workable: a) Commonwealth Act No. 141, as amended, should be amended again to eliminate ancestral lands from its coverage; b) the Revised Forestry Code, as amended, should be amended again to eliminate all its provisions (e.g. ban on *kaingin* farming, the 18% slope rule) which work against the tenurial rights of indigenous cultural communities; and c) the Property Registration Decree or the Torrens System should be amended to accommodate communal titling of ancestral lands consistent with the ancestral domain law that may be enacted in the future.

Resolving the ancestral domain problem is an intimidating task. The fronts to be attended to are so many like human rights, social justice, economic development, reformation of laws, political autonomy, ethnography, ecology, education, health, law enforcement, and special adjudication, to name some, which all cry out for simultaneous government action. Thus, one cannot help but say that only a highly competent, intensely determined, and fully humane government can peacefully settle this complex, age-old, and all-encompassing problem on ancestral domain rights. Perhaps it is more appropriate to say that a people that can humanely solve a problem of such magnitude is truly worthy of being called a nation.

THE RIGHT TO CLEANER AIR: STRATEGIES FOR THE CONTROL OF AIR POLLUTION FROM STATIONARY SOURCES IN THE LIGHT OF EXISTING LAWS

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One of the problems brought about by the industrialization of the country is the increasing pollution of the air, which threatens human health and survival.

This thesis makes a survey of existing laws that deal with pollution from stationary sources, as well as other related laws, rules and regulations, and the cases that interpret these, with the end in view of evaluating the efficacy of these laws and mapping out a legal strategy which may be used by persons, especially community members, who may be aggrieved by problems of pollution. In the process, the author discusses the main governmental agencies involved in pollution control, and the role and enhanced powers of the local governments in the task of pollution control, as provided in the Local Government Code of 1991.

After mapping out such strategy, the author goes on to conclude that the basic framework for air pollution control has been set in place, and makes recommendations for the more effective use of the law in air pollution control.

INTRODUCTION

A. Background of the Study

> Petitioner takes note of x x x [its] plea [,] focusing on its huge investment in this dollar-earning industry. It must be stressed, however, that concomitant with the need to protect investments and contribute to the growth of the economy is the equally essential importance of protecting the health, nay the very lives of the people, from the deleterious effects of the pollution of the environment.[1]

We live in an era which demands a delicate balance of important forces and interests. While on one hand there is a growing concern for the envi-

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[1] *Technology Developers, Inc. v. Court of Appeals*, 192 SCRA 147 at 152 (1991).

The second and third chapters deal with the laws and administrative rules and regulations on air pollution. Chapter II focuses on the relevant constitutional provisions and the laws which direct central government agencies to deal with pollution. Chapter III tackles the laws empowering local governments to confront the problem of pollution.

Chapters IV and V cover the administrative and judicial remedies, respectively, available to persons aggrieved by problems of pollution, based on an integration of the existing laws and administrative rules and regulations discussed in the previous chapters.

Chapter VI contains the conclusions derived from the author's research as well as the recommendations for making the present laws and their implementation more effective.

I. AN AIR POLLUTION SITUATIONER: SOME FACTS ON AIR POLLUTION

> The pollution in Asia's cities is approaching the point when it's no longer a case of "what you don't know won't hurt you." In fact, with each year seeing more poisons flung into the air, x x x, it's becoming more a case of "what you don't know will kill you."[7]

There is indeed cause for alarm when one discovers that, as stated in a report submitted by the Environmental Management Bureau to the President of the Philippines in November 1990, "[t]he deterioration of atmospheric and climatic conditions has never been more noticeable than it was in the past decade."[8]

The sources of pollution are classified into three general types. These are:

(1) mobile sources;
(2) stationary sources; and
(3) area sources.[9]

About sixty per cent of the air pollution in Metro Manila is caused by motor vehicles.[10] Motor vehicles are the leading emitters of carbon monoxide (CO) and nitric oxide (NO).

Next in line as major polluters are the stationary sources such as structures for industrial processing, power plants, and factories, which emit considerable amounts of sulfur dioxide (SO_2). Both stationary and mobile sources are responsible for spewing out particulate matters[11] into the atmosphere.[12]

In addition to these gaseous pollutants, heavy metals such as lead, copper, iron, zinc, and cadmium have also been found in various quantities in the Metro Manila air.[13]

Poisonous wastes do not choose their victims.[14] The same may be said of all air pollutants.

The worsening condition of the air causes more than the immediate inconvenience of not being able to breathe fresh air. Serious health hazards result from the inhalation of the different pollutants.

The inhalation of oxides of nitrogen and sulfur may be toxic in certain dosages.[15] Sulfur dioxide, which is produced by electric and industrial plants which burn coal and oil fuels, "causes a choking sensation when inhaled."[16] When combined with water, sulfuric acid (H_2SO_4) is formed. Sulfuric acid is particularly irritating to the moist surfaces of the eyeballs and the moist lining of the lungs.

Nitric oxide, which is released from internal-combustion engines in automobiles, combines with oxygen in the air to form nitrogen dioxide (NO_2). The combination of nitrogen dioxide with water produces nitric acid (HNO_3) which is irritating to the lungs.

Carbon monoxide (CO), a gas given off when coal, charcoal, wood, oil, and gasoline are not completely burned, combines with the hemoglobin of the blood much faster than oxygen,[17] depriving the blood of much-needed oxygen.

In the case of the Philippines, a report prepared by the Metropolitan Environment Improvement Program of the World Bank and the United Nations Development Program shows that in 1988, air pollution in Metro Manila caused "at least 471,100 cases of upper respiratory tract infection, with 79,400 cases of bronchitis reported."[18]

Humans are not the only victims of poor air quality. An imbalance in the natural composition of the air affects plants and animals that respire, and green plants that photosynthesize.

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[7] Alan C. Robles, *Poisoned Cities*, The Manila Chronicle National Weekly, Jan. 9-15, 1993.

[8] DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ENVIRONMENTAL MANAGEMENT BUREAU, PHILIPPINE ENVIRONMENT IN THE EIGHTIES 1 (1990).

[9] Defined as "dispersed sources of emission that individually emit small amounts of pollutants but in aggregate, may be significant." Examples of these are aircraft operations, structural fires, marine transfers, and dry cleaning. *Id.* at 7, 12.

[10] *Id.* at 8.

[11] Particulate matters consist of "small solid particles such as dust, metallic and mineral particles, smoke, mist and acid fumes." Id. at 1.

[12] *Id.* at 3-4.

[13] *Id.* at 3-4

[14] F.P. Guanzon, *Industrial Pollution: Update, Status and Policy Options*, paper delivered at the Jaime V. Ongpin Lecture Series on Future Issue, Asian Institute of Management, Makati, April 22, 1992.

[15] M.B. Buat, *Air Quality Management Laws*, 1 Phil. Environ. L. 23.

[16] JAMES H. OTTO and ALBERT TOWLE, MODERN BIOLOGY 775 (1981). [hereinafter cited as OTTO.]

[17] *Id.*

[18] Robles, *supra* note 7, at 1.

Beyond its direct effects on living things, pollution also adversely affects the physical structure of the atmosphere. The reaction of sulfur dioxide and nitrogen dioxide with water in the atmosphere causes the phenomenon called acid rain, which destroys both aquatic and terrestrial ecosystems, and causes corrosion on metal and stone surfaces.[19]

Other consequences of pollution include the greenhouse effect which causes climatic disturbances,[20] and temperature inversion. As a consequence, polluted air is trapped above the houses and factories, instead of being blown away from where it can do the most harm.[21]

Given this situation, our lawmakers have attempted to address the problem of pollution through various laws which are to be discussed in the succeeding chapters.

II. A Survey of the Laws on Pollution

The non-compliance with and non-implementation of our laws, pollution control laws included, have often brought to question the advisability of even enacting such laws. It is submitted, however, that such fleeting and remediable defects should not be taken against the enactment of environmental laws, for the:

> [a]doption of environmental principles as law would imbue them with a force and legitimacy x x x and would make it politically easier to give environmental considerations their proper weight in the Government's decision-making process.[22]

A. Relevant Provisions of the 1987 Constitution

Perhaps believing in such advantage, the drafters of the 1987 Constitution included in the Declaration of State Principles and Policies, Section 16 which says:

> Sec. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

This entirely novel constitutional provision is significant in that it points out a duty of the state (to promote and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature), and recognizes the corresponding right of the people. Together

[19] OTTO, *supra* note 16, at 776; and Buat, *supra* note 15, at 7.

[20] Buat, *supra* note 15, at 31.

[21] OTTO, *supra* note 16, at 777-778.

[22] A.S. Tolentino, Jr., *Review of Environmental Legislation and Administrations and Its Application in Selected DMCs*, ASIAN DEVELOPMENT BANK, ENVIRONMENTAL PLANNING AND MANAGEMENT 86 (1986).

with the laws for the control of air pollution from stationary sources, this constitutional provision is a potent weapon to use in obtaining relief from the government in cases involving the environment.[23]

Closely related to this provision, insofar as ecological damage may affect the health of the people, is Section 15, Article II of the Constitution which states:

> Sec. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

As was demonstrated in the first chapter, pollution adversely affects people's health. With the inclusion of a statement on the people's right to health in the Constitution, an act of pollution may now be challenged with greater success because of the primordial importance given to the people's right to health.

Considering that pollution is a matter of public concern, Section 7, Article III of the Constitution may be used by a citizen to compel the government to give him access to information obtained by the government agencies tasked with pollution control through independent studies or through the reportorial requirements imposed on those who operate stationary sources of pollution.[24] Said provision states:

> Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Using Section 12 of Republic Act 6969 (The Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990) as a basis, the limitations on the right to information on matters of pollution would most probably refer to confidential matters in view of their effect on the competitive position of the entity involved.[25] The question of confidentiality of the desired information may, however, become a matter for judicial review.

[23] Antonio S. Oposa, Jr., class lecture in Environmental Law, June 26, 1992.

[24] Antonio S. Oposa, Jr., class lecture in Environmental Law, July 3, 1992.

[25] Sec. 12. *Public Access to Records, Reports or Notification.* — The public shall have access to records, reports, information concerning chemical substances and mixtures including safety data submitted, data on emission or discharge into the environment, and such documents shall be available for inspection or reproduction during normal business hours *except that the Department of Environment and Natural Resources may consider a record, report of information or particular portions thereof confidential and may not be made public when such would divulge trade secrets, production or sales figures or methods, production or processes unique to such manufacturer, processor or distributor, or should otherwise tend to affect adversely the competitive position of such manufacturer, processor or distributor.* The Department of Environment and Natural Resources, however, may release information subject to claim of confidentiality to a medical research or scientific institution when the information is needed for the purpose of medical diagnosis or treatment of a person exposed to the chemical substance or mixture. [emphasis supplied]

Under the title of National Economy and Patrimony (Article XII of the 1987 Constitution), the second paragraph of Section 1 speaks, *inter alia*, of the promotion by the state of "industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources x x x."[26]

Air is a finite natural resource which must be used efficiently if its benefits are to be fully harnessed. Through this provision, therefore, the principle of responsible use of natural resources is raised to a level of a constitutional precept, which must be taken into consideration in applying pollution control laws and in drawing out plans for the economy.

While Section 6, Article XII of the Constitution is often related to social justice and agrarian reform, the same provision may also be used to bolster the cause against pollution, in being a reminder that "[t]he use of property bears a social function." All economic agents are enjoined to contribute to the common good. While recognizing the right of individuals and private groups, "including corporations, cooperatives, and similar collective organizations" to "own, establish, and operate economic enterprises," such right is made "subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."[27]

B. Pollution Control Legislation

The centerpiece of the government's efforts at pollution control is Republic Act No. 3931, otherwise known as the Pollution Control Law. This law, albeit amended by subsequent laws (which will hereinafter be tackled), is still the basic law when it comes to air and water pollution.

The goal, then, during the passage of the law in 1964, was to maintain "reasonable standards of purity for the waters and air of this country with their utilization for domestic, agricultural, industrial and other legitimate purposes."[28]

One of the main features of the law was the creation of the National Water and Air Pollution Commission (the NAWAPCO), an agency under the office of the President, which was given the responsibility of handling the problem of pollution. Towards this end, the NAWAPCO was conferred, *inter alia*, with regulatory powers which consisted of the power to issue, renew or deny permits for the discharge of waters and the operation of pollution related works, as well as investigatory and visitorial powers. Also in line with its regulatory function, the NAWAPCO was given rule-making powers and the task of issuing standards to govern city and district engineers in the approval of plans and specifications for sewage works and industrial waste disposal systems.

The NAWAPCO also possessed quasi-judicial powers, i.e., the power to conduct hearings on alleged acts of pollution or failure to comply with the provisions of the pollution control law or its orders, and, if necessary, to issue orders for the discontinuance of the violation, including orders for the revocation of permits. In addition, the NAWAPCO was authorized to institute legal proceedings to compel compliance with the provisions of RA 3931.[29]

On the NAWAPCO also lay the responsibility for preparing "a comprehensive plan for the abatement of existing pollution and prevention of new and/or imminent pollution of the water and/or atmospheric air of the Philippines."[30]

Republic Act 3931 also set out a general prohibition against the discharge of wastes that will pollute the water or air,[31] together with a prohibition against the construction of a possible source of pollution, the expansion of a known polluting facility, or the increase in the volume or strength of the emissions without first securing a permit from the city or district engineer,[32] and provided sanctions for the violations of these prohibitions or the orders of the Commission, which in addition to an order for the discontinuance of the violation, consisted of a penalty of fifty pesos for each day during which the violation continues, imprisonment of from two years to six years, or both such fine and imprisonment.[33]

Given the growing problem of pollution, an amendment of Republic Act 3931 was certain to be forthcoming. Faced with "the growing menace of environmental pollution",[34] the then President Marcos saw a need to further strengthen pollution control laws. Thus, in 1976, Presidential Decree No. 984, the National Pollution Control Decree of 1976, was passed, with the avowed purpose of strengthening the NAWAPCO to meet the growing challenges brought about by pollution.

Whereas RA 3931 made vague allusions to pollution, P.D. 984 zeroed in on the problem of pollution by declaring as a national policy the prevention, abatement, and control of pollution, not only of the air and water, but also of land "for the more effective utilization of the resources of the country."[35]

The growing concern for the adverse effects of pollution and the newly-recognized effect on land resources was reflected in the definition of *pollution* as:

> Any alteration of the physical, chemical and biological properties of any water, air and or *land resources* of the Philippines, or any discharge thereof of any liquid, gaseous or solid wastes as will or is likely to create or render

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[26] PHILIPPINE CONST., art. XII, sec. 1 (1).

[27] *Id.*, art. XII, sec. 6.

[28] The Pollution Control Law, R.A. No. 3931, sec. 1 (1964).

[29] *Id.*

[30] *Id.*

[31] Sec. 9. *Prohibitions.*— No person shall throw, run, drain, or otherwise dispose into any of the water and/or atmospheric air of the Philippines, or cause, permit, suffer to be thrown, run, drain, allow to seep or otherwise dispose into such waters or atmospheric air, any organic or inorganic matter or any substance in gaseous or liquid form that shall cause pollution of such waters or atmospheric air.

[32] *Id.*, sec. 9.

[33] *Id.*, sec. 10.

[34] Providing for the Revision of Republic Act No. 3931, commonly known as the Pollution Control Law, and for Other Purposes, Presidential Decree 984, Second WHEREAS clause (1976).

[35] *Id.*, sec. 1.

such water air and land resources harmful, detrimental or injurious to public health, safety or welfare or which will affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.[36] [emphasis supplied]

The decree also adopted the previous law's definition of industrial waste with the modification that the term was clarified to refer not simply to any waste, substance, or combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development, processing or recovery of any natural resource, but such waste as "may cause or tend to cause pollution, or contribute to the pollution of the water, air and land resources of the Philippines."[37]

While the decree aimed to strengthen the NAWAPCO, what was actually done was to replace the NAWAPCO with another agency, called the National Pollution Control Commission (the NPCC).

The NPCC was established as the main research agency of the government for problems of pollution. It was mandated to translate the fruits of its research into the development of periodic plans for the prevention and abatement of pollution, with the restriction that such plans were to be consistent with the national development plan of the country.[38] Note that it was the pollution plan which was required to conform to the national development plan of the country, and not the other way around.

The NPCC retained the NAWAPCO's power to set up standards with which to gauge the level of pollution, but with the proviso "[t]hat the local governments, development authorities, all other similar government instrumentalities or agencies may set up higher standards subject to the written approval of the Commission."[39] These standards, as further elucidated in Presidential Decree No. 1152, consisted of *ambient air quality standards* that would "prescribe the maximum concentration of air pollutants permissible in the atmosphere consistent with public health, safety and general welfare,"[40] and *national emission standards*[41] for new and existing stationary mobile sources of pollution. Currently, these standards are found in Chapter III of the Rules and Regulations of the National Pollution Control Commission, which became effective on July 5, 1978.[42]

[36] *Id.*, sec. 2(a).

[37] *Id.*, sec. 2(a).

[38] *Id.*, sec. 6(b).

[39] *Id.*, sec. 6(i).

[40] The factors to be taken into consideration were, *inter alia*: (1) local atmospheric conditions; (2) location and land use; and (3) available technology. Philippine Environment Code, Presidential Decree No. 1152, title I (Air Quality Management), chapter I, sec. 3 (1977).

[41] National emission standards were to be set with the following factors in mind: (1) type of industry; (2) practicable control technology available; (3) location and land use; and (4) nature of pollutants emitted. *Id.*, sec. 4.

[42] The rules were published in the June 5, 1978 issue of the Official Gazette. Pursuant to Section 112 of the Rules, the same were to take effect thirty days after such publication.

Presidential Decree No. 1152 also required the NPCC to enforce the air quality standards it had set, and for this purpose, was called upon to establish, "to the greatest extent practicable [,] an air quality monitoring network."[43]

Although the power to deputize or request other government agencies and instrumentalities for aid could be implied from the powers given to the NAWAPCO, to clear all doubts, and in line with the aim of strengthening the anti-pollution control body, such power to deputize was expressly given to the NPCC in Section 6(k) of the Decree.

An important innovation introduced by P.D. 984 was the power to issue an *ex parte* temporary restraining order (*ex parte* TRO). While as a general rule, an order for the discontinuance of the discharge of sewage, industrial, or other wastes could only be issued after due notice and hearing, the proviso of the first paragraph of Section 7 authorized the issuance of an *ex parte* TRO upon the finding of *prima facie* evidence that the discharge is of "immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable standards set by the Commission."[44]

To give teeth to the provisions of the pollution control law and enforce strict compliance with the orders of the NPCC, the above-mentioned section of the decree also gave the NPCC the power to cite in contempt a person who wilfully fails or refuses, without just cause, to comply with a summons, subpoena, or *subpoena duces tecum*.

While R.A. 3931 made no mention of judicial review of the decision of the NAWAPCO, P.D. 984 provided for an appeal of the NPCC's decision to the Court of Appeals or the Supreme Court within fifteen days from the date of notification of the decision, in the absence of which the decision would become final. Judicial review, however, was to be permitted only after the exhaustion of the remedies before the NPCC.[45]

Section 9 of P.D. 984 expanded the scope of the prohibition found in R.A. 3931 and raised the penalties for the offenses. Take the fact, for instance, that while R.A. 3931 only penalized the violation of the prohibitions or orders of the NAWAPCO, P.D. 984 included the violation of the regulations formulated by the NAWAPCO as a punishable offense. Furthermore, Section 9(c) of P.D. 984 strengthened the visitorial powers of the NPCC by providing

[43] Presidential Decree No. 1151, sec. 12.

[44] The full text of the proviso reads: *Provided*, that whenever the Commission finds a *prima facie* evidence that the discharge sewage or wastes are of immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable standards set by the Commission, the Commissioner may issue an *ex parte* order directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such sewage or wastes without the necessity of a prior public hearing. The said *ex parte* order shall be immediately executory and shall remain in force until said establishment or person prevents or abates the said pollution within the allowable standards, or modified or nullified by a competent court.

[45] *Id.*, sec. 7.

for a fine not exceeding two hundred (200) pesos or imprisonment of not exceeding one month, or both such fine and imprisonment, for any obstruction of the exercise of the NPCC's duly-authorized representatives of its visitorial powers.[46]

Pollution control legislation was to be directed not only to the actual operations of a stationary pollutant, but was to reach out to the pre-operation or planning phase, in the form of the requirement for the preparation of an environmental impact assessment.

An *Environmental Impact Assessment* (EIA), otherwise known as an Environmental Impact Statement, is a detailed statement which any agency or instrumentality of the government, including government-owned or controlled corporations, or any private corporation, firm, or entity, is required to file with the Environmental Management Bureau in relation to any environmentally critical project which said entity seeks to undertake, or with regard to any project which said entity is to undertake in an environmentally critical area. Said statement should contain, among other things, a statement on:

(a) the environmental impact of the proposed action, project or undertaking;

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) any alternatives to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involves the use of depletable or non-renewable resources, a finding that such use and commitment are warranted.[47]

The EIA was introduced in the country by Presidential Decree No. 1151, otherwise known as the Philippine Environmental Policy. P.D. 1151 set forth the State's intention to establish an Environmental Impact Assessment System (EIAS), directing the agencies enumerated in Letter of Instruction No. 422[48] to come up with their guidelines, rules and regulations to aid in the establishment of the EIAS.

[46] For a more extensive discussion of the penal provisions of Presidential Decree No. 984, *see* Chapter V *infra*.

[47] Presidential Decree No. 1151, sec. 4.

[48] The agencies mentioned in Letter of Instruction No. 422 are: The Department of Natural Resources, The Department of Agriculture, The Department of Health, The Department of Local Government and Community Development, The Department of Public Highways, The Department of Public Works, Transportation and Communications, The Department of Education and Culture, The National Economic and Development Authority, The Energy Development Board, The National Pollution Control Commission, The Philippine Atomic Energy Commission, The Human Settlements Commission, The Laguna Lake Development Authority, The National Irrigation Administration, The U.P. Natural Science Research Center, The Philippine Coast Guard, and The PAGASA.

Presidential Decree No. 1586, "Establishing an Environmental Impact Statement System, Including other Environmental Management Related Measures and for Other Purposes", recognized, in its second WHEREAS clause, the need to work "into their full regulatory and procedural details" the regulatory requirements of the EIAS.

P.D. 1586 expanded the coverage of the EIAS, as set forth in P.D. 1151, by giving the President the power, in Section 4 thereof, to declare by proclamation, certain projects, undertakings or areas in the country as environmentally critical, for in giving the President such power, the requirement of the submission of an EIA became applicable not only to public and private entities seeking to undertake environmentally critical projects, but also to public and private entities seeking to undertake projects in previously declared environmentally critical areas.

In another sense, however, P.D. 1586 also narrowed the scope of P.D. 1151 by declaring that only those projects and areas expressly declared as environmentally critical by the President would be considered as such, in relation to the requirement of a submission of an EIA.

P.D. 1586 also outlined, albeit roughly, the EIAS, by providing for the submission and evaluation of the EIA, and the issuance of an Environmental Compliance Certificate (ECC) by the lead agency (now the Environmental Management Bureau, by virtue of Executive Order No. 192, *infra.*), without which "no person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area."[49]

Lastly, P.D. 1586 provided a penalty for a required entity's failure to secure an ECC, consisting of a fine not to exceed fifty thousand (50,000.00) pesos.[50]

Pursuant to the power vested in the President by Section 4 of P.D. 1586, then President Marcos, on December 14, 1981, issued Presidential Proclamation No. 2146, "Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established Under Presidential Decree No. 1586". Said decree set out, in general terms, the areas and projects which are to be considered environmentally critical, such as smelting plants, logging operations, construction of major roads and bridges, and, for environmentally critical areas, "areas of unique historic, archeological, or scientific interests; areas frequently visited and/or hard-hit by natural calamities (geologic hazards, flood, typhoons, volcanic activity, etc.) [Under this, it seems the whole Philippines has, of late, become an environmentally critical area!]; and areas classified as prime agricultural lands,"[51] to name a few.

[49] Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586, sec. 4 (1987).

[50] *Id.*, sec. 9.

[51] Proclaiming Certain Areas and types of Project as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established Under Presidential Decree No. 1586, Presidential Proclamation No. 2146 (1981).

III. LEGAL REMEDIES FOR POLLUTION CONTROL ON THE LOCAL GOVERNMENT LEVEL

Any law, to be effective, must be properly enforced. Enforcement, in turn, depends upon the cooperation of people, whose contact with government begins at the local level. There is sense, then, in empowering the local governments for their proximity to the people and the greater manageability of the political units they handle, if harnessed properly, would yield outstanding results.

This vital role of local governments in environmental responsibility was noted in Section 58 of P.D. 1152 which declared it a responsibility of the local government units "to actively participate in the environmental management and protection programs of the government."

Towards the end of empowering local government units, Section 2 of Article X of the 1987 Constitution declares that "[t]he territorial and political subdivisions shall enjoy local autonomy." To facilitate the implementation of the autonomy granted to local governments, Section 3 of Article X of the Constitution calls on Congress "to enact a local government code which shall provide for a more responsible and accountable local government structure x x x."

The Local Government Code of 1991 (LGC), Republic Act No. 7160, became effective on January 1, 1992. The Code is notable, among other things, for its various references to the role of local governments in the task of environmental protection.

This chapter will discuss the legal remedies available in dealing with the problem of pollution from stationary sources at the local government level. The bulk of the chapter will discuss the Local Government Code, where many of the provisions on the role of the local government in pollution control are found.

A. Republic Act No. 7160

Consistent with the policy of decentralization, the Local Government Code has delegated powers related to pollution control to various bodies and officials of the local government, with the express mandate, in Section 3 (i) thereof, that "[l]ocal government units shall share with the National Government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction. x x x"

Among the rules of interpretation provided for in Section 5 of the Local Government Code, worthy of notice is subsection (a) which provides for the liberal interpretation of provisions of the Local Government Code in favor of the local government or in favor of the lower local government unit, as the case may be.[52]

Under Section 16 of the LGC, every local government is recognized as possessing the well-nigh police powers, as expressed in the General Welfare Clause, which is followed by an enumeration of some of the basic concerns

[52] Local Government Code of 1991, sec. 5(a).

of a local government unit, such as the enhancement of the right of the people to a balanced ecology. The police power of the local government unit is a potent tool which it may use in justifying interference with both illegitimate as well as otherwise legitimate businesses that pose a threat to the purity of the air.

In the next section, the development of an environmental management system is regarded as one of the basic services that a municipality is required to provide.[53] Provinces, for instance, are tasked with the enforcement of pollution control laws and other laws on the protection of the environment, "[p]ursuant to national policies and subject to supervision, control and review of the DENR."[54]

Such responsibilities promise to be more than token responsibilities, for under Section 17 (c) of the LGC, national agencies and offices concerned are mandated to devolve to local government units the responsibility for providing the enumerated basic services within six (6) months from the effectivity of the Code. *Devolution* is defined in the section as "the act by which the National Government confers power and authority upon the various local government units to perform specific functions and responsibilities."[55] Even the functions of national government agencies which are not to be delegated to the local government are required to be deconcentrated to the regional or field offices of the national agencies concerned.[56]

When it is recalled that one of the objectives of the Local Government Code is the creation of a more responsive and accountable local government structure, the enumeration of the basic services which a member of a ocal government unit (LGU) may demand from the officials of the local government becomes important in at least two ways. First, the members of the LGU can demand the delivery of these basic services as a matter of statutory right. Second, if there is scarcity of resources, which will perhaps be the case in many instances, the enumeration will serve as a list to guide the LGU's in prioritizing activities. If, in the face of strong demands for these services, LGU officials remain unresponsive, then their constituents may resort to the mechanisms of recall, initiative, and referendum.

To aid LGU's in the fulfillment of the many tasks which have been given to it (an increase in responsibility being a natural consequence of an increase in power), local government units are authorized to enter into joint ventures and other similar cooperative agreements with people's and non-governmental organizations in the delivery of certain basic services, including the promotion of ecological balance and the enhancement of the economic and social well-being of the people.[57] Considering that pollution control has been expressly included as one of the basic services under Section 17 of the LGC, the problems of enforcement of pollution control laws may perhaps be lessened by the cooperation of the people's and non-governmental organizations.

[53] *Id.*, sec. 17 (b) (2) (viii).
[54] *Id.*, sec. 17 (b) (3) (iii).
[55] *Id.*, sec. 17 (c).
[56] *Id.*, sec. 528.
[57] *Id.*, sec. 35.

Complementing Section 35 of the Local Government Code is Section 36 which empowers a local government unit, through its local chief executive and legislature, to extend financial or other assistance to people's and non-governmental organizations for, *inter alia*, environmental projects to be implemented in its territorial jurisdiction.

To the local executive of the smallest political unit, i.e., the barangay captain, is given the responsibility of enforcing laws and regulations relating to pollution control and the protection of the environment under Section 389 of the LGC.

The governors, as well as the city and municipal mayors, are given the option of appointing an environment and natural resources officer for their province, city or municipality.[58] This environment and natural resources official shall coordinate with government agencies and non-governmental organizations in the implementation of measures to prevent and control land, air and water pollution with the assistance of the Department of Environment and Natural Resources.

The different legislative bodies are given the power to enact ordinances that may be necessary to promote the general welfare of the inhabitants.[59] Violation of these ordinances may be dealt with by the imposition of a fine, which must not exceed one thousand (₱1,000.00) in the barangay level.[60] When the ordinance violated is a municipal ordinance, the penalty is a fine of not exceeding two thousand and five hundred (₱2,500.00) pesos or imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment.[61] The penalty goes up to an amount not exceeding five thousand (₱5,000.00) pesos or imprisonment of not exceeding one (1) year, or both such fine and imprisonment, at the discretion of the court, for the violation of a provincial or city ordinance.[62]

The enactment of pollution control measures lies within the ambit of the legislative power of local legislatures. This stand finds confirmation in Section 446 (vi) of the LGC which imposes upon the municipal legislative body the duty of protecting the environment and imposing appropriate penalties for acts which endanger the environment, such as activities which result in pollution.[63] These local legislative bodies may not only enact pollution control measures enforceable within their territorial jurisdiction, but may also recommend to the legislative bodies of the higher local government units the enactment of measures that will have more far-reaching territorial application and, in the case of penal ordinances, provide stiffer penalties.[64]

[58] *Id.*, secs. 463 (b) (2) [for the province]; 454 (b) [for the city]; and 443 (b) [for the municipality].

[59] *Id.*, sec. 391 [for the *Sangguniang Barangay*].

[60] *Id.*, sec. 391 (a) (14).

[61] *Id.*, sec. 447 (a) (1) (iii).

[62] *Id.*, sec. 468 (a) (1) (iii) [for the province], and sec. 458 (a) (1) (iii) [for the city].

[63] The same power is given to the *Sangguniang Panlungsod*, in sec. 458 (1) (vi), and to the Provincial Council, in sec. 468 (1) (vi), of the Local Government Code of 1991.

[64] The Local Government Code of 1991, sec. 391 (a) (5) for the Sangguniang Barangay.

The solution of certain environmental problems may be facilitated by the organization of community brigades, barangay tanods or community service units[65] through the *sangguniang barangay*. Educational programs on pollution control and environmental awareness may be coursed through the *sangguniang barangay* which is authorized to organize lectures, programs or fora for the purpose of solving community problems.[66]

An important power granted to the municipal mayor is the power to:

> require owners of illegally constructed houses, buildings or other structures to obtain the necessary permit, subject to such fines and penalties as may be imposable by law or ordinance, or to make necessary changes in the construction of the same when said construction violates any law or ordinance, or to order the demolition or removal of said house, building or structure within the period prescribed by law or ordinance.[67]

It is not enough, then, for the owners of a particular structure to obtain national permits. It is also important to acquire and maintain possession of local permits, the lack of which is equally fatal to the continued operation of the facility.

It is also to be noted that reference is made not only to ordinances, but to laws as well, hinting that even environmental or air pollution control laws may be used as a standard for defining what is an illegally constructed structure.

Adherence to the law is also safeguarded by giving the municipal council the power to enact ordinances authorizing the issuance of permits or licenses "upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the municipality x x x ."[68] Pursuant to such legislative authority, the municipal council is made responsible for the regulation of any business within the municipality and the conditions under which the licenses for said business may be issued or revoked.[69]

In view of the admission made early on in this thesis, that air is a valuable natural resource, the duty of the municipal mayor to adopt adequate measures to safeguard and conserve the resources of the municipality[70] assumes greater significance for purposes of pollution control.

The municipal council acts not only as a legislative body, but is also given the responsibility of providing legal assistance to barangay officials who, on the occasion of the performance of their official duties, may be constrained to initiate or defend themselves against legal action.[71] A situation that comes to mind, in relation to air pollution control, is the possibility of

[65] *Id.*, sec. 391.

[66] *Id.*, sec. 391 (17).

[67] *Id.*, sec. 444 (vi).

[68] *Id.*, sec. 447 (a) (3) (ii).

[69] *Id.*

[70] *Id.*, sec. 444 (vi).

[71] *Id.*, sec. 446 (xii).

legal action being instituted against barangay officials while carrying out the task of enforcing air pollution control laws.

The power of a municipality to reclassify land, enact zoning ordinances, and process and approve subdivision plans for residential, commercial, industrial, or other purposes[72] is an indirect way of empowering the local government against stationary pollutants. When the pollutant, for example, is a heavy industry which is found in a zone which has not been approved for such type of activity, local government officials can refuse or revoke a permit previously given for the continued operation of such plant.

More than being the lawmaker of the municipality, the *sangguniang bayan* is tasked with regulating activities relative to the use of land, buildings and structures within the municipality in order to promote the general welfare, and towards this end, is empowered to declare, prevent or abate any nuisance.[73]

A potential forum for the infusion of environmental consciousness into the development plans of local government units is the local development council, a body charged with assisting the respective local legislative bodies in "setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction."[74] Environmental advocacy may be especially made by the non-governmental organizations' representatives in the council who shall, in accordance with law, constitute not less than one-fourth of the members of the council.[75]

A city development plan, though passed by a progressive or environmentally-conscious development council, would be futile without proper implementation. With the city mayor rests the ultimate task of implementing the approved plans.[76] Although the city mayor cannot, on his own, enact laws for the control of pollution, he may recommend the enactment of pollution control measures.[77]

After the legislative council passes an ordinance for the issuance of permits to regulate certain industries in the city, it is the mayor who is given the power to issue, suspend or revoke such permits, upon violation of the conditions for the issuance of the license or the permits as provided by law or ordinance.[78] This regulatory power is an effective complement for the proper enforcement of development, zoning and land use plans.

To promote coordination among the different legislative bodies, a mechanism has been set in place whereby legislative bodies of a higher local

[72] *Id.*, sec. 446 (a) (2) (viii to x); *mutatis mutandis* for a city [sec. 448 (a) (vii to x)] and a province [sec. 468 (a) (2) (vi and vii)].

[73] *Id.*, sec. 447 (a) (4) (i), and sec. 458 (a) (4) (i) for cities.

[74] *Id.*, sec. 35.

[75] *Id.*, sec. 107.

[76] *Id.*, sec. 455 (1) (ii), and sec. 465 (b) (i) (ii) for provinces.

[77] *Id.*, sec. 455 (1) (ii), and sec. 465 (b) (i) (ii) for provinces.

[78] *Id.*, sec. 455 (3) (iv).

government unit review the ordinances approved by the legislative body and the executive orders issued by the chief executive of the lower local government unit to determine whether they are acting within the scope of their respective powers.[79]

A complaint to the governor or mayor may be resorted to, if a government official fails to carry out his functions since the chief executive of the local government is in charge of ensuring that all executive officials and employees of their respective local government units discharge their duties and functions faithfully. Such officials and employees may, for failure to perform their duties, be administratively or judicially disciplined.[80]

In deference to the authority of a local executive within his territory, the governor or mayor, as the case may be, is given the power to require all national officials and employees stationed in the territory within his jurisdiction to make available to him such books, records, and other documents in their custody, except those classified by law as confidential.[81] The local executive is also empowered to call upon national officials or employees stationed or assigned to his territory to advise him on matters affecting the area, and is called upon to coordinate with such persons in the formulation and implementation of plans, programs and projects. If need be, the local chief executive may also bring administrative or judicial action against said official or employee who may have committed an offense in the performance of his official duties while stationed or assigned within his territorial jurisdiction.[82]

The Local Government Code also makes the governor the general overseer of the city, municipality or province, giving him the duty to visit component barangays, cities and municipalities, as the case may be, to keep himself abreast of the problems of these component units, to give counsel to local officials and inhabitants, and to inform the same of the general laws and ordinances applicable to them, all with the end in view of improving the quality of life of the inhabitants.[83]

As a corollary to its duty to enact ordinances to ensure the "efficient and effective delivery of basic services and facilities," the *sangguniang panlalawigan* is tasked with adopting measures and safeguards against pollution in Section 468 (a) (4) (i) of the LGC.

[79] *Id.*, secs. 447 (a) (1) (i) [from barangays to the Municipal Council]; 458 (a) (1) (i) [from barangays to the City Council]; and 458 (a) (1) (i) [from component cities and municipalities to the Provincial Council].

[80] *Id.*, secs. 444 (1) (x) [for the municipality]; 455 (b) (1) (x) for the city; and 465 (b) (x) [for provinces].

[81] *Id.*, secs. 444 (b) (1) (xi) [for municipalities]; 455 (b) (1) (xi) [for cities]; and 465 (b) (1) (xi) [for provinces].

[82] *Id.*, sec. 444 (b) (1) (xi) [for municipalities]; 455 (b) (1) (xvi) [for cities]; and 465 (b) (1) (xvi).

[83] *Id.*, secs. 444 (b) (1) (xiii) for municipalities; 455 (b) (1) (xiii) for cities; and 465 (b) (1) (xiii) for provinces.

There are several officials in the local government who have a direct or indirect role in the protection of the environment. They are the secretary of the respective councils, the health officer, the administrator, the legal officer, the environment and natural resources officer, and the information officer.

If community members want to find out what went on in the proceedings of their *sanggunian*, these persons may avail of the records of the proceedings from the official custodian of these records, i.e, the secretary of the *sanggunian*, upon payment of such fees as may be prescribed by ordinance.[84]

Pollution control is a matter affecting the health of the people. A healthy environment translates into a healthy populace. Thus, one of the purposes for the enactment of title I (on air quality management) of Presidential Decree No. 1152 was "to achieve and maintain such level of air quality as to protect public health."[85] Considering that an environment and natural resources officer may not be appointed in many local government units for one reason or another, it is important to take note of the functions of the health officer whose appointment in a local government unit is, unlike that of an environment and natural resources officer, mandatory.

The health officer is made the adviser of the chief executive and the local legislature on matters of health. While the chief executive is responsible for the over-all implementation of laws in the political units, the health officer is specifically responsible for the execution and enforcement of "all laws, ordinances and regulations relating to public health."[86]

Any rough spots in the coordination among the officials of the local government unit are to be taken care of by the administrator.[87]

Valuable aid is provided by the legal officer who has the power to cause the investigation of "any person, firm or corporation holding any franchise or exercising any public privilege for failure to comply with any term or condition in the grant of such franchise or privilege and recommend appropriate action"[88] to the proper executive officer.

The responsibilities of the environment and natural resources officer are aptly summed up in Article 248 (b) (4) of the LGC which calls for said officer to "[b]e in the frontline of the delivery of services concerning the environment and natural resources x x x."[89] The local legislature is given assistance, especially on the technical aspect, by the environment and natural resources officer. The environment and natural resources officer also acts as the consultant of the local chief executive, so that outside of the laws enacted for the protection of the environment, he may also develop plans and strategies for the environment. Coordination with government agencies and non-governmental

[84] *Id.*, sec. 419.

[85] Presidential Decree 1152, title I, sec. 2.

[86] Local Government Code of 1991, sec. 478.

[87] *Id.*, sec. 480.

[88] *Id.*, sec. 481 (b) (3) (v).

[89] *Id.*, sec. 248.

organizations in the implementation of measures to prevent and control air pollution with the assistance of the DENR also lies within the sphere of this official's responsibilities.[90]

In view of the importance of the role of the environment and natural resources officer, and the reality that local chief executives are often burdened with other responsibilities, it is recommended that the appointment of such officer be made mandatory, so that someone in the local government may be made directly responsible for environmental protection.

Another officer who may be appointed in a local government unit is the information officer who shall maintain effective liaison with the various sectors of the community on matters and issues that affect the quality of life of the inhabitants and shall also encourage support for the programs of both local and national government.[91]

The leagues provided for in the Local Government Code, which are to be formed among the various barangays, cities, municipalities or provinces, as the case may be, may provide a forum for concerted action for the promotion of the general welfare.[92]

B. Presidential Decree No. 1160

Even before the enactment of the Local Government Code of 1991, it was already recognized that the effective implementation of any law starts from the grassroots level. Among the presidential decrees passed in 1977 was Presidential Decree No. 1160, Vesting Authority in Barangay Captains to Enforce Pollution and Environmental Control Laws and for Other Purposes, for a "more vigorous, coordinated and effective method of enforcing national and local laws, ordinances, rules and regulations that prohibit, control or regulate activities which create imbalance between man and his natural environment"[93] through the involvement and mobilization of the barangay "in a concentrated and sustainable national campaign to minimize, if not totally eradicate, the causes of disharmony between man's economic needs and his environmental conditions."[94]

For the above-mentioned purposes, the Barangay Captain and the Barangay Councilman are deputized as peace officers, with authority to effect lawful arrests in order to enforce and implement "national and local laws, ordinances [,] rules and regulations governing pollution control and other activities which create imbalance in the ecology or disturbance in environmental conditions."[95] When this power is related to the principles on arrest, it is to be seen that it is not

[90] *Id.*, sec. 484.

[91] *Id.*, sec. 486.

[92] *Id.*, secs. 491-495 for the *Liga ng mga Barangay*; secs. 496-498 for the League of Municipalities; secs. 499-501 for the League of Cities; and secs. 502-504 for the League of Provinces.

[93] Vesting Authority in Barangay Captains to Enforce Pollution and Environmental Control laws and for Other Purposes, Presidential Decree No. 1160, 2nd WHEREAS clause (1977).

[94] *Id.*, 3rd WHEREAS clause.

[95] Presidential Decree No. 1160, sec. 1.

as easy as seizing a person who is alleged to be responsible for the act of pollution. There must either be personal knowledge and reasonable belief that such person is responsible for the act of pollution, or a preliminary determination by proper authorities that an act of pollution has been committed.[96] In the case of *Mead v. Argel*, it was held by the Supreme Court that the power to determine whether an act of pollution has been committed rests with the National Water and Air Pollution Control Commission,[97] whose functions have, in part, been taken over by the Environmental Management Bureau. Therefore, without this preliminary determination, a barangay official is powerless to effect an arrest.

Also found in P.D. 1160 is a call to vigorously implement the criminal and administrative aspects of pollution control.[98]

Lastly, courts and proper prosecuting or administrative officers or agencies are called upon to give preference to the expeditious disposition of cases involving a violation of national and local laws, ordinances, rules and regulations governing pollution control when the magnitude of the violation is such as to adversely affect an entire or major portion of a community as certified to by the Environmental Management Bureau.[99]

In line with Section 7 of Rule 22 of the Revised Rules of court, such provision in the law has given pollution cases preferential position with respect to other cases. Such preference, however, is shared with *habeas corpus*, election cases, and special civil actions, and such other actions which are required to be prioritized by express provisions of law. There is the question, then, of what such preference in paper will amount to in actual practice.

IV. Administrative Remedies for Pollution Control

Today, when the word *pollution* is mentioned, the term is almost always related with the Department of Environment and Natural Resources (DENR). The DENR is, however, of recent vintage, having been created only in 1987, by virtue of Executive Order No. 192.[100] Prior to the creation of the DENR, several agencies had already been formed to handle the problem of environmental protection and natural resource conservation and management.

A. History of Government Institutions Involved in Pollution Control

In 1964, the National Water and Air Pollution Commission (the NAWAPCO) was created with the passage of Republic Act No. 3931, the Pollution Control

[96] New Rules on Criminal Procedure, rule 113, sec. 5. (1981).

[97] *Mead v. Argel*, 116 SCRA 257, at 264-268 (1982).

[98] Presidential Decree No. 1160, sec. 3.

[99] *Id.*, sec. 4.

[100] The Reorganization Act of the Department of Environment and Natural Resources, Executive Order No. 192 (1987).

Law. In 1976, the National Pollution Control Commission (NPCC) took over the functions of the NAWAPCO, by virtue of Presidential Decree No. 984, the National Pollution Control Decree of 1976.[101]

In between the creation of the NAWAPCO and its replacement by the NPCC, i.e., in 1971, the Pollution Research Center of the Philippines (The Center) was established. The Center, formed in recognition of the fact that the government machinery then was inadequate in coping with the problem of pollution, was to be based in Fort Bonifacio. Representatives from the NAWAPCO, the then National Science Development Board, the then Department of Agriculture and Natural Resources, the then Department of Public Works and Communication, the Department of Health, the Department of National Defense, and representatives from such government agencies and the private sector as the President may designate, were to man the Center.[102] On March 27, 1973, the name of the Pollution Research Center was changed to the Environmental Center of the Philippines.[103]

On July 6, 1976, Letter of Instruction No. 422 (LOI 422) was issued, calling for the creation of an Inter-Agency Committee on Environmental Protection (IACEP) under the then Department of Natural Resources. LOI 422 was addressed to nineteen agencies of the government which were considered as being concerned with environmental protection.[104]

Pursuant to the IACEP's task of assessing the efforts made by the various agencies to protect the environment, and making recommendations to improve these efforts, the IACEP recommended the "integration of environmental programs through inter-agency coordination and the creation of a national coordinating agency on environmental protection."[105]

Such recommendations of the IACEP were adopted by Presidential Decree No. 1121, Creating the National Environmental Protection Council (NEPC), enacted on April 18, 1977. The NEPC, an agency under the supervision and control of the President, was envisioned to be a "central authority that will oversee, unify and integrate the planning, management and implementation of the government's environment program."[106] Among the members of the NEPC was the chairman of the NPCC. From the list of functions and powers

[101] For a more detailed discussion of Republic Act No. 3931 and Presidential Decree No. 984, *see*, Chapter II *supra*.

[102] Establishing the Pollution Research Center of the Philippines, Executive Order No. 342 (1971). Curiously, the provisions of said order were set out almost *verbatim* in a supposed amendatory law issued a year after, i.e., Establishing the Pollution Research Center of the Philippines, Executive Order No. 375 (1971).

[103] Amending Executive Order No. 342, Dated October 5, 1971, Establishing the Pollution Research Center of the Philippines so as to Change the Name Thereof to Environmental Center of the Philippines, Executive Order No. 410 (1973).

[104] For the list of the agencies enumerated in Letter of Instruction No. 422, *see supra* note 48.

[105] DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, *supra* note 8, at 263.

[106] Creating the Environmental Protection Council, Presidential Decree No. 1121, 5th WHEREAS clause (1977).

of the NEPC found in Section 3 of P.D. 1121, it appears that most of the functions of the NPCC were assumed by the NEPC. The technical and legal staff, as well as the secretariat of the NEPC were attached to the Department of Natural Resources for purposes of administration.[107]

On January 30, 1987, pursuant to the powers vested in her by the Freedom Constitution, then President Corazon C. Aquino passed Executive Order No. 131 (E.O. 131), reorganizing the Ministry of Natural Resources and renaming it as the Department of Environment, Energy and Natural Resources. The effectivity of E.O. 131 was suspended by E.O. 131-A, issued on March 6, 1987 because of the controversy surrounding the abolition of the Department of Energy.[108] After the resolution of the issue on the abolition of the Department of Energy, the stage was set for the reorganization of the Department of Natural Resources.[109] Thus, shortly after the passage of the aforementioned executive orders, President Aquino signed into law Executive Order No. 192, reorganizing the Department of Environment, Energy and Natural Resources, and renaming it as the Department of Environment and Natural Resources. The reorganization was called for by the need to give equal attention to environmental concerns and natural resource concerns.[110]

Under Section 16 of E.O. 192, and Section 17, Chapter 3, Title XIV of a subsequent law, E.O. 292,[111] the National Pollution Control Commission, the National Environmental Protection Council, and the Environmental Center of the Philippines were abolished, and their functions absorbed by the Pollution Adjudication Board and the Environmental Management Bureau, both of the DENR.

B. The Department of Environment and Natural Resources

Today, the DENR is the agency primarily responsible for carrying out the government's policy of "conservation, management, development and proper use of the country's environment and natural resources."[112]

To aid in the accomplishment of its task of environmental protection, the DENR has been designated, through its Secretary, as the adviser of the President and Congress in the matter of the enactment of laws relative to pollution control.[113] The DENR has also been put in charge of the passage of rules and regulations regarding the control of water, air, and land pollution, the issuance of environmental standards, as well as the enforcement of laws on environmental protection, and said rules, regulations and standards.[114]

[107] Presidential Decree No. 1121, sec. 7.

[108] Suspending the Implementation of Executive Order No. 131, dated January 30, 1987, Executive Order 131-A, WHEREAS clauses (1987).

[109] Executive Order No. 192, 2nd WHEREAS clause.

[110] *Id.*, 5th WHEREAS clause.

[111] Instituting the Administrative Code of 1987, Executive Order No. 292 (1987).

[112] Executive Order No. 192, sec. 4.

[113] *Id.*, secs. 5 (a) and 7.

[114] Executive Order No. 192, sec. 5, and Executive Order No. 292, title XIV, chapter 1, sec.

At present, there are two main agencies under the DENR which deal with the problem of pollution. These are the Pollution Adjudication Board (the PAB) and the Environmental Management Bureau (the EMB).

The Pollution Adjudication Board, a body under the office of the Secretary of the DENR (the Secretary), is composed of the Secretary as chairman and two undersecretaries as members designated by the Secretary, the Director of the Environmental Management Bureau, and three others to be designated by the Secretary, with the EMB acting as its secretariat. The PAB is the successor of the National Pollution Control Commission insofar as the latter's adjudicatory functions are concerned. Under E.O. 192, the PAB is authorized to delegate its powers to the regional offices of the DENR, in accordance with the rules and regulations to be promulgated by it.[115]

Among the bureaus of the DENR is the Environmental Management Bureau, which acts as an advisory body for the Secretary of the DENR with respect to environmental management, conservation, and pollution control. Furthermore, it is the EMB which carries out the DENR's responsibility of formulating environmental quality standards, such as "ambient and effluent standards for water and air quality, including the allowable levels of other pollutants and radiations."[116] The EMB is also concerned with rendering assistance to the regional offices of the DENR.[117]

[115] Executive Order No. 192, sec. 19, and Executive Order No. 292, sec. 13. The functions of the PAB are:

(1) to issue orders or decisions to compel compliance with the provisions of Presidential Decree No. 984 and its implementing rules and regulations only after proper notice and hearing (sec. 6 (e), P.D2. No. 984);

(2) make, alter, or modify orders requiring the discontinuance of pollution, specifying the conditions and the time within which such discontinuance must be accomplished (sec. 6 (f), P.D. No. 984);

(3) issue, renew, or deny permits, under such conditions as it may determine to be reasonable, for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system or parts thereof, with the power to impose reasonable fees and charges for the issuance or renewal of all such permits required; (sec. 6 (g), P.D. No. 984);

(4) serve as arbitrator for the determination of reparations, or restitution of the damages and losses resulting from pollution (sec. 6 (j), P.D. No. 984);

(5) deputize in writing or request assistance of appropriate government agencies or instrumentalities for the purpose of enforcing Presidential Decree No. 984 and its implementing rules and regulations and the orders and decisions of the PAB (sec. 6 (k), P.D. No. 984); and

(6) exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under Presidential Decree No. 984 (sec. 6 (p), P.D. No. 984).

[116] Executive Order No. 192, sec. 5 (p); and Executive Order No. 292, title XIV, chapter 1, sec. 4 (18).

[117] Executive Order No. 192, sec. 16; and Executive Order No. 292, title XIV, chapter 3, sec. 17.

In the thirteen administrative regions of the country, DENR field offices are established for the more effective delivery of services of the DENR to the people. Among the personnel of a regional office is a technical director for environmental management.[118] Taking advantage of the proximity of field offices to the project sites, the field offices are directed to conduct field research to develop appropriate technologies for the various projects of the DENR.[119]

In every province, there is an environment and natural resources provincial office for the implementation of laws, policies, programs, projects, rules and regulations of the DENR in relation to natural resource conservation and environmental protection.[120] When deemed necessary, the DENR may also establish community offices in every municipality.[121]

Aside from the two aforementioned agencies, there are several departments or agencies in the DENR which may also become involved in pollution problems. One such office is the Public Affairs Office, the public information arm of the DENR.[122] If the public wishes to know about the state of affairs in the DENR, it may resort to the Public Affairs Office, invoking its constitutional right to information.[123]

Although all cases of environmental degradation are causes for concern, if the Secretary's attention is called to a case which particularly requires special and immediate action, and he believes in the urgency of resolving the matter, the Secretary may refer the same to the Special Concerns Office which is responsible for handling priority areas or subjects previously identified by the Secretary.[124]

In the evaluation of the state of the environment and the effectivity of the activities undertaken by the DENR, vital data on the environment may be procured from the National Mapping and Resource Information Authority, the central mapping agency of the government, which is attached to the DENR.[125]

C. *Administrative Remedies in Poliution Control*

From an evaluation of the available remedies in pollution control, it appears that the better remedy is preventive, rather than curative action. While there are a variety of remedies available to persons and communities beset by problems of pollution, these remedies are costly and long-drawn

[118] Executive Order No. 192, sec. 20; and Executive Order No. 292, title XIV, chapter 4, sec. 20.

[119] Executive Order No. 192, sec. 21.

[120] *Id.*

[121] Executive Order No. 192, sec. 20; and Executive Order No. 292. title XIV, chapter 4, sec. 20.

[122] Executive Order No. 192, sec. 11; and Executive Order No. 292, sec. 11.

[123] For a more thorough discussion of this right, please refer to Chapter II of this thesis.

[124] Executive Order No. 192, sec. 12; and Executive Order No. 292, sec. 12.

[125] *Id.*, sec. 22 (1).

Moreover, considering that for persons not engaged in environmentally-critical projects or whose projects are not to be located in environmentally-critical areas, the first point of contact with the DENR is during the period for the acquisition of permits, it is fitting to begin any discussion of administrative remedies with the so-called preventive remedies. One must keep in mind, however, that the adoption of such preventive remedies is, of course, based on the assumption that there is a strong showing of possible non-compliance with pollution control laws.

A vigilant community, once it learns of plans to construct a plant or other possible pollutant in the community, must take steps to prevent the construction of the plant, or at least make sure that before the plant is constructed and operated, it had complied with the standards set by law.

No plant or other form of stationary pollutant may operate, much less start construction, without obtaining a permit.[126] Under the present rules, there are two general types of permits: the *authority to construct*,[127] and the *permit to operate*.[128] Before the granting of either type of permit, the regulations allow an interested party to file an opposition. If such opposition is filed, a public hearing may be conducted on the application.[129]

The decision to conduct a public hearing, even in the face of a written opposition, lies within the discretion of the PAB. The question arises as to how notice of such application is to be given to parties who may be affected by the stationary installation or activity "which will reasonably be expected to be a source of pollution."[130] Once again, the primacy of the constitutional right to information on matters of public concern comes to the fore. By invoking this right, the public may demand that the PAB require effective publication of such application for a reasonable period of time before the application is acted upon.

If the project happens to be environmentally critical or is to be located in an environmentally critical area, an opposition to the issuance of a permit may be made on the ground of failure of the applicant to secure an environmental compliance certificate, since under Section 4 of P.D. 1586, no person,

[126] Rules and Regulations of the National Pollution Control Commission, sec. 88 (1978). [hereinafter cited as RRNPCC] Under sec. 87 (b) of said Rules and Regulations, a *permit* is defined as: "The legal authorization to engage in or conduct any construction, operation, modification or expansion of any installation, operation or activity which will reasonably be expected to be a source of pollution."

[127] The legal authorization granted by the Pollution Adjudication Board to construct, expand, modify or make alterations to any installation and to temporarily operate and test such new or modified installations. (RRNPCC, sec. 87 (c), as amended by Executive Order No. 192)

[128] The legal authorization granted by the Pollution Adjudication Board to operate or maintain an installation for a specified period of time. (RRNPCC, sec. 87 (d))

[129] RRNPCC, sec. 93.

[130] *Id.*, sec. 88.

partnership or corporation may undertake or operate a project without obtaining an environmental compliance certificate.[131]

If such permits are granted despite vigorous opposition, the battle may have been lost, but the war, so to speak, is still to be waged. After all, a permit is renewable annually. Therefore, the task of monitoring compliance of the pollutant with the terms of the permit issued to it remains. Subsequent findings of violations may give the community members the right to ask for the modification, suspension, or revocation of a permit.

On one hand, new or additional conditions may be imposed on a permit holder based on Section 97 of the RRNPCC, due to the following reasons:

(a) that an improvement in effluent or emission quality or quantity can be accomplished because of technological advances without unreasonable hardship;

(b) necessity of a higher degree of treatment to effect the intents and purposes of the applicable provisions of the rules and regulations;

(c) change in the environment or surrounding conditions requiring a modification of the installation covered by a permit to conform to applicable air or water quality standards;

(d) requirement of modification of the discharge into any water due to new or changed classification of water; or

[131] Under Presidential Proclamation No. 2146 issued on December 14, 1981, the following have been declared as environmentally critical projects:

I. Heavy Industries
   a. non-ferrous metal industries
   b. iron and steel mills
   c. petroleum and petro-chemical industries including oil and gas
   d. smelting plants

II. Resource Extractive Industries
   a. major mining and quarrying projects
   b. forestry projects
      1. logging
      2. major wood processing projects;
      3. introduction of fauna (exotic animals) in public/ private forests
      4. forest occupancy
      5. extraction of mangrove products
      6. grazing
   c. Fishery Projects
      dikes for/and fishpond development projects

III. Infrastructure Projects
   a. major dams
   b. major power plants (fossil-fueled, nuclear fueled, hydroelectric or geothermal)
   c. major reclamation projects
   d. major roads and bridges.

For the areas declared to be environmentally critical, please refer to Chapter II of this thesis.

(e) the necessity under P.D. 984 or the rules to modify the conditions of the permit.

On the other hand, the following are the grounds for the suspension or revocation of a permit:

(a) non-compliance with, or violation of any of the provisions of P.D. 984, the rules and regulations, and/or permit conditions;

(b) false or inaccurate information in the application for permit that led to the issuance of the permit;

(c) refusal to allow lawful inspection under Section 6 (n) of P.D. 984; or

(d) other valid causes.[132]

D. Other Available Administrative Remedies

While there are both administrative and judicial remedies available to a person or community victimized by problems of pollution, resort to administrative agencies before seeking relief with the courts is often necessary, if not indispensable. This is so because of the well-established doctrine of exhaustion of administrative remedies. The principle, in brief, states that courts will not grant the relief sought by a party who has not exhausted the available administrative remedies. A person can not plead ignorance of the existence of such an administrative remedy.[133]

In the case of problems of pollution, the necessity of resort to the proper administrative agency, and the failure to avail of such remedy before resorting to the court, was illustrated in the case of *Mead v. Argel*.[134]

Sometime in 1975, petitioner Donald Mead and a certain Isaac Arivas, as president and general manager, respectively, of Insular Oil Refinery, were charged by the Provincial Fiscal of Rizal with a violation of Section 9, in relation to Section 10 of Republic Act No. 3931, The Pollution Control Law, for allegedly allowing industrial and other waste matter from the operation of the refinery to be discharged into the highway canal, thereby causing pollution.

Mead moved for a quashal of the information on two grounds: first, lack of jurisdiction of the trial court, and second, lack of personality of the Provincial Fiscal to file the information. Such motion was denied.

On petition to the Supreme Court, the Court upheld Mead's contention that the authority of the NAWAPCO (given in Sections 6 and 8 of R.A. 3931)

[132] RRNPCC, sec. 97.

[133] *Llarena v. Hon Lacson, et al.*, 108 Phil 510, at 513 (1960). In this case, the Court rejected petitioner's defense that he failed to exhaust administrative remedies because of lack of awareness of the proper procedure, he having reached only fourth grade.

[134] 115 SCRA 256 (1982).

to determine the existence of pollution is an *exclusive* authority. Without a prior determination by the NAWAPCO of the existence of pollution, as it is defined in law, no court action, whether civil or criminal, could be filed against an alleged offender.[135]

The decision finds support in the last paragraph of Section 8 of R.A. 3931 which draws the line between the authority to be exercised by the NAWAPCO and the ordinary courts. Only the determination and filing of court actions involving the Civil Code provisions on nuisance are excluded from the authority of the NAWAPCO. On matters not related to nuisance, no court action may be initiated without the prior determination by the NAWAPCO of the existence of pollution.

Said interpretation of the law is likewise dictated by expediency, since the determination of the existence of pollution requires "special knowledge of technical and scientific matters which are not ordinarily within the competence of fiscals or of those sitting in a court of justice."[136]

The filing of the information was found to be premature and unauthorized, there being no finding yet by the NAWAPCO that R.A. 3931 or any of its orders had been violated.

Having reviewed the doctrine of exhaustion of administrative remedies, it is now apt to proceed with a discussion of proceedings which may be had before the Pollution Adjudication Board.

Under the *Revised Rules on Pleadings, Practice and Procedure Before the Pollution Adjudication Board,*[137] the following are the four types of cases which may be filed before the Pollution Adjudication Board or through the duly-authorized Regional Offices of the DENR:

(1) an action for pollution control and abatement;

(2) arbitration;

(3) an action for damages to fish and aquatic life; and

(4) an action based on violations of P.D. 984 and its implementing rules.

An action for pollution is commenced by either the Department of Environment and Natural Resources, *motu proprio*, or by complaint of any individual person filed before the PAB.[138]

[135] This finding may be made, not only by the central office, but also by the Field Offices of the DENR, as illustrated in the case of *Pollution Adjudication Board v. Court of Appeals*, 195 SCRA 113 (1991), where an *ex parte* temporary restraining order was issued against the Solar Textile Finishing Corporation based on the findings of the Regional Executive Director of the DENR/NCR.

[136] *Id.*, at 268.

[137] Resolution No. 1-A, series of 1989, of the Pollution Adjudication Board (1989). Said resolution [hereinafter cited as PAB Rules] was published in the June 5 and 21, 1990 issues of *Ang Pahayagang Malaya*, thereby taking effect on June 6, 1990, in accordance with Section of the Rules.

[138] *Id.*, sec. 6.

At such proceedings, the appearance of counsel is optional, and even if the individual withdraws the complaint, the action is not automatically dismissed if the PAB deems it necessary to continue the proceedings in the interest of public welfare and safety.[139]

Once the complaint/affidavit/information is docketed, summons is served on the respondent, who is invited to a preliminary conference where the following, among other things, are considered:

(1) the possibility of a compromise agreement;

(2) the necessity of a hearing; and

(3) stipulations of facts.[140]

Even if an amicable settlement is entered into, such amicable settlement will not bind the PAB if there is a *prima facie* violation of the law or its implementing rules and regulations. In such a case, the legal action against the respondent will proceed, notwithstanding the compromise agreement.[141]

In addition to considering the possibility of an amicable settlement, the parties are required to submit position papers and to give full disclosure of their evidence, both testimonial and documentary, during the preliminary conference. Failure to so present or allege such evidence in the complaint, position paper, or accompanying affidavits will bar proof of such facts or cause of action.[142]

If, based on the position papers and supporting documents, as well as other matters the presentation of which the hearing officer may request for purposes of clarification, such officer determines that there is no need for future hearings, he shall dispose of the matter within fifteen working days from procurement of the assent of both parties to the submission of the case for decision.[143]

If there is need for future hearing, the order of presentation of evidence mentioned below is to be followed:

(a) the complainant;

(b) the results of surveys or field investigations conducted by the DENR; and

(c) the respondent[144]

[139] *Id.*, sec. 10.

[140] *Id.*, sec. 18.

[141] *Id.*, sec. 19.

[142] *Id.*, sec. 20.

[143] *Id.*, sec. 21.

[144] *Id.*, sec. 23.

After the hearing, memoranda are submitted by both parties. Within fifteen (15) days from the submission of memoranda, the hearing officer must submit his findings and recommendations to the Pollution Adjudication Board, which decides the matter.

Two basic rules on the institution of an administrative action can be found in the laws and rules pertaining to pollution. Under Section 9 (a), third paragraph of Presidential Decree 984, an aggrieved party is given cumulative, rather than exclusive, remedies. Thus, the choice of one remedy under the existing pollution control laws does not bar the party from seeking other remedies, simultaneously with the ones chosen.

Side by side with this right to cumulative remedies is the provision in Section 8 of the RRNPCC, which discourages multiplicity of actions.

An attempt to reconcile these two rules leads to the conclusion that an aggrieved party is allowed to ask for several remedies, but is encouraged to institute as few actions as possible. The logical strategy then is to include an omnibus prayer in whatever action is finally instituted. Such omnibus prayer may include the following pleas:

(1) that the renewal of the permit of the respondent be denied, or be made subject to more stringent restrictions, as called for by the circumstances;

(2) that in the meantime, an *ex-parte* temporary restraining order be issued;

(3) that the respondent, if found to have committed the violations alleged, be ordered to pay the applicable fines and administrative remedies;

(4) that an order be issued requiring the discontinuance by the respondent of the violation, or the installation of a pollution control device or treatment plant;

(5) if the violation of existing pollution laws is gross, that the closure or stoppage of the business or operations of the respondent be ordered; and

(6) that an ocular inspection of the premises be conducted.

If a party is successful in obtaining the reliefs prayed for, and any of the orders issued by the PAB with respect to such reliefs are not followed, such party may move that the disobedient party be cited in indirect contempt.[145]

While the case is pending before the PAB, it may be advisable to obtain an *ex-parte* temporary restraining order (commonly known as an *ex parte* TRO) which may be issued upon a finding of prima facie evidence that the discharged sewage or wastes:

(1) are of immediate threat to life, public health, safety or welfare or the animal or plant life;

[145] *Id.*, sec. 37.

(2) exceeds the allowable standards set by the Environmental Management Bureau.[146]

The applicant need not fear any attack on the violation of respondent's rights to procedural due process, since it was held in the case of *Pollution Adjudication Board v. Court of Appeals* (195 SCRA 112 [1991]) that the issuance of an *ex parte* TRO, if founded on the grounds provided by law, does not violate procedural due process.

Aside from instituting an action for the abatement of pollution, the aggrieved party may choose to institute an action for arbitration to claim reparation or restitution of damages and losses resulting from the pollution of water, air or land resources, also with the PAB. The damages shall be assessed based on the following criteria:

(1) gravity and duration of the pollution;
(2) extent and reasonable value of the damage; and
(3) evidence presented by the parties.[147]

To aid the PAB in assessing the damages, the help of expert witnesses may be availed.[148]

If the parties fail to arrive at a settlement, the hearing officer will submit his findings to the PAB, which will rule on the matter.[149]

V. JUDICIAL REMEDIES IN AIR POLLUTION CONTROL

A discussion of the legal remedies in air pollution control would not be complete without touching on the pertinent provisions of the Civil Code, as well as the penal sanctions provided in Presidential Decree No. 984.

Before beginning the discussion on these pertinent provisions, it is necessary to point out that the scope of judicial action has been somewhat limited by the third paragraph of Section 8 of R.A. No. 3931. Said provision subjects all legal action related to pollution to the prior declaration of the NAWAPCO (now the EMB) of the existence of pollution, except in the case of an action based on the provisions in the Civil Code on nuisance.

In a resolution on a motion for reconsideration of petitioners in the case of *Technology Developers, Inc. v. Hon. Court of Appeals, Hon. Narciso T. Atienza, as Acting Mayor, and the Municipality of Sta. Maria, Bulacan,*[150] the first division of the Supreme Court, after disposing of the main jurisdictional issue, said, in *obiter*, that "the provisions of the Civil Code on nuisance, insofar as the

[146] *Id.*, sec. 33.
[147] *Id.*, sec. 42.
[148] *Id.*, sec. 44.
[149] *Id.*, sec. 45.
[150] G.R. No. 94759 (July 31, 1991).

nuisance is caused by pollution of the air, water and land resources, are deemed superseded by P.D. No. 984 x x x."[151]

It is respectfully submitted, however, that such statement cannot be used as authority for declaring the provisions on nuisance useless, insofar as they relate to pollution, for the following reasons:

(a) The parties in the above-cited case never invoked the provisions of the Civil Code on nuisance. Therefore, the effect of P.D. 984 on such provisions was never at issue in the case.

(b) In the same resolution,[152] the Supreme Court also quoted that portion of *Mead v. Argel, supra.*, which declared that the exclusive jurisdiction of the National Pollution Control Commission was only with regard to matters not related to nuisances, but made no comment about that part of the *Mead* case being modified by the enactment of P.D. 984.

(c) Presidential Decree No. 984, the supposed repealing law, contains no express repeal of Section 8 of R.A. 3931, which retains the courts' jurisdiction over matters relating to nuisance. Furthermore, P.D. 984 is entitled, "Providing for the *Revision* of Republic Act No. 3931, Commonly Known as the Pollution Control Law, and for Other Purposes." (emphasis supplied) In other words, P.D. 984 sought to revise, not repeal, R.A. 3931. Since there is no repugnancy between the provisions of R.A. 3931 and P.D. 984 with regard to this delineation of jurisdiction between the courts and the NPCC, Section 8 of R.A. 3931, which uphold the effectivity of the Civil Code provisions on nuisance, can not be deemed repealed, it being a rule in statutory construction that implied repeals are frowned upon.

(d) Granting, *arguendo*, that P.D. 984 has repealed the provisions of the Civil Code on nuisance, Sections 447 (a) (4) (i) and 458 (a) (4) (i) of the Local Government Code of 1991, in empowering the local legislative bodies to declare, prevent or abate any nuisance, can be deemed to have restored the effectivity of the Civil Code provisions on nuisance.

After a discussion of the true significance of the Supreme Court's declaration, a discussion can now be made of the pertinent Civil Code provisions.

A. An Action for the Abatement of a Nuisance

An examination of the definition of a nuisance under Article 694 of the Civil Code leads to the conclusion that that which causes air pollution may be considered a nuisance insofar as it is injurious to the health or safety of others or is annoying or offensive to the senses. Such position is supported by Article 682 of the Civil Code which prohibits a proprietor or possessor

[151] *Id.*, at 5.

[152] *Id.*, at 8.

from committing nuisance through, *inter alia*, offensive odor or smoke. Article 683, which is found under the section entitled Easement Against Nuisance, subjects the right of persons to maintain factories and shops to the limits set forth in zoning, health, police and other laws and regulations, and to the criterion that the least possible annoyance be caused to the neighborhood.

Under Article 2191 (2) of the Civil Code, a proprietor may be held liable for damages for, among other things, excessive smoke, which may be harmful to persons or property.

Considering that the emissions of a stationary pollutant are carried into the air and may harm anyone who breathes the air, it is safe to assume that a stationary pollutant would be classified as a public nuisance, being, by its nature, a nuisance that "affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals be unequal."[153]

The distinction between a private and a public nuisance, while not difficult to make in the case of a stationary pollutant, is important nonetheless, since there is a remedy that is available only against a public nuisance, i.e., a prosecution under the Revised Penal Code or any local ordinance.[154] As will later be shown, the institution of criminal actions is an important component of efforts at enforcing air pollution control laws.

Aside from criminal prosecution of those persons responsible for the nuisance, a nuisance may also be dealt with, by authority of Article 699 of the Civil Code, through a civil action or through the extrajudicial abatement of the nuisance. A great degree of caution must be exercised, though, in treating a polluting source as a nuisance *per se* which warrants extrajudicial abatement because of the sanctions provided by Article 707 of the Civil Code for the wrongful extrajudicial abatement of a nuisance. In the case of *Iloilo Cold Storage Co. v. Municipal Council*,[155] involving an ice and cold storage plant in Iloilo City which emitted smoke that was complained of by residents as being injurious to their health and comfort, the Supreme Court declared that while a local legislative body may, by law, be given the power to declare and abate a nuisance, such authority does not give them the power to find as a fact that particular thing is a nuisance, if the nuisance is not a nuisance *per se*. Consequently, such local authorities cannot cause the extrajudicial abatement of a nuisance that is merely a nuisance *per accidens*, the determination of that fact being left to the courts.[156]

[153] The Civil Code of the Philippines, R.A. No. 386, art. 694 (1950). [hereinafter cited as the Civil Code]

[154] The Civil Code, art. 699.

[155] 24 Phil 471 (1912).

[156] *Id.* at 484. It is to be noted, however, that under Letter of Instructions No. 551, issued by then President Marcos on June 7, 1977, it was suggested that factories which emitted visibly black smoke, caused noise, discharged effluents, or yielded oppressive odor, and which had no anti-pollution device to eliminate such undesirable characteristics should be considered as nuisances *per se*.

The judicial remedy most readily available then, in the case of a polluter which, by the extent of damage or discomfort it causes, would qualify as a nuisance, is the institution of a civil action for its abatement.

Although such civil action would have for its primary purpose the eventual abatement of the nuisance, those affected by the nuisance may also ask for damages in the same action, since under Article 697 of the Civil Code, "[t]he abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence." The amount of damages will depend on the extent of the injury that is proved and the presence and degree of malice or willfulness of those responsible for the operation of the plant. Even if the court finds that the degree of injury caused by the pollutant is not sufficient to call for its abatement, or that such injury or harm may be discontinued through the adoption of less severe measures, the resulting injury caused by the activity in the past may still be sufficient to entitle the complaining party to damages.

Since the resolution of a nuisance action may take a long time, and in the meantime, the act allegedly constituting a nuisance will continue, it will be advisable to pray for the provisional remedy of a preliminary injunction to restrain the continuance of the act complained of as a nuisance, as long as the plaintiff can, *prima facie*, show a clear right to the relief demanded, and a corresponding violation of that right on the part of the defendant.

It must be noted though that the general rule under Article 701 of the Civil Code[157] is that the institution of a civil action against a nuisance must be brought by the city or municipal mayor. It is only when a public nuisance is especially injurious to a private person that such person may file an action on account of the public nuisance. To a large extent, then, the possibility of an action being filed for the abatement of a nuisance depends on the perception of the chief executive of the city or municipality as to the imminence of the danger, or his will to see the cause to its end, for unless the special injury to an individual or community is proved, the action may fail for want of capacity to sue on the part of the private parties. At times, therefore, it will be necessary for community members to bring to the attention of the proper public authorities the necessity of bringing an action for nuisance.

Notwithstanding the difficulties encountered in instituting any nuisance suit, there are several advantages in treating a pollutant as a nuisance. One advantage is that the definition of a nuisance is broader than the technical definition of pollution under P.D. 984. When, for example, the emissions pass the standards set by the Environmental Management Bureau, but there is, nonetheless, a discernible discomfort brought about by the emissions, an action for the abatement of, and for damages arising from, a nuisance, may be brought.

Another advantage of going by the Civil Code provisions on nuisance, as related to the pertinent ordinances, is that such an approach allows a complainant to go around the requirement of a prior declaration from the

[157] The Civil Code, art. 703.

EMB of the existence of pollution, since the cause of action is based on the existence, not only of pollution, but of a nuisance.

Furthermore, in a nuisance suit, it is no defense that a high degree of care has been exercised by the offender. As long as there is resulting injury, such person may be held liable.[158] Compare this with the administrative case where, as implied by the RRNPCC (especially section 95 thereof), due care and the use of the best available technology are acceptable defenses.

There are certain basic facts that must be established in a nuisance suit, notwithstanding the latitude afforded one who wants to sue under the Civil Code provisions on nuisance. These facts are:

(1) a degree of injury which goes beyond mere inconvenience; and
(2) use of the property which is a deviation from its usual use.

B. Quasi-delict

If aside from the continuing injury that results from the operation of a pollutant, there is exposure of any person or group of persons to extraordinary harm, such incident provides sufficient basis for the institution of a suit for damages based on quasi-delict.[159]

C. General Provisions of the Civil Code

There are certain provisions in the Civil Code which, in the expression of some general principles governing relations between persons, provide a fertile source of legal bases to support a claim for damages in a judicial or administrative action for the abatement of a pollutant.

The general limitation, for instance, found in Article 431 of the Civil Code, which says that "[t]he owner of a thing cannot make use thereof in such manner as to injure the rights of third persons," may be used in connection with Section 16, Article II of the Constitution to enjoin a use of property which threatens a considerable number of persons' right to a healthful environment.

Several provisions on the chapter on human relations may also be used, together with other provisions of the Civil Code or P.D. 984, in a damage suit against a pollutant. The first of these provisions is Article 19 of the Civil Code, which embodies the principle of abuse of right.

Article 21, which makes a person "who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy,"

[158] ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 396 (1990). As was held in the case of *Velasco v. Manila Electric* (40 SCRA 344, at 348), citing *Kentucky and West Virginia Power Co. v. Anderson*, 115 S.W. 2d. 857:

> "There can be no doubt that commercial and industrial activities which are lawful in themselves may become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable. *It is no defense that skill and care have been exercised and the most improved methods and appliances employed to prevent such results.*" (emphasis supplied)

[159] *Id.*

liable for damages, may be used together with Article 19 as a tool against any inordinate use of the defense of lack of perceptible violation of the law.

In order to use Article 21, however, it is necessary to prove willfulness and contravention of morals or public policy.[160]

The matter of willfulness, on one hand, is established by showing that there is cognizance of the injurious effects of the act on the part of the offender, and not necessarily that the act is done purposely to cause the injury.[161] On the other hand, reference to the Constitution and the air pollution control laws, will establish the public policy of protecting people's health and maintaining ecological balance.

When the act which causes damage is clearly contrary to law, Article 20 of the New Civil Code may be used to strengthen the complainant's right to damages when the act which causes damage is wilfully or negligently performed. But because of the reference of Article 20 to other laws which have been violated, this provision may not be used independently, except in relation to the other articles already mentioned.

D. Penal Sanctions

While criminal cases involve a greater quantum of evidence, the deterrent effect of obtaining a conviction under the penal provisions of Presidential Decree 984 or an appropriate ordinance transcends the immediate case of pollution for which the action was instituted, considering the threat of imprisonment and imposition of a penalty which increases daily.

For purposes of this thesis, there are three classes of acts for which penalties are provided by Section 9 of Presidential Decree 984. The first is for the failure to comply with any order, decision, or regulation of the Pollution Adjudication Board for the control or abatement of pollution. Such disobedience will result in the imposition of a fine not exceeding five thousand (5,000.00) pesos per day for every day during which such violation or default continues, with such fine to be imposed after due notice and hearing.

Failure to pay the fine within the time specified in the order or decision will authorize the Pollution Adjudication Board to order the closure or the stoppage of operations of the establishment being operated or managed by the person to whom the order is directed.

The second type of offense is a violation of the prohibitions found in Section 8 of P.D. 984, its implementing rules and regulations, or any order or decree of the Pollution Adjudication Board. For such violation, a penalty of not to exceed one thousand (1,000.00) pesos for each day during which the violation continues, or imprisonment of from two years to six years, or both such fine and imprisonment, aside from an injunction to prevent the continuance of such violation, may be imposed.

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[160] 1 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 70 (1990).

[161] *Id.* at 71.

The second type of offense may be committed in relation to the first one, so that while no imprisonment is provided for in the first paragraph of Section 9 of P.D. 984, by reference to the second paragraph, which covers the offenses mentioned in the first, a person who violates or fails to comply with any order, decision, or regulation of the Pollution Adjudication Board may be imprisoned.

The third type of offense involves an obstruction to the exercise of the visitorial powers of the members of the Pollution Adjudication Board or any of its representatives. Such violation is penalized by a fine not exceeding two thousand (2,000.00) pesos or imprisonment of not exceeding one month, or both.

This third type of violation involves not only establishments that are definitely found to be causing pollution, but even those which are only suspected of causing pollution, for the third paragraph of Section 9 of P.D. 984 talks of refusing, obstructing or hampering the entry of a duly authorized person

> into *any property of the public domain or private property devoted to industrial manufacturing, processing or commercial use* during reasonable hours for the purpose of inspecting or investigating the conditions therein relating to pollution or *possible or imminent pollution*.[162]

In view of the power granted to local governments to enact ordinances imposing penalties for the commission of acts of pollution, as found in the Local Government Code of 1991,[163] criminal prosecution of those causing pollution may also be made under the provisions of particular city or municipal ordinances. Such criminal actions shall fall within the jurisdiction of the metropolitan, municipal or municipal circuit trial courts,[164] and shall be subject to the rules on summary procedures.[165]

Where the provisions of the pertinent ordinance penalize the commission of an act of pollution, a finding by the EMB, through the regional offices of the DENR, that an act of pollution has been committed, is a necessary requisite for the institution of an action, based on the ruling in *Mead v. Argel, supra.* But, as previously discussed, no such finding need be made in the case of an ordinance punishing an act constituting a nuisance, although eventually, the accused may invoke findings of the EMB that he has committed no act constituting pollution, as a matter of defense.

It is recommended then that aside from enacting ordinances against pollution, the local legislative bodies should also enact ordinances against who commit acts constituting a nuisance, to give aggrieved parties more legal options.

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[162] Presidential Decree No. 984, Sec. 9 (emphasis supplied).

[163] Please refer to Chapter III of this thesis.

[164] The Judiciary Reorganization Act of 1980, B.P. Blg. 129, sec. 32 (1981).

[165] Revised Rules on Summary Procedures, Resolution of the Supreme Court *En Banc*, sec. 1 (B) (October 15, 1991).

CONCLUSION AND RECOMMENDATIONS

> Laws which are not implemented in any form or not enforced for whatever reasons may contribute to political expediency, satisfy bureaucratic conscience, or meet a formal international obligation, but their impact on environmental management would be minimal at best.[166]

More than fifteen years have passed since the 1977 pollution law frenzy when most of the major statutes dealing with the problem of pollution were enacted. With the growing complexity of modern life, and the evil of pollution which it seems to inevitably bring, it is perhaps high time to take a look at the laws which are in place, and evaluate their sufficiency and efficacy.

If one were to take a whiff of air in the metropolis, the verdict would be that whatever pollution control laws are in place are not effective, for air pollution seems, not under control, but out of control. It is, however, submitted that the basic framework for effective pollution control legislation has been set in place. Legal remedies are available. There is no need to enact an entirely new air pollution control law, only an improved one.

Through the preceding chapters, the author has attempted to show that pollution control, as well as other related laws can, if properly used, provide several sufficiently effective legal options to those who seek relief. Our laws do not condone acts of pollution, but condemn such acts in rather strong words, and provide the corresponding penalties for their commission. Even the "traditional" fields of law such as political, civil and remedial law, may be used, together with pollution control laws, or independently of these, in some instances, to obtain relief from air pollution.

The 1987 Constitution contains explicit recognition of the right of the people to a healthful environment. The embodiment of such environmental concern in the Constitution is a command to all branches of the government to be more sympathetic to the cause of those who suffer adversely from pollution.[167]

The enactment of the Local Government Code provides local government units with immense potential for reinforcing the national policy against pollution through the broadened powers of local government officials.[168]

A. Strategies for Pollution Control in the Light of Existing Laws

After a survey of the laws on, and relating to, the control of air pollution from stationary sources, the strategy set forth below is suggested for those who seek relief against air pollution:

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[166] A. K. Biswas, *Environment and law: A Perspective from Developing Countries*, 1984 HAGUE ACADEMY DE DROIT INTERNATIONAL COLLOQUE WORKSHOP 397-398 (1985).

[167] For a more detailed discussion of the constitutional provisions relating to pollution, please refer to Chapter II of this thesis.

[168] See Chapter III *supra*.

Begin with preventive action. Keep abreast of recent applications for permits to operate filed with the field offices of the DENR, so that a timely opposition may be made to any application of a potential polluter. In this regard, the environment and natural resources officer of the local government unit concerned should be responsible for communicating the information on such applications to the community members, and guiding them on how to go about opposing an application.[169]

Since the permit to operate is not the only permit a potential polluter has to obtain, community members should try to keep themselves informed of permit applications pending with the mayor's office, or other administrative agencies involved (such as the Housing and Land Use Regulatory Board). If no publication requirements are imposed on applicants, community members must push for the imposition of such requirements.

If and when all the necessary permits for the operation of a plant are obtained, community members should, through the environment and natural resources officer or the chief executive of the local government, request the regional offices of the DENR to conduct periodic monitoring of the plants in their area, to ensure that these plants comply with the pollution standards set by the EMB. Even when no legal action is as yet being contemplated, it is advisable to have on hand proper documentation of the emissions from a plant, just in case the situation subsequently calls for legal action.

If such requests are turned down without just cause, the EMB officials involved may be made subject to administrative or judicial action, under Sections 444, 455, and 465 of the Local Government Code of 1991, which allow a governor or mayor, as the case may be, to bring such actions in aid of his power to ensure that executive officials and employees within his local government unit discharge their duties and functions faithfully.

If injury, illness, or discomfort is caused by a polluter, the community members should coordinate with the community health officers to have such cases documented. The community members should immediately check with the DENR field offices if the results of tests conducted on the alleged polluter show emissions exceeding the allowable limits.

If the emissions exceed the allowable limits, the community members may file an administrative case with the Pollution Adjudication Board through the regional offices as a class, through their chief executive, or on their own. In such case, the complainants should pray for the immediate issuance of an *ex parte* temporary restraining order, so that prolonged litigation will not defeat their rights.

Considering that a finding by the EMB of the existence of pollution may take time, and resolution of the case by the PAB may likewise be delayed, the community members should also take advantage of the accessibility of the municipal trial or regional trial courts, by filing an action for the abatement of a nuisance, with a prayer for damages, and a criminal action against

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[169] See Chapter IV *supra*.

the alleged polluter, based on the appropriate ordinance, or the penal provisions of P.D. 984. If the polluter is found to have no anti-pollution control device at all, and causes considerable inconvenience, a summary abatement of the nuisance by the local legislative bodies, as empowered by the Local Government Code of 1991, may even be justified. In the criminal action, if the community members choose to go by an ordinance, the action is to be filed with the municipal trial, metropolitan trial, or municipal circuit trial court, as the case may be.[170] Furthermore, such action shall be subject to the rules on summary procedure. If the penal provisions of P.D. 984 are to be availed of, the action is to be filed with the proper regional trial court. The latter action shall take more time, since the action will not be subject to the rules on summary procedure, and a finding from the EMB that an act of pollution has been committed must be awaited. But the penalty to be imposed in the latter case is heavier.

The criminal prosecution of persons causing pollution is highly recommended to forestall other acts of pollution, as the threat of incarceration will most effectively forestall future acts of pollution.

Together with the abovementioned remedies, the community members may also petition their chief executive to revoke the permit granted to the firm which causes pollution, under Section 444 of the Local Government Code of 1991.

In all these actions, the community members may seek the aid of the legal officer of the local government.

If the emissions from the operations of an alleged polluter are found to pass the applicable standards, the community members still have the option of availing of the provisions on nuisance, both in the Civil Code and in their respective ordinances.

B. Recommendations

In surveying the pertinent laws, and attempting to map out a strategy, several deficiencies of the law have come to the author's attention. Following, therefore, is a list of observations and recommendations which the author would like to make to improve the remedies available for air pollution control. At the outset, it is consoling to note that many of the deficiencies in the law have already come to the attention of the country's lawmakers, who have proposed certain bills in an attempt to improve the existing remedies for air pollution control.

Considering that not all the local government units may come up to par in fulfilling their duties in preserving the environment, it may be advisable to give the EMB the power to take over the functions devolved on the local government, if need be,[171] to preserve the primacy of the EMB as the lead agency in the task of pollution control.

[170] B.P. Blg. 129, sec. 32.

[171] The Philippine Clean Air Act of 1992, Senate Bill No. 794, Ninth Congress of the Republic of the Philippines, First Session, 1992, sec. 5.

The centralization of the task of pollution control with the Environmental Management Bureau and the Pollution Adjudication Board has eliminated many of the conflicts of jurisdiction. There is question, however, of whether these central agencies have been provided with the adequate funding for them to effectively carry out their functions. Given the fact that there are severe budgetary constraints, it is recommended that higher budgetary allocation be complemented by the creation of an air pollution control fund from the proceeds of licenses and permits issued by the EMB, the fines imposed on pollutants, and donations, grants and endowments, with such gratuitous transfers being made exempt from gift or estate taxes.[172] Permit fees should be so imposed as to truly reflect the share which a pollutant should bear in the cost of environmental protection.

The strengthening and expansion of the Environmental Management Bureau is especially crucial, since most, if not all cases relating to pollution, will pass through the EMB. The government must make sure that the EMB is properly funded and manned, so that efforts to utilize available legal remedies against air pollution will not be thwarted by institutional and budgetary constraints.

Once the EMB has been furnished with sufficient funding, manpower and equipment, the periodic inspection of commercial, industrial, manufacturing and processing firms should be strictly enforced. Perhaps inspections could be required to be conducted monthly, as proposed in House Bill No. 726, with corresponding penalties, not only for the refusal to permit inspection, as already provided for in Presidential Decree 984, but also for the connivance of an officer or employee of the EMB with the firm to feign compliance with pollution control laws.[173]

There is also need to re-examine the exclusive jurisdiction given to the EMB for the determination of the existence and commission of acts of pollution. While it is understandable that the law should aim at eliminating conflicts of jurisdiction, and giving deference to the primary jurisdiction of the EMB in this specialized field, it is submitted, that there are certain instances when resorting to the courts, without prior resort to the EMB or the PAB, or exhaustion of the administrative remedies provided by law, may be warranted, such as:

(a) in cases of unreasonable delay or official inaction;

(b) "when there is an irreparable damage or injury or threat thereof unless resort to the court is immediately made";[174]

(c) "in extreme cases where there is no other plain, speedy, or adequate remedy in the ordinary course of law";[175]

[172] *Id.*, sec. 5.

[173] Requiring a Monthly Inspection for Pollution Control of All Commercial, Industrial, Manufacturing and Processing Firms and Providing Penalties for Violation Thereof, House Bill No. 726, Ninth Congress of the Republic of the Philippines, First Regular Session, 1992, secs. 1-3.

[174] NEPTALI A. GONZALES, ADMINISTRATIVE LAW (A TEXT) 147 (1979).

[175] *Id.*

(d) when special reasons or circumstances demand immediate court action or
(e) cases where adherence to the exhaustion requirement would "result in the nullification of the claim being asserted."[176]

To remove any doubts as to the jurisdiction of the EMB and the PAB vis-a-vis the regular courts, P.D. 984 should be amended to state explicitly, as proposed in House Bill 18280 (which, unfortunately, has been archived), that the remedies provided in Section 9 of P.D. 984 "shall not be a bar to nor shall affect any other remedies provided for in this Decree, *in the Civil Code or in other laws which may be invoked by private parties or citizen affected* but shall be cumulative and additional to such remedies."[177]

Considering the growing number of pollution cases that will arise in the future, it is advisable for the Pollution Adjudication Board to delegate some of its powers to the hearing officers in the regional offices, as authorized by Section 19 of Executive Order No. 192. As the regulations of the PAB now stand, a hearing officer in a DENR regional office only has recommendatory powers, and can neither render a decision on his own nor order the issuance of an *ex parte* TRO. The centralization of the adjudicatory powers with the Pollution Adjudication Board may potentially create a bottleneck in the resolution of pollution cases, and will involve great inconvenience and expense to litigants, especially those in the far-flung areas.

Compliance with pollution control laws would also be improved if tax incentives are given out to firms which acquire pollution control equipment, and to entities which engage in pollution control research.

While tax incentives were, for a while, extended to such entities, the effectivity of these incentives lapsed in 1985.[178] It would be advisable to restore these tax incentives, as proposed by Sen. Heherson Alvarez in Senate Bill No. 739.[179] To avoid any abuse in the availment of these tax incentives, a prohibition against the transfer of the tax-exempt pollution control equipment should be imposed.[180] For those firms that have already acquired pollution control devices, incentives such as accelerated depreciation should be extended to reward their having acquired such devices, and to encourage them to update their pollution control equipment. Such incentives should only be given upon proper certification of the EMB that such pollution control devices are actually being used.

[176] *Id.*

[177] An Act Further Strengthening Efforts to Control Pollution by Amending Certain Sections of Presidential Decree No. 984, Entitled "Providing for the Revision of Republic Act No 3931, Commonly Known as the Pollution Control Law, and for Other Purposes, House Bill 18280, Eighth Congress of the Republic of the Philippines, Second Regular Session, 1992, sec. 2.

[178] DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, *supra* note 8, at 276.

[179] The Pollution Control Law of 1992, Senate Bill No. 739, Ninth Congress of the Republic of the Philippines, First Regular Session, 1992, sec. 17.

[180] *Id.*, sec. 18.

Considering that health hazards from a pollutant would probably harm not only the nearby residents, but workers inside the plant as well, another approach that could be taken in pollution control is to enforce the occupational health and safety standards found in Articles 162 to 165 of the Labor Code, to pressure firms to push towards greater efficiency in their processes so as not to produce needless waste which causes pollution.

Another amendment that could be made to Presidential Decree No. 984 is that embodied in Section 9 of House Bill No. 18280 which proposes that if the failure by any firm to pay the fine imposed by the Pollution Adjudication Board exceeds ninety days, the closure or stoppage of the operation, or the revocation or cancellation of the franchise, registration or license shall be ordered, with such revocation or cancellation being permanent, notwithstanding the payment of the fine imposed.[181] The threat of deprivation of their right to operate a plant will cause operators thereof to be more cautious. The Pollution Adjudication Board, however, if given the power to order such permanent closure, must be wary of ostensible changes in ownership of a firm to avoid the consequences of a permanent deprivation or closure order.

Aside from the imposition of the fixed fine currently provided by P.D. 984, it is suggested that the provisions in Senate Bill 739 providing for the award of damages for aggrieved parties be adopted, so that polluters shall be required to pay, damages for "any harm, injury, illness or death to any person, animal, plant, fish or other marine and aquatic life and/or damage to property," including in such amount "the cost of rehabilitating and cleaning up of the resources, properties or structures damaged or polluted as well as the cost of restoring the damaged or polluted resources, properties or structures to its original state in cases where the same shall be possible."[182] Such move would be in line with the effort to truly assess the environmental damage caused by a pollutant.

Any effort at pollution control would not be complete without an educational and information campaign. The officials of the local government, while empowered to become more active participants in environmental management, cannot be expected to utilize such powers if they are unaware of the national policy on pollution, and the national pollution control laws after which they are supposed to pattern their environmental programs and ordinances. Those who are operating, or seek to establish factories and other stationary sources of pollution must be aided in acquiring knowledge on the best and most cost-efficient technology available for pollution control. Community members must be apprised of their right to a healthful environment, the effect of pollution on this right, the remedies available to them for the protection of such right, and their responsibility in maintaining ecological balance. Consumers should also be made aware of the firms which violate pollution

[181] House Bill No. 18280, sec. 9.

[182] Senate Bill No. 739, sec. 20.

control laws so that they may refrain from patronizing the products of these firms so as to impress upon the owners and operators of these plants the message that not only the government, but also the public, will not tolerate their acts of pollution.

Lastly, government should set the example in complying with air pollution control laws. No matter how stringent the laws on air pollution control are, if the power plants and other stationary structures operated and owned by the government continue to spew out pollutants into the air, persons will not take air pollution control laws seriously.

If these recommendations are adopted, the author is confident that pollution control law in the Philippines will become a vibrant law, and not the dead-letter law that it is alleged to be.

THE DOCTRINE OF PIERCING THE CORPORATE VEIL AS APPLIED BY THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG)

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On the basis of prima facie *evidence, the Presidential Commission on Good Government (PCGG) issued writs of sequestration over "ill-gotten" corporations through an administrative piercing of the corporate veil. On August 2, 1987, within the deadline set in Sec. 26, Art. XVIII of the 1987 Constitution, the PCGG filed the judicial actions corresponding to the issued writs of sequestration. It impleaded only the stockholders as party-defendants due to its application of the doctrine of piercing of the corporate veil. The prima facie "ill-gotten" corporations themselves were merely listed in an annex of the complaints filed as assets sought to be recovered by the State.*

After the lapse of the constitutional deadline for bringing the judicial actions, the sequestered corporations filed with the Sandiganbayan a petition for certiorari, *alleging that no judicial action was brought against the corporations themselves within the deadline. They further prayed for the lifting of the writs of sequestration.*

The main issue before the Sandiganbayan focused on whether the PCGG filed a judicial action corresponding to the writs of sequestration over the petitioner-corporations on or before the constitutional deadline.

The position of the PCGG was in the affirmative. It urged the Sandiganbayan to apply the "doctrine of piercing of the corporate veil" as it did at the administrative level. The Sandiganbayan, however, ruled that the PCGG could not pierce the corporate veil for lack of factual basis. This decision was later sustained by the Supreme Court since no judicial action was brought against the sequestered corporations within the constitutional deadline. This was because the said corporations were not impleaded as party-defendants in the complaints filed by PCGG. The writs of sequestration were automatically lifted.

This paper analyzes the PCGG's use of the doctrine of piercing the corporate veil at the administrative level, and the Court's appreciation or misappreciation of that use in terms of factual substantiation for piercing. The basic postulate is that the corporation is a mere creature of the State. The Supreme Court, therefore, may pierce the corporate veil in cases where fraud is involved, or where the corporation is a mere

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