having authority to do the act or exercise that function.
7. *Prospective citizen/plaintiff* refers to any person who served a Notice of Intent to Sue with the intention of filing a citizen suit pursuant to the Philippine Clean Air Act.
8. *Parties directly affected* refers to the real party in interest who is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

**Section 4.     *Scope and Coverage.***

This Order shall apply to any administrative, civil or criminal action or remedy that any citizen intends to file with the proper forum pursuant to the citizen suit provision under the Philippine Clean Air Act against any of the following parties:

- (a) Any private natural or juridical person, including national government agencies, local government units, government owned and controlled corporations, who violates or fails to comply with the provisions of the Act;
- (b) The Department, in case of orders or rules issued inconsistent with the Act. For this purpose, unless the inconsistency is so blatant as to manifest evident bad faith, the action available herein shall only be civil in nature, such as for declaratory relief and/or injunction. The government official who was made a respondent in said civil action shall be sued in his official capacity and shall not be liable for damages;
- (c) Any officer of the Department who willfully or grossly neglects to perform the duties provided for under the Act, or who abuses his authority or in any manner performs his duties under the Act and its Implementing Rules and Regulations.

*Provided, that,* upon filing of the action before the appropriate forum, the rules of procedure for each forum or court shall apply. *Provided, also that,* any suit filed by any person directly affected by the alleged act or the DENR against violators of the Act shall be independent from the suit contemplated under these guidelines. *Provided, further that,* the suit may be filed with LTO for administrative case involving mobile sources, DENR Pollution Adjudication Board for cases involving stationary sources, and the Ombudsman for cases against public officers.

**Section 5.     *Collection of Information on the Alleged Violator.***

Without trespassing on the alleged violator's property, any citizen who intends to file a citizen suit shall investigate the site; record observations and details about the alleged violation such as the exact location, date, and time of day; how the alleged violation is occurring; or what it may be affecting. If possible, take photographs *and/or video* with date imprinting, or mentioned in the notice of intent to sue or affidavit of the photographer/video-taker, to document any problems such as black smoke, other visual signs, etc. Findings obtained in connection with the investigation shall be the basis for the service of the Notice of Intent to Sue.

The citizen/plaintiff may obtain reimbursement from the convicted or adjudged violator for the cost and expense of investigating and pursuing the violations when a court or other proper forum finds that the violator has indeed violated the law.

**Section 6.     *Notice of Intent to Sue.***

Pursuant to Section 4 of Rule LII of DAO 2000-81, administrative, criminal or civil remedies against any party initiated as a citizen suit shall be filed with the proper forum only after a 30-day **Notice of Intent to Sue** is given by the prospective citizen/plaintiff to the alleged violator, with a copy furnished to the Department. The 30-day notice shall be a condition precedent to the filing of the case and given for purposes of allowing the alleged violator the opportunity to undertake the necessary measures to abate the pollution. *Provided,* that any

person directly affected by the alleged act, or the Department can *motu proprio* file action against violators of the Act without the required notice.

**Section 7.     *Service of Notice of Intent to Sue.***

(a) Notice of Intent to Sue shall be served by the prospective citizen/plaintiff upon an alleged violator of the Philippine Clean Air Act and its implementing rules and regulations in the following manner:

- (1) If the alleged violator is a private individual or corporation, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the owner or site manager of the building, plant, installation, or facility alleged to be in violation. A copy of the notice shall be mailed to the Regional Technical Director (RTD) for Environment of the region in which the violation is to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be mailed to the President or Chief Operating Officer and Pollution Control Officer of that corporation in which such violation is alleged to have occurred.
- (2) If the alleged violator is the Department or its officer, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon the officer and the Secretary of the Department.

(b) Notice given in accordance with the provisions of this Order shall be considered to have been served on the date of personal receipt. If service was accomplished by registered mail, the date of receipt will be considered to be the date of mailing noted on the return receipt card.

**Section 8.     *Contents of Notice of Intent to Sue.***

(a) *Violation of permit, standard, regulation, condition, requirement, or order.* Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under the Philippine Clean Air Act shall include sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of an officer of the Department to perform an act or duty which is not discretionary under the Act shall identify the provisions of the Act which require such act or create such duty, shall describe with reasonable specificity the action taken or not taken by the officer which is claimed to constitute a failure to perform the act or duty, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Illegal Order or Rules.* Notice regarding an alleged Order or Rules issued by the Department not consistent with the Act shall identify the provision(s) of the Act which has been violated by the said Order or Rules.

(d) *Identification of counsel.* The notice shall state the name, address, and telephone number

of the legal counsel, if any, representing the person giving the notice.

**Section 9. *Alleged Violator's Response to Receipt of Citizen Suit Notice.***

Within 30 days from receipt of the Notice of Intent to Sue, the alleged violator shall respond to each alleged violation in the Notice of Intent to Sue. The response shall be in writing and served to the prospective citizen/plaintiff and the RTD for Environment.

In case of violations committed by the official of the Department who issued the order or rules inconsistent with the Act, the response shall be in writing and served to the prospective citizen/plaintiff. If the violation contemplates an officer who fails to perform an act or duty required under the Act, the response shall be served to the prospective citizen/plaintiff and the Secretary of the Department.

Failure to respond to the Notice shall merit the filing of a citizen suit in the proper forum.

**Section 10. *Department's Response to Receipt of Citizen Suit Notice.***

Within ten (10) days upon receipt of a copy of a citizen's Notice of Intent to Sue to the alleged violator, the RTD for Environment shall provide prospective citizen/plaintiff a summary of available relevant information concerning the alleged violation(s), including but not limited to:

- (a) results of latest inspections;
- (b) the status of any permits or orders issued to the alleged violator by appropriate agency;
- (c) the potential environmental and health impacts of the alleged violation;
- (d) the enforcement and compliance history of the alleged violator; and
- (e) Any enforcement action taken or planned with respect to the alleged violation.

Upon investigation and within the 30-day period, the RTD for Environment shall respond to the prospective citizen/plaintiff and defendant, and/or may refer the matter to the Pollution Adjudication Board (PAB) or prosecuting attorney's office. The response shall contain any of the possible determinations referred to in Section 11 hereof.

Provided that if the alleged violator is the Department or its officer, the Secretary of the Department shall respond within 10 days from receipt of the Notice of Intent to Sue stating any action taken or plan with respect to the alleged violation.

**Section 11. *Possible Determinations by the Department.***

Upon investigation into the facts and circumstances pertaining to the allegations in a particular citizen's Notice of Intent to Sue, the RTD for Environment may make one or more of the below-listed Determinations:

- (a) The violations that are the subject of the citizen's Notice have been resolved previously, by means of an Administrative or judicial Order, the terms of which have been fully performed by the violator;

- (b) The violations that are the subject of the citizen's Notice have been resolved previously, by means of an Administrative or judicial Order, the terms of which have not been fully performed by the violator;
- (c) The violations have been referred to the Department or appropriate forum for resolution through the commencement of administrative or judicial enforcement proceedings, but the violations have not yet been resolved by the issuance of an order;
- (d) The Department is aware of the violations alleged in the Notice, is addressing the violations with the violator in the manner outlined in the Department's established guidance, and has not yet referred the violations to the PAB/Prosecutor;
- (e) The violation(s) exist and that Department was not aware of the violation(s) prior to receipt of the citizen's Notice; and/or
- (f) The allegations of violation(s) set forth in the citizen's Notice are unfounded in fact.

The findings of such investigation shall be transmitted by the RTD for Environment to the Director of the Environment and Management Bureau (EMB) for appropriate action.

**Section 12. *Actions of the Concerned Department.***

After the lapse of 30 days, and upon investigation in accordance to Section 10 hereof, the EMB Director may act on the allegations in the Notice of Intent to Sue in one of the following ways:

**1. Initiation of action.**

If the case is provable, meritorious and sufficiently significant, appropriate administrative, civil or criminal action may be instituted by the EMB.

**2. No action.**

The Department through the EMB may decide not to initiate an action on the allegations if it finds the allegation(s) unfounded in fact; or, if the violations have been resolved by means of an Administrative or judicial Order, the terms of which have been fully performed by the violator; or, if the violations have been resolved by means of an administrative or Judicial Order, the terms of which have not been fully performed but the violator is in compliance with the schedule and conditions established by the Order. Provided, that the EMB shall respond, in writing, to the prospective citizen/plaintiff outlining its findings and the reason for not initiating a case against the alleged violator. Provided, however, that the prospective citizen/plaintiff may still proceed with the filing of citizen suit in the proper forum.

**3. Intervention in the citizen's civil suit.**

When the violation mentioned in the citizen's Notice is the subject of an ongoing administrative proceeding with the Department which has not yet resulted in the issuance of an Order at the time that the citizen's statutory notice period expires, the citizen may exercise his right to commence a civil action by filing a complaint against the violator in the proper court. After reviewing all the facts and circumstances of the specific case, the Department may move to intervene in the citizen's civil suit.

The Department through the EMB may intervene as a party/plaintiff, or party/defendant, or when asked by the courts to act as an *Amicus Curiae*, to assist the Court by giving information which may not be available from any other source; and by introducing argument, authority, and evidence which serves to enhance environmental protection and which is

consistent with the goals and enforcement policies of the Department.

**Section 13. *Citizen Suit Settlements.***

The Department through the EMB may intervene in any settlement of citizen suit involving violations of the Philippine Clean Air Act. A proposed citizen suit settlement shall be reviewed according to the following criteria:

1. Is the proposed settlement consistent with the statutory and regulatory standards applicable to the defendant with respect to the activity in question?;
2. Will the proposed settlement interfere in any way with the Department's present and/or future regulatory, compliance monitoring, or enforcement functions?;
3. Will the proposed settlement provide for appropriate remediation of all negative impacts in the environmental media affected by the violation?; and
4. Will the proposed settlement provide for appropriate general and specific deterrence of similar violations?

EMB shall review the proposed settlement in accordance with the criteria listed above and provide comments to the plaintiff and defendant through the Court.

**Section 15. *Separability Clause.***

If any clause, provision or section of these Guidelines shall be declared unconstitutional or invalid, the remaining parts of these rules shall not be affected thereby, shall remain in full force and effect.

**Section 16. *Repealing Clause.***

All Orders, rules and regulations inconsistent with or contrary to the provisions of these guidelines are hereby repealed or modified accordingly.

**Section 17. *Effectivity.***

These rules shall take effect immediately upon filing with the Office of the National Administrative Register (ONAR), and publication in two (2) national newspapers of general circulation.

**Approved,**

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Secretary  
Department of Environment and  
Natural Resources