

MINERALS ACTION PLAN (MAP)

A ROADMAP FOR THE REVITALIZATION OF THE MINERALS INDUSTRY

The Minerals Industry plays a significant role in the development of the Philippine economy. For 2003 alone, the Industry registered P41.9 Billion in production, U.S \$519M in export earnings and paid P2.1B in taxes and fees. The Industry employed 112,000 workers and provided P4B-P5B in wages and benefits. In addition, 4-10 allied jobs are created for each mining job. The Minerals Industry still offers huge potentials. Mining permits presently cover only 1.4% or roughly 420,000 hectares of the country's land area. Geologists estimate that the potential minerals (e.g., gold, copper, and chromite) onshore cover an area of about 9 million hectares.

Developments in the Industry, however, is hampered by numerous constraints: perceived policy instabilities arising from the Supreme Court decision nullifying certain provisions of the Philippine Mining Act of 1995, overlapping provisions of various laws and certain ordinances of Local Government Units (LGUs); tedious permitting process; public concerns over the environmental and ecological impacts of mining; and inadequate benefits to host communities, among others. These resulted in the decline in the number of operating mines from 58 producing metallic mines in 1981 to only 8 mines in 2002.

Executive Order (E.O.) No. 270 as amended, issued on 16 January 2004 and amended on 20 April 2004, provides for the revitalization of the Industry through the promotion of responsible mining that adheres to the principles of sustainable development: economic growth, environmental protection and social equity. The detailed Minerals Action Plan (MAP) that will implement the provisions of said E.O. was crafted by inter-agency working groups and consists of 32 issues, 57 strategies/action agenda, and 126 specific measures (*See attached matrix of the detailed Mineral Action Plan*). The MAP was subjected to consultations and already incorporated most of the comments of other government agencies, and the Minerals Industry and Civil Society/NGOs.

Towards the Promotion of Investments in the Minerals Industry

The most pressing concern facing the Industry is the January 27, 2004 Supreme Court Decision that nullified the provisions of the Mining Act allowing the direct participation of foreign-owned corporations in mining. This has created policy instability and uncertainties in an industry that relies heavily on foreign capital. The quick response in filing the Motion for Reconsideration (MR) reflects the priority concern of government. The entire government machinery will be mobilized to support the MR. In the meantime, a "comfort" letter has been issued by DENR to allay the fears of investors. The MAP also calls for the formulation of an action plan in case of an adverse final decision on the MR. These measures are intended to create stability in the Industry.

Notwithstanding the outcome of the Supreme Court case, serious concerns have been raised by the Industry on the "tedious" processing of mining applications. The Industry estimates an average of 3 years processing time. The DENR has substantially streamlined its procedures and has created 15 regional one-stop shops. The MAP reflects an agreement with the NCIP for the reduction in securing the Free and Prior Informed Consent (FPIC) from 185 days to 107 days or by 43.0% and to streamline and decentralize the certification process for areas without Indigenous Peoples (IPs). At the same time, exploration projects will only be required a certification of consultation from a designated official instead of the resolution of the whole Sanggunian. All these are

expected to reduce the processing time from 3 years to as much as 6 months or a reduction of 83.0%.

Another perceived major source of policy instability are the overlapping provisions of various laws (e.g., Mining Act, NIPAS Law, IPRA and Local Government Code). Regular discussions among the concerned agencies will also be undertaken to harmonize or amend these laws. The Plan also provides for an agreement between DENR and the LGUs on the parameters for endorsement and withdrawal of endorsement by LGUs of mining projects, among others. The DENR will also seek DOJ's opinion on issues involving the LGUs (e.g., moratorium on mining, taxation, etc.) to harmonize national and local policies.

The Plan calls for the government to provide more technical support to the Industry in terms of conducting more geological/geophysical surveys for mineral exploration to provide more complete and accurate information on mineral resources potentials in the country; more efficient mining methods and technologies; training and skills upgrading for industry workers, closer collaboration among the government, Industry and academe, both locally and internationally.

The Plan will also promote the development of downstream industries to maximize the benefits or value-added from mining. The Plan provides for the completion of the minerals value chain through regular information on mineral products and markets, joint R and D and capability-building programs for local engineers and researchers on downstream industries, and promotion of investments.

The MAP is not only for large-scale mining. It provides equal importance to the development of small-scale mining and the protection of small-scale miners, roughly estimated at about 200,000 (largely in the informal/underground mining sector). Considering the limited capability of small-scale miners, the Plan calls for government interventions in the identification of mineralized areas exclusively for small-scale miners ("Minahang Bayan"); provision of common mineral processing facilities; capability-building and education programs (also for LGUs), especially on environmental, health and safety issues; and provision of social infrastructures to improve their living conditions. The vision is to transform these miners from the informal to the formal sector and free them from the bondage of subsistence; thereby, affording them protection of law and formalizing their contributions to development. The DENR will also ensure the formation of Provincial and City Mining Regulatory Board in all provinces and highly urbanized cities to facilitate the development of small-scale mining, which has been devolved to the LGUs.

Towards Greater Public Confidence in the Minerals Industry

Public concern over the adverse environmental and ecological impact of mining is due mostly to the pollution and degradations experienced with a number of mining projects that were abandoned or are now largely dormant. The Plan seeks to address these issues by developing mine viability and environmental assessment guidelines for the remediation/rehabilitation or redevelopment of viable projects, with appropriate incentives. The liabilities and accountabilities of responsible companies shall be legally pursued. In the meantime, non-capital intensive and short-term remediation measures shall be implemented, similar to the resolution of the Maricalum dust pollution in Negros Occidental.

To promote greater public confidence, the Plan calls for the establishment of measures to ensure that past mistakes are not repeated and possible environmental problems are immediately and adequately responded to. The Environmental Impact Assessment (EIA) system and Environmental Protection and Enhancement Program (EPE) will play a significant role by providing for the integration of environmental

parameters at every phase in the life of the mine and provide for incentives for environmental management initiatives. Final Mine Rehabilitation and Decommissioning Plan and post-abandonment land use, including progressive rehabilitation and an appropriate environmental performance surety, shall be instituted from the start of the mining project. At the same time, the guidelines and standards for mine waste and mill tailings management shall be rationalized to effect continual improvement and to keep abreast with current technology. Voluntary third party audits shall be encouraged, for greater transparency and bring out best practice in addressing a mining concern.

The implementation of mining projects in ecologically sensitive areas (e.g., high biodiversity areas and small islands) shall be addressed through the EIA system and science-based valuation tools. Biodiversity considerations shall form part of the EIA system, pursuant to existing laws and international commitments (e.g., Convention on Biological Diversity). To determine the best and alternative uses of areas, given competing needs, a study shall be initiated on a valuation system for various land uses. This will be the initial phase in the implementation of a compatible and multiple land use policy adopted in E.O No. 270 as amended.

The above measures are not only expected to instill greater public confidence in the Minerals Industry, but will also result in clear, stable and predictable policies on environmental and ecological aspects on mining. These are also in line with the Corporate Social Responsibility (CSR) initiatives that the Minerals Industry is seriously pursuing.

Towards Greater Public Acceptance of the Minerals Industry

Acceptance by communities to host mining projects depends to a large extent on the local benefits that they will bring. This is critical since government approval ultimately depends on the social acceptability of the project. Under the Local Government Code, the hosts LGUs are entitled to 40% of the gross collection from the utilization of national wealth that includes minerals. In reality, however, the remittances still need to be budgeted at the national level and remitted only after 4 years. The Plan provides for a simplified and streamlined process for budgeting and remittance by national agencies in order for the LGUs to receive their share on time. More importantly, the Plan strongly supports the amendment of existing laws to provide for direct remittance and pursue the recent Supreme Court decision in the case of The Province of Batangas, Petitioner, versus the Hon. Alberto G. Romulo, et. al., Respondents (G.R. No. 152774) that upheld local autonomy in the allocation of the Internal Revenue Allotment.

To ensure that the government collects the correct amount of taxes, the Plan provides for improvements in the reporting, coordination and processing system for revenue generation. In addition, an indicator system for the social performance of mining projects shall also be developed.

The rights of the IPs, through the Free and Prior Informed Consent (FPIC) as provided for in the IPRA Law, and the rights of communities with tenurial instruments shall always be respected and upheld. The Social Development and Management Program that allocates 1% of the direct mining and milling costs for community development shall be fully implemented. This is expected to result in a harmonious relation between the mining contractor and the communities.

Towards Open and Transparent Communication Among Stakeholders

A sustained Information, Education and Communication (IEC) campaign, both on the benefits and risks of mining, shall be initiated and maintained. These include the promotion of regular and institutional linkages among the stakeholders through MOA's, agreements, etc.; conduct of tri-media campaigns, and cross-visits and site visits. These

are intended to ensure well-informed decisions by stakeholders and avoid speculations and recriminations.

The Plan also provides for a regular, continuous and meaningful consultation process, among all the stakeholders, including other government offices. Policy formulation by the government (e.g., establishment of Protected Areas), will always involve the various stakeholders, including the Minerals Industry. This is expected not only to empower the stakeholders but lead to their capability enhancement.

Conclusions

The Minerals Industry suffers mainly from instabilities in the policy environment, administrative processing bottlenecks and lack of support from some stakeholders. The climate, therefore, is not conducive for investments. The MAP seeks to substantially address these concerns in order to revitalize the industry and maximize its contributions to national development and poverty alleviation. In addition, it provides for clear and predictable protocols on environmental and ecological concerns and pursues the development of downstream industries and small-scale mining. Pursuant to E.O Nos. 270 as amended, the MAP is consistent with the promotion of economic growth, environmental protection and social equity or sustainable development.

The MAP, however, can only be as effective as its implementors. The Plan, therefore, provides for capability building in the government sector. In particular, the Plan strongly supports the separation of the environment from the natural resources functions of the DENR. The appropriate Bill in Congress will be recommended for certification by the President as “Urgent.” This is something which the present DENR management has been pushing for. The Plan also calls for priority status for the Minerals Industry in the generation of foreign and local assistance by the government. It is expected that concerned agencies will allocate corresponding budget for Plan implementation in their 2004 reprogramming and 2005 budget proposal.

Once all the reforms under the MAP have been put in place, government expects mining investments to go as high as US\$4.36B, with annual potential revenues of US\$2.32B and employment generation of as much as 19,000 workers from identified high-profit mining projects within the next 10 years.

It is envisioned then that the Minerals Action Plan will lead to a Minerals Industry that is not only prosperous but also socially, economically and environmentally sustainable, with broad community and political support while positively and progressively assisting in the government’s program to alleviate poverty and contribute to the general economic well being of the nation.