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[G.R. No. 194239, June 16, 2015]

WEST TOWER CONDOMINIUM CORPORATION, ON BEHALF OF THE RESIDENTS OF WEST TOWER CONDOMINIUM AND IN REPRESENTATION OF BARANGAY BANGKAL, AND OTHERS, INCLUDING MINORS AND GENERATIONS YET UNBORN, PETITIONERS, VS. FIRST PHILIPPINE INDUSTRIAL CORPORATION, FIRST GEN CORPORATION AND THEIR RESPECTIVE BOARD OF DIRECTORS AND OFFICERS, JOHN DOES, AND RICHARD DOES, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

Nature of the Case

Before the Court is the Petition for the Issuance of a Writ of *Kalikasan* filed following the leak in the oil pipeline owned by First Philippine Industrial Corporation (FPIC) in Makati City.

The Facts

Respondent FPIC operates two pipelines since 1969, *viz*: (1) the White Oil Pipeline (WOPL) System, which covers a 117-kilometer stretch from Batangas to the Pandacan Terminal in Manila and transports diesel, gasoline, jet fuel and kerosene; and (b) the Black Oil Pipeline (BOPL) System, which extends 105 kilometers and transports bunker fuel from Batangas to a depot in Sucat, Parañaque. These systems transport nearly 60% of the petroleum requirements of Metro Manila and parts of the provinces of Bulacan, Laguna, and Rizal.

The two pipelines were supposedly designed to provide more than double the standard safety allowance against leakage, considering that they are made out of heavy duty steel that can withstand more than twice the current operating pressure and are buried at a minimum depth of 1.5 meters, which is deeper than the US Department of Transportation standard of 0.9 meters.

In May 2010, however, a leakage from one of the pipelines was suspected after the residents of West Tower Condominium (WestTower) started to smell gas within the condominium. A search made on July 10, 2010 within the condominium premises led to the discovery of a fuel leak from the wall of its Basement 2. Owing to its inability to control the flow, WestTower's management reported the matter to the Police Department of Makati City, which in turn called the city's Bureau of Fire Protection.

What started as a two-drum leak at the initial stages became a 15-20 drum a day affair. Eventually, the sump pit of the condominium was ordered shut down by the City of Makati to prevent the discharge of contaminated water into the drainage system of Barangay Bangkal. Eventually, the fumes compelled the residents of WestTower to abandon their respective units on July 23, 2010 and the condo's power was shut down.

Petitioner FPIC initially disowned any leak from its oil pipeline. Thus, the residents of WestTower shouldered the expenses of hauling the waste water from its basement, which eventually required the setting up of a treatment plant in the area to separate fuel from the waste water.

On October 28, 2010, the University of the Philippines-National Institute of Geological Sciences (UP-NIGS), which the City of Makati invited to determine the source of the fuel, found a leak in FPIC's WOPL about 86 meters from West Tower.

A day after, or on October 29, 2010, FPIC admitted that indeed the source of the fuel leak is the WOPL, which was already closed since October 24, 2010, but denied liability by placing blame on the construction activities on the roads surrounding West Tower.

On November 15, 2010, West Tower Condominium Corporation (West Tower Corp.) interposed the present Petition for the Issuance of a Writ of *Kalikasan* on behalf of the residents of West Tower and in representation of the surrounding communities in Barangay Bangkal, Makati City. West Tower Corp. also alleged that it is joined by the civil society and several people's organizations, non-governmental organizations and public interest groups who have expressed their intent to join the suit because of the magnitude of the environmental issues involved.[1]

In their petition, petitioners prayed that respondents FPIC and its board of directors and officers, and First Gen Corporation (FGC) and its board of directors and officers be directed to: (1) permanently cease and desist from committing acts of negligence in the performance of their functions as a common carrier; (2) continue to check the structural integrity of the whole 117-kilometer pipeline and to replace the same; (3) make periodic reports on their findings with regard to the 117-kilometer pipeline and their replacement of the same; (4) rehabilitate and restore the environment, especially Barangay Bangkal and West Tower, at least to what it was before the signs of the leak became manifest; and (5) to open a special trust fund to answer for similar and future contingencies in the future. Furthermore, petitioners pray that respondents be prohibited from opening the pipeline and allowing the use thereof until the same has been thoroughly checked and replaced, and be temporarily restrained from operating the pipeline until the final resolution of the case.

To bolster their petition, petitioners argued that FPIC's omission or failure to timely replace its pipelines and to observe extraordinary diligence caused the petroleum spill in the City of Makati. Thus, for petitioners, the continued use of the now 47-year old pipeline would not only be a hazard or a threat to the lives, health, and property of those who live or sojourn in all the municipalities in which the pipeline is laid, but would also affect the rights of the generations yet unborn to live in a balanced and "healthful ecology," guaranteed under Section 16, Article II of the 1987 Constitution.

On November 19, 2010, the Court issued the Writ of *Kalikasan*[2] with a Temporary Environmental Protection Order (TEPO) requiring respondents FPIC, FGC, and the members of their Boards of Directors to file their respective verified returns. The TEPO enjoined FPIC and FGC to: (a) cease and desist from operating the WOPL until further orders; (b) check the structural integrity of the whole span of the 117-kilometer WOPL while implementing sufficient measures to prevent and avert any untoward incident that may result from any leak of the pipeline; and (c) make a report thereon within 60 days from receipt thereof.

In compliance with the writ, FPIC directors Edgar Chua, Dennis Javier, Dennis Gamab and Willie Sarmiento submitted a Joint Return[3] praying for the dismissal of the petition and the denial of the privilege of the Writ of *Kalikasan*. They alleged that: petitioners had no legal capacity to institute the petition; there is no allegation that the environmental damage affected the inhabitants of two (2) or more cities or provinces; and the continued operation of the pipeline should be allowed in the interest of maintaining adequate petroleum supply to the public.

Respondents FPIC and its directors and officers, other than the aforementioned four (4) directors, also filed a Verified Return[4] claiming that not all requirements for the issuance of the Writ of *Kalikasan* are present and there is no showing that West Tower Corp. was authorized by all those it claimed to represent. They further averred that the petition contains no allegation that respondents FPIC directors and officers acted in such a manner as to allow the piercing of the corporate veil.

Meanwhile, on January 18, 2011, FGC and the members of its Board of Directors and Officers filed a Joint Compliance[5] submitting the report required by the Writ of *Kalikasan*/TEPO. They contended that they neither own nor operate the pipelines, adding that it is impossible for them to report on the structural integrity of the pipelines, much less to cease and desist from operating them as they have no capability, power, control or responsibility over the pipelines. They, thus, prayed that the directives of the Writ of *Kalikasan*/TEPO be considered as sufficiently performed, as to them.

On January 21, 2011, FPIC, in compliance with the writ, submitted its 4-page "Report on Pipeline Integrity Check and Preventive Maintenance Program."[6] In gist, FPIC reported the following:

> (I) For the **structural integrity** of the 117-kilometer pipeline, (a) the DOE engaged the services of UP-NIGS to do borehole testing on 81 pre-identified critical areas of the WOPL in eight cities and municipalities—all the boreholes showed negative presence of petroleum vapors; (b) pressure tests were conducted after the repair of the leak and results showed negative leaks and the DOE's pipeline expert, Societe General de Surveillance, New Zealand, has developed a pressure test protocol requiring a 24-hour operation of running a scraper pig through the pipeline to eliminate air gap; (c) In-Line Inspection Test, was conducted by NDT through MFL and ultrasonic. The NDT later cleared the WOPL from any damage or corrosion.
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> (II) For **preventive maintenance measures**, (a) Cathodic Protection Systems are installed involving the use of anode materials and the introduction of electric current in the pipeline to enhance prevention of corrosion; (b) Regular Scraper Runs through the pipeline to maintain cleanliness and integrity of the pipelines' internal surface; (c) Daily Patrols every two hours of the pipeline route to deter unauthorized diggings in the vicinity of the pipeline segments; (d) Regular coordination meetings with DPWH, MMDA and utility companies to monitor projects that might involve digging or excavation in the vicinity of the pipeline segments; (e) Installation of Security Warning Signs along the pipeline route with toll free number which can be called in the event of an accident or emergency; (f) Emergency Response Procedure of the ERT is activated by a call-out procedure; (g) Maintenance of Emergency Equipment and Repair Kit which are always on standby; and, (h) Remotely controlled Isolation Valves are in place to shut the pipeline when necessary.

On February 9, 2011, petitioners filed, and the Court eventually granted, their Motion to Set the Case for Preliminary Conference and Hearing[7] pursuant to Sec. 11, Rule 7 of the Rules of Procedure for Environmental Cases.

On April 15, 2011, the Court conducted an ocular inspection of the WOPL in the vicinity of West Tower to determine the veracity of the claim that there were two (2) additional leaks on FPIC's pipeline. Results of the ocular inspection belied the claim.

In the meantime, petitioners also filed civil and criminal complaints against respondents arising from the same incident or leakage from the WOPL.[8]

Since after the Court's issuance of the Writ of *Kalikasan* and the TEPO on November 19, 2010, FPIC has ceased operations on both the WOPL and the BOPL. On May 31, 2011, however, the Court, answering a query of the DOE, clarified and confirmed that what is covered by the Writ of *Kalikasan* and TEPO is only the WOPL System of FPIC; thus, FPIC can resume operation of its BOPL System.[9]

On July 7, 2011, petitioners filed an Omnibus Motion[10] assailing the Court's May 31, 2011 Resolution, praying for the conduct of oral argument on the issue of reopening the BOPL System. This was followed, on September 9, 2011, by a Manifestation (Re: Current Developments) with Omnibus Motion[11] wherein petitioners invoked the precautionary principle[12] and asserted that the possibility of a leak in the BOPL System leading to catastrophic environmental damage is enough reason to order the closure of its operation. They likewise alleged that the entities contracted by FPIC to clean and remediate the environment are illegally discharging waste water, which had not undergone proper treatment, into the Parañaque River. Petitioners, thus, prayed that respondents be directed to comply with environmental laws in rehabilitating the surroundings affected by the oil leak and to submit a copy of their work plan and monthly reports on the progress thereof. To these omnibus motions, respondents were directed to file their

respective comments.

On September 28, 2011, respondent FPIC filed an Urgent Motion for Leave (To Undertake "Bangkal Realignment" Project)[13] in order to reduce stress on the WOPL System. FPIC sought to construct a new realigned segment to replace the old pipe segment under the Magallanes Interchange, which covers the portion that leaked. Petitioners were directed to file their comment on FPIC's motion.

Report and Recommendation of the Court of Appeals

To expedite the resolution of the controversy, the Court remanded the case to the Court of Appeals (CA). By this Court's Resolution dated November 22, 2011,[14] the appellate court was required to conduct hearings and, thereafter, submit a report and recommendation within 30 days after the receipt of the parties' memoranda.

On March 21, 2012, the preliminary conference was continued before the CA wherein the parties made admissions and stipulations of facts and defined the issues for resolution. In view of the technical nature of the case, the CA also appointed[15] several *amici curiae*,[16]but only four (4) filed their reports.[17]

On December 26, 2012, the CA Former 11th Division submitted to the Court its well-crafted and exhaustive 156-page Report and Recommendation[18] dated December 21, 2012 (CA Report). Some highlights of the Report:

1. Anent petitioners' June 28, 2011 Omnibus Motion assailing the reopening of the BOPL System, the CA directed respondent FPIC to submit the appropriate certification from the DOE as to the safe commercial operation of the BOPL; otherwise, the operation of the BOPL must also be enjoined.

2. On petitioners' September 9, 2011 Manifestation (Re: Current Developments) with Omnibus Motion, the CA directed the Inter-Agency Committee on Health to submit its evaluation of the remediation plan prepared by CH2M Hill Philippines, Inc. for FPIC. Further, the appellate court directed FPIC to strictly comply with the stipulations contained in the permits issued by the Department of Environment and Natural Resources (DENR) for its remediation activities in Barangay Bangkal, Makati City. The DENR was in turn directed by the CA to:

   (a) monitor compliance by respondent FPIC with applicable environmental laws and regulations and conditions set forth in the permits issued;
   (b) conduct independent analysis of end-products of the Multi-Phase Extraction System;
   (c) conduct regular consultative meetings with the City of Makati, residents of Barangay Bangkal and other stakeholders concerning the remediation activities; and,
   (d) evaluate the viability of the recommendation of *amicus* Dr. Benjamin R. De Jesus, Jr. to include the use of surfactants and oxygen-releasing compounds (ORCs) in the middle and terminal portions of the remediation plan.

3. Respondent's September 27, 2011 Urgent Motion for Leave (To Undertake "Bangkal Realignment" Project) was denied.

4. With regard to the March 29, 2012 Supplemental Manifestation (Re: List of *Amici Curiae* and Recent Possible Leak in the Pipeline) filed by petitioners, the CA found that the existence of another possible leak alleged by petitioners was not established. Nonetheless, to prevent such event, the CA ordered FPIC to: (i) review, adopt and strictly observe appropriate safety and precautionary measures; (ii) closely monitor the conduct of its maintenance and repair works; and (iii) submit to the DOE regular monthly reports on the structural integrity and safe commercial operation of the pipeline.

5. As to the merits of the case, the CA submitted the following recommendations:

   (a) That the people's organizations, non-governmental organizations, and public interest groups that indicated their intention to join the petition and submitted proof of juridical personality (namely: the Catholic Bishop's Conference of the Philippines; *Kilusang Makabansang Ekonomiya*, Inc.; Women's Business Council of the Philippines, Inc.; Junior Chambers International Philippines, Inc. – San Juan Chapter; Zonta Club of Makati Ayala Foundations; and the Consolidated Mansions Condominium Corporation) be allowed to be formally

impleaded as petitioners.

(b) That respondent FPIC be ordered to submit a certification from the DOE Secretary that the WOPL is already safe for commercial operation. The certification should take into consideration the adoption by FPIC of the appropriate leak detection system to be used in monitoring the entire pipeline's mass input versus mass output. The certification must also consider the necessity of replacing the pipes with existing patches and sleeves. In case of failure of respondent FPIC to submit the required certification from the DOE Secretary within sixty (60) days from notice of the Honorable Supreme Court's approval of this recommendation, the TEPO must be made permanent.

(c) That petitioners' prayer for the creation of a special trust fund to answer for similar contingencies in the future be denied for lack of sufficient basis.

(d) That respondent FGC be not held solidarily liable under the TEPO.

(e) That without prejudice to the outcome of the civil and criminal cases filed against respondents, the individual directors and officers of FPIC and FGC be not held liable in their individual capacities.

On January 11, 2013, petitioners filed their Motion for Partial Reconsideration[19] of the CA's Report praying that (a) instead of the DOE, the required certification should be issued by the DOST-Metal Industry Research and Development Center; (b) a trust fund be created to answer for future contingencies; and (c) the directors and officers of FPIC and FGC be held accountable.

On January 25, 2013, FPIC filed its Compliance (Re: Department of Energy Certification on the Black Oil Pipeline) [20] and submitted the required DOE Certification[21] issued on January 22, 2013 by DOE Secretary Carlos Jericho L. Petilla (Secretary Petilla). On March 14, 2013, petitioners countered with a Manifestation with Motion[22] asserting that FPIC's certification is not compliant with the CA's requirement. Hence, petitioners moved that the certification should be disregarded, the 30-day period be deemed to have lapsed, and FPIC be permanently enjoined from operating the BOPL.

On July 30, 2013, the Court issued a Resolution adopting the recommendation of the CA in its Report and Recommendation that FPIC be ordered to secure a certification from the DOE Secretary before the WOPL may resume its operations. The pertinent portion of said Resolution reads:

> [FPIC] is hereby **ORDERED** to submit a certification from the DOE Secretary that the pipeline is already safe for commercial operation. The certification should take into consideration the adoption by FPIC of the appropriate leak detection system to be used in monitoring the entire pipeline's mass input versus mass output. The certification must also consider the necessity of replacing the pipes with existing patches and sleeves xxx.[23]
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> The DOE Secretary is **DIRECTED** to consult the [DOST] regarding the adoption of the appropriate leak detection system and the necessity of replacing the pipes with existing patches and sleeves.

On October 2, 2013, petitioners, in a Motion for Reconsideration with Motion for Clarification, emphasized that the CA found FPIC's tests and maintenance program to be insufficient and inconclusive to establish the WOPL's structural integrity for continued commercial operation.[24] Furthermore, petitioners point out that the DOE is biased and incapable of determining the WOPL's structural integrity.

Respondents, for their part, maintain that the DOE has the technical competence and expertise to assess the structural integrity of the WOPL and to certify the system's safety for commercial operation.[25] Respondents further allege that the DOE is the agency empowered to regulate the transportation and distribution of petroleum products, and to regulate and monitor downstream oil industry activities, including "product distribution" through pipelines.[26]

In compliance with the Court's July 30, 2013 Resolution, the DOE Secretary issued on October 25, 2013 a

Certification,[27] attesting that the WOPL is safe to resume commercial operations, subject to monitoring or inspection requirements, and imposing several conditions that FPIC must comply with. The Certification, in its entirety, reads:

> This is to certify that based on the Pipeline Integrity Management Systems (PIMS) being implemented by [FPIC] for its [WOPL] facility, the same is safe to resume commercial operations. This certification is being issued after consultation with the [DOST] and on the basis of the following considerations, to wit:
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> 1. DOE noted the adoption by FPIC of the appropriate leak detection system to be used in monitoring the pipeline's mass input versus mass output, as well as the other measures of leak detection and prevention adopted by the latter;
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> 2. DOE further noted that FPIC has already undertaken realignment and reinforcement works on the current pipeline to remove majority of the patches. FPIC has likewise presented substantial and adequate documentation showing that the remaining patches and sleeves are safe, and that the use of such is recognized by the industry and complies with existing standards;
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> 3. DOE finally noted the results of various tests and inspections done on the pipeline as indicated in the *Manifestation* submitted by the DOE on March 31, 2012, in the civil case docketed as *CA GR SP No. 00008* and entitled *West Tower Condominium, et al. [v.] First Philippine Industrial Corporation, et al.*
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> This certification is being issued subject to the condition that FPIC will submit itself to regular monitoring and validation by the Oil Industry Management Bureau (OIMB) of the implementation of its PIMS, particularly on the following: (a) mass or volume input versus mass or volume output loss/gain accounting; (b) results of borehole monitoring, (c) inspection of the pipeline cathodic protection and (d) pressure test.
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> Further, FPIC shall submit itself to any test or inspection that the DOE and DOST may deem appropriate for purposes of monitoring the operations of the WOPL facility.

The Court is fully cognizant of the WOPL's value in commerce and the adverse effects of a prolonged closure thereof. Nevertheless, there is a need to balance the necessity of the immediate reopening of the WOPL with the more important need to ensure that it is sound for continued operation, since the substances it carries pose a significant hazard to the surrounding population and to the environment.[28] A cursory review of the most recent oil pipeline tragedies around the world will readily show that extreme caution should be exercised in the monitoring and operation of these common carriers:

(1) On August 1, 2014, a series of powerful explosions from underground pipeline systems ripped up the streets of Kaohsiung, Taiwan, killing at least 28 people and injuring 299 more. Further, 23,600, 2,268 and 6,000 households were left without gas, power and water, respectively, in the 2-3 square kilometer blast area.[29]

(2) On November 22, 2013, an oil pipeline leaked, caught fire, and exploded in Qingdao, Shangdao Province in China, killing 55 people and injuring more than a hundred more.[30]

(3) On September 14, 2011, a fuel pipeline exploded in Kenya's capital city, Nairobi, reducing bodies to dust and flattening homes. At least 75 people died in the explosion, while more than a hundred people were injured.[31]

(4) In September 2010, a natural gas pipeline ruptured and set off a fireball, killing eight (8) people and leveling 38 homes in San Bruno, California in the United States.[32]

(5) On July 30, 2004, a rupture of an underground natural gas pipeline buried six (6) meters in Ghislenghien, Belgium resulted in 24 deaths and over 120 injuries.[33]

On April 29 and 30, 2014, the DOE organized a dialogue between said government agencies and the FPIC. There it was stated that during the dialogue, "the division heads and a high profile team from FPIC, both from operation and management made presentations and answered questions on pipeline pumping operation and product delivery, and a detailed explanation of the FPIC PIMS' control measures, condition monitoring measures, and emergency measures, as well as its various activities and projects implemented since 2010 such as pipeline replacement and realignment in Pandacan and Bangkal, inspection and reinforcement of all patches in the WOPL, inspection and reinforcement of a

number of reported dents in the WOPL, conduct of successful leak tests, and installation of boreholes that are gas-tested on a weekly basis, and the safety systems that go with the daily pipeline operation and maintenance and project execution."[34]

On August 5, 2014, Secretary Carlos Jericho L. Petilla of the DOE submitted a letter[35] recommending activities and timetable for the resumption of the WOPL operations, to wit:

A. Preparatory to the Test Run

I. FPIC Tasks:

a. Continue submission of monitoring charts, data/reading, accomplishment reports, and project status for all related activities/works. Respond to comments and prepare for site inspection.

b. Continue gas testing along the right-of-way using the monitoring wells or boreholes. Prepare for inspection of right-of-way and observation of gas testing activities on monitoring wells and boreholes.

c. Expound on the selection of borehole location. For example, identify those located in pipeline bends, bodies of water, residential areas, repaired portions of the pipelines, dents and welded joints.

d. Continue submitting status report relating to "Project Mojica" (an ongoing pipeline segment realignment activity undertaken by FPIC to give way to a flood control project of MMDA in the vicinity of Mojica St. and Pres. Osmeña Highway in Makati City). Prepare for site inspection.

II. Inter-agency undertaking:

a. Conduct onsite inspection of right-of-way

b. Review/check remaining 22 patches that were already inspected and reinforced with Clockspring sleeves.

i. Determine location of sleeves.

ii. Review of procedures on repair of sleeves.

iii. Random visual inspection of areas easily accessible.

c. Cathodic protection's onsite inspection on rectifier to check readings

i. Old readings

ii. Current Readings

iii. Segment covered

iv. Criteria for prioritization for corrective action

d. Observe and witness the running/operation of the cleaning pig.

e. Check and validate all calibration certificate of instruments

i. Instrument verification and calibration.

B. Actual Test Run (to be undertaken both by FPIC and inter-agency)

a. Perform Cleaning Pig Run

i. Witness launching and receiving of the cleaning pig.

ii. Handling of the residuals after cleaning.

b. Demonstrate Various Pressure Tests (already being conducted by FPIC)

i. Blocked-in pressure test (Leak Test, not in operation)

ii. In-operation (hourly reading)

c. Continue Current Gas Monitoring (boreholes)

i. Ocular inspection of selected areas

d. Demonstrate mass or volume balance computation during WOPL test run (already being implemented in the BOPL)

i. 30 days baseline data generation

ii. 30 days computational analysis and monitoring

C. Commissioning or Return to Commercial Operation

I. FPIC Tasks:

a. Continue implementation of the PIMS. Review recommendations from DOE.

b. Continue monthly reporting of operations and maintenance activities with DOE.

c. Continue reporting and coordination with DOE and other government agencies for implementation of projects.[36]

Secretary Petilla also recounted to the Court in his August 5, 2014 letter that the DOE, together with the DPWH and the Metropolitan Manila Development Authority (MMDA), observed the different milestones of the realignment project being undertaken by FPIC in support of the MMDA Flood Control Project and stated that the new line segment as laid was coated with corrosion protection prior to the backfilling of the excavated portion.

On February 3, 2015, the Court required the parties to submit their comment on Sec. Petilla's letter within ten (10) days from receipt of the Resolution. On various dates, respondents First Gen Corporation, FPIC, and petitioner West Tower filed their respective comments[37] in compliance with the Court's resolution. The intervenorswere unable to comply with the Court's directive; hence, they are deemed to have waived their right to file their respective comments.

The Issues

Having received the October 25, 2013 Certification and the August 5, 2014 Letter from the DOE on the state of the WOPL, as well as the parties' comments thereon, the following issues defined by the parties during the March 21, 2012 preliminary conference are now ripe for adjudication:

1. Whether petitioner West Tower Corp. has the legal capacity to represent the other petitioners and whether the other petitioners, apart from the residents of West Tower and Barangay Bangkal, are real parties-in-interest;

2. Whether a Permanent Environmental Protection Order should be issued to direct the respondents to perform or to desist from performing acts in order to protect, preserve, and rehabilitate the affected

environment;

3. Whether a special trust fund should be opened by respondents to answer for future similar contingencies; and

4. Whether FGC and the directors and officers of respondents FPIC and FGC may be held liable under the environmental protection order.[38]

The Court's Ruling

We adopt, with modifications, the recommendations of the CA and discuss the foregoing issues *in seriatim*.

I.

Petitioners as Real Parties-in-Interest

On the procedural aspect, We agree with the CA that petitioners who are affected residents of West Tower and Barangay Bangkal have the requisite concern to be real parties-in-interest to pursue the instant petition.

Residents of West Tower and Barangay Bangkal

As defined, a real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[39] Generally, every action must be prosecuted or defended in the name of the real parties-in-interest.[40] In other words, the action must be brought by the person who, by substantive law, possesses the right sought to be enforced.[41] Alternatively, one who has no right or interest to protect cannot invoke the jurisdiction of the court as party-plaintiff-in-action for it is jurisprudentially ordained that every action must be prosecuted or defended in the name of the real party-in-interest.[42]

In the case at bar, there can be no quibble that the oil leak from the WOPL affected all the condominium unit owners and residents of West Tower as, in fact, all had to evacuate their units at the wee hours in the morning of July 23, 2010, when the condominium's electrical power was shut down. Until now, the unit owners and residents of West Tower could still not return to their condominium units. Thus, there is no gainsaying that the residents of West Tower are real parties-in-interest.

There can also be no denying that West Tower Corp. represents the common interest of its unit owners and residents, and has the legal standing to file and pursue the instant petition. While a condominium corporation has limited powers under RA 4726, otherwise known as The Condominium Act,[43] it is empowered to pursue actions in behalf of its members. In the instant case, the condominium corporation is the management body of West Tower and deals with everything that may affect some or all of the condominium unit owners or users.

It is of no moment that only five residents of West Tower signed their acquiescence to the filing of the petition for the issuance of the Writ of *Kalikasan*, as the merits of such petition is, as aptly put by the CA, not measured by the number of persons who signified their assent thereto, but on the existence of a *prima facie* case of a massive environmental disaster.

Moreover, the fact that no board resolution was submitted by West Tower Corp. authorizing Manuel DyChuaunsu, Jr. to sign the Verification and Certification of Non-forum Shopping is irrelevant. The records show that petitioners submitted a notarized Secretary's Certificate[44] attesting that the authority of Chuaunsu to represent the condominium corporation in filing the petition is from the resolution of the total membership of West Tower Corp. issued during their November 9, 2010 meeting with the requisite quorum. It is, thus, clear that it was not the Board of West Tower Corp. which granted Chuaunsu the authority but the full membership of the condominium corporation itself.

As to the residents of Barangay Bangkal, they are similarly situated with the unit owners and residents of West Tower and are real parties-in-interest to the instant case, *i.e.*, if they so wish to join the petitioners.

Organizations that indicated their intention to join the petition and submitted proof of juridical personality

Anent the propriety of including the Catholic Bishops' Conference of the Philippines, *Kilusang Makabansang Ekonomiya*, Inc., Women's Business Council of the Philippines, Inc., Junior Chambers International Philippines, Inc. – San Juan Chapter, Zonta Club of Makati Ayala Foundations, and the Consolidated Mansions Condominium Corporation, as petitioners in the case, the Court already granted their intervention in the present controversy in the adverted July 30, 2013 Resolution.

This is so considering that the filing of a petition for the issuance of a writ of *kalikasan* under Sec. 1, Rule 7[45] of the Rules of Procedure for Environmental Cases does not require that a petitioner be directly affected by an environmental disaster. The rule clearly allows juridical persons to file the petition *on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation*.

Thus, as parties to the case, they are entitled to be furnished copies of all the submissions to the Court, including the periodic reports of FPIC and the results of the evaluations and tests conducted on the WOPL.

Having disposed of the procedural issue, We proceed to the bone of contention in the pending motions. Suffice it to state in the outset that as regards the substantive issues presented, the Court, likewise, concurs with the other recommendations of the CA, with a few modifications.

II.

Propriety of Converting the TEPO to PEPO or its Lifting in light of the DOE Certification of the WOPL's Commercial Viability

To recall, petitioners' persistent plea is for the conversion of the November 19, 2010 TEPO into a Permanent Environmental Protection Order (PEPO) pursuant to Sec. 3,[46] Rule 5 of the Rules of Procedure for Environmental Cases. For its part, respondent FPIC asserts that regular testing, as well as the measures that are already in place, will sufficiently address any concern of oil leaks from the WOPL.

With respect to leak detection, FPIC claims that it has in place the following systems: (a) regular cleaning scraper runs, which are done quarterly; (b) pipeline integrity gauge (PIG) tests/Intelligent PIG, now known as in-line inspections (ILI), which is done every five years; (c) pressure monitoring valves; and (d) 24-hour patrols. Additionally, FPIC asserted that it also undertook the following: (a) monitoring of wells and borehole testing/vapor tests; (b) leak tightness test, also known as segment pressure test; (c) pressure-controlled test; (d) inspection and reinforcement of patches; (e) inspection and reinforcement of dents; and (f) Pandacan segment replacement.[47] Furthermore, in August 2010, with the oil leak hogging the headlines, FPIC hired NDT Middle East FZE (NDT) to conduct ILI inspections through magnetic flux leakage (MFL) and ultrasonic tests to, respectively, detect wall thinning of the pipeline and check it for cracks.

The CA, however, observed that all of these tests and measures are inconclusive and insufficient for purposes of leak detection and pipeline integrity maintenance. Hence, considering the necessary caution and level of assurance required to ensure that the WOPL system is free from leaks and is safe for commercial operation, the CA recommended that FPIC obtain from the DOE a certification that the WOPL is already safe for commercial operation. This certification, according to the CA, was to be issued with due consideration of the adoption by FPIC of the appropriate leak detection systems to monitor sufficiently the entire WOPL and the need to replace portions of the pipes with existing patches and sleeves. Sans the required certification, use of the WOPL shall remain abated.

The Court found this recommendation of the appellate court proper. Hence, We required FPIC to obtain the adverted DOE Certification in Our July 30, 2013 Resolution. We deemed it proper to require said certification from the DOE considering that the core issue of this case requires the specialized knowledge and special expertise of the DOE and various other administrative agencies. On October 25, 2013, the DOE submitted the certification pursuant to the July 30, 2013 Resolution of the Court. Later, however, on August 5, 2014, DOE Secretary Carlos Jericho I. Petilla submitted a letter recommending certain activities and the timetable for the resumption of the WOPL operations after conducting a dialogue between the concerned government agencies and FPIC.

After a perusal of the recommendations of the DOE and the submissions of the parties, the Court adopts the activities and measures prescribed in the DOE letter dated August 5, 2014 to be complied with by FPIC as conditions for the resumption of the commercial operations of the WOPL. The DOE should, therefore, proceed with the implementation of the tests proposed in the said August 5, 2014 letter. Thereafter, if it is satisfied that the results warrant the immediate reopening of the WOPL, the DOE shall issue an order allowing FPIC to resume the operation of the WOPL. On the other hand, should the probe result in a finding that the pipeline is no longer safe for continued use and that its condition is irremediable, or that it already exceeded its serviceable life, among others, the closure of the WOPL may be ordered.

The DOE is specially equipped to consider FPIC's proper implementation and compliance with its PIMS and to evaluate the result of the various tests conducted on the pipeline. The DOE is empowered by Sec. 12(b)(1), RA 7638 to formulate and implement policies for the efficient and economical "distribution, transportation, and storage of petroleum, coal, natural gas."[48] Thus, it cannot be gainsaid that the DOE possesses technical knowledge and special expertise with respect to practices in the transportation of oil through pipelines.

Moreover, it is notable that the DOE did not only limit itself to the knowledge and proficiency available within its offices, it has also rallied around the assistance of pertinent bureaus of the other administrative agencies: the ITDI[49] of the DOST, which is mandated to undertake technical services including standards, analytical and calibration services; the MIRDC,[50] also of the DOST, which is the sole government entity directly supporting the metals and engineering industry;[51] the EMB[52] of the DENR, the agency mandated to implement, among others, RA 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990) and RA 9275 (Philippine Clean Water Act of 2004); and the BOD of the DPWH, which is mandated to conduct, supervise, and review the technical design aspects of projects of government agencies.[53]

The specialized knowledge and expertise of the foregoing agencies must, therefore, be availed of to arrive at a judicious decision on the propriety of allowing the immediate resumption of the WOPL's operation. In a host of cases, this Court held that when the adjudication of a controversy requires the resolution of issues within the expertise of an administrative body, such issues must be investigated and resolved by the administrative body equipped with the specialized knowledge and the technical expertise.[54] Hence, the courts, although they may have jurisdiction and power to decide cases, can utilize the findings and recommendations of the administrative agency on questions that demand "the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact."[55]

Justice Leonen, in his dissent, is of the view that the petition should be denied and the TEPO immediately lifted in light of the DOE's issuance of a certification attesting to the safety of the WOPL for continued commercial operations, thereby rendering the instant petition moot and academic, seeking, as it does, the checking of the pipeline's structural integrity. According to his dissent, the writ of *kalikasan* issued by the Court has already served its functions and, therefore, is *functus officio*. Moreover, he argues that directing the DOE and FPIC to repeat their previous procedures is tantamount to doubting the agency's performance of its statutorily-mandated tasks, over which they have the necessary expertise, and implies that said DOE certification is improper, a breach, allegedly, of the principle of separation of powers.

He also contends that the majority ordered the repetition of the procedures and tests already conducted on the WOPL because of the fear and uncertainty on its safeness despite the finding of the DOE in favor of its reopening, taking into consideration the occurrence of numerous pipeline incidents worldwide. The dissent argues that the precautionary principle should not be so strictly applied as to unjustifiably deprive the public of the benefits of the activity to be inhibited, and to unduly create other risks.

The dissent's contentions that the case is already moot and academic, that the writ of *kalikasan* has already served its function, and that the delay in the lifting of the TEPO may do more harm than good are anchored on the mistaken premise that the precautionary principle was applied in order to justify the order to the DOE and the FPIC for the conduct of the various tests anew. The following reasons easily debunk these arguments:

1. The precautionary principle is not applicable to the instant case;

2. The DOE certification is not an absolute attestation as to the WOPL's structural integrity and in fact imposes several conditions for FPIC's compliance;

3. The DOE itself, in consultation with FPIC and the other concerned agencies, proposed the activities to be conducted preparatory to the reopening of the pipeline; and

4. There are no conclusive findings yet on the WOPL's structural integrity.

Section 1, Rule 20 of A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases, on the Precautionary Principle, provides that "[w]hen there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it."

According to the dissent, the directive for the repetition of the tests is based on speculations, justified by the application of said principle. This, however, is not the case. Nowhere did We apply the precautionary principle in deciding the issue on the WOPL's structural integrity.

The precautionary principle only applies when the link between the cause, that is the human activity sought to be inhibited, and the effect, that is the damage to the environment, cannot be established with full scientific certainty. Here, however, such absence of a link is not an issue. Detecting the existence of a leak or the presence of defects in the WOPL, which is the issue in the case at bar, is different from determining whether the spillage of hazardous materials into the surroundings will cause environmental damage or will harm human health or that of other organisms. As a matter of fact, the petroleum leak and the harm that it caused to the environment and to the residents of the affected areas is not even questioned by FPIC.

It must be stressed that **what is in issue in the instant petition is the WOPL's compliance with pipeline structure standards so as to make it fit for its purpose, a question of fact that is to be determined on the basis of the evidence presented by the parties on the WOPL's actual state.** Hence, Our consideration of the numerous findings and recommendations of the CA, the DOE, and the *amici curiae* on the WOPL's present structure, and not the cited pipeline incidents as the dissent propounds.

Consider also the fact that it is the DOE itself that imposed several conditions upon FPIC for the resumption of the operations of the WOPL. This, coupled with the submission by the DOE of its proposed activities and timetable, is a clear and unequivocal message coming from the DOE that the WOPL's soundness for resumption of and continued commercial operations is not yet fully determined. **And it is only after an extensive determination by the DOE of the pipeline's actual physical state through its proposed activities, and not merely through a short-form integrity audit,**[56] **that the factual issue on the WOPL's viability can be settled.** The issue, therefore, on the pipeline's structural integrity has not yet been rendered moot and remains to be subject to this Court's resolution. Consequently, We cannot say that the DOE's issuance of the certification adverted to equates to the writ of *kalikasan* being *functus officio* at this point.

The dissent is correct in emphasizing that We defer to the findings of fact of administrative agencies considering their specialized knowledge in their field. And We, as a matter of fact, acceded to the DOE's conclusions on the necessity of the conduct of the various activities and tests enumerated in Sec. Petilla's letter to this Court dated August 5, 2014. Hence, Our directive for the DOE to immediately commence the activities enumerated in said Letter, to determine the pipeline's reliability, and to order its reopening should the DOE find that such is proper.

The dissent also loses sight of the fact that the petition not only seeks the checking of the WOPL's structural integrity, but also prays for the rehabilitation of the areas affected by the leak, the creation of a special trust fund, the imposition of liability upon the directors of FPIC, among others. These issues, undoubtedly, are matters that are not addressed by the DOE certification alone. Furthermore, these are issues that no longer relate to the WOPL's structure but to its maintenance and operations, as well as to the residues of the incident. It will, thus, be improper for Us to simply dismiss the petition on the basis solely of the alleged resolution of only one of several issues, which purportedly renders the issue on the WOPL's soundness moot, without disposing of the other issues presented.

Lastly, any delay in the reopening of the WOPL, if said delay is for the purpose of making sure that the pipeline is commercially viable, is better than hastily allowing its reopening without an extensive check on its structural integrity when experience shows that there were and may still be flaws in the pipeline. Even the DOE, the agency tasked to

oversee the supply and distribution of petroleum in the country, is well aware of this and even recommended the checking of the patched portions of the pipeline, among others. In this regard, the Court deems it best to take the necessary safeguards, which are not similar to applying the precautionary principle as previously explained, in order to prevent a similar incident from happening in the future.

III.

Propriety of the Creation of a Special Trust Fund

Anent petitioners' prayer for the creation of a special trust fund, We note that under Sec. 1, Rule 5 of the Rules of Procedure for Environmental Cases, a trust fund is limited solely for the purpose of **rehabilitating or restoring** the environment. Said proviso pertinently provides:

> SEC. 1. *Reliefs in a citizen suit*. – If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It **may** also require the violator to submit a program of **rehabilitation or restoration of the environment**, the costs of which shall be borne by the violator, or to **contribute to a special trust fund for that purpose** subject to the control of the court. (emphasis supplied)

Furthermore, Sec. 15(e), Rule 7 of the Rules of Procedure for Environmental Cases expressly prohibits the grant of damages to petitioners in a petition for the issuance of a writ of *kalikasan*, *viz*:

> Section 15. *Judgment*. - Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.
>
> The reliefs that may be granted under the writ are the following:
>
> x x x x
>
> (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, **except the award of damages to individual petitioners**.

A reading of the petition and the motion for partial reconsideration readily reveals that the prayer is for the creation of a trust fund for **similar future contingencies**.This is clearly outside the limited purpose of a special trust fund under the Rules of Procedure for Environmental Cases, which is to rehabilitate or restore the environment that has presumably already suffered. Hence,the Court affirms with concurrence the observation of the appellate court that the prayer is but a claim for damages, which is prohibited by the Rules of Procedure for Environmental Cases. As such, the Court is of the considered view that the creation of a special trust fund is misplaced.

The present ruling on petitioners' prayer for the creation of a special trust fund in the instant recourse, however, is without prejudice to the judgment/s that may be rendered in the civil and/or criminal cases filed by petitioners arising from the same incident if the payment of damages is found warranted.

IV.

Liability of FPIC, FGC and their respective Directors and Officers

On the last issue of the liability of FPIC, FGC and their respective directors and officers, the CA found FGC not liable under the TEPO and, without prejudice to the outcome of the civil case (Civil Case No. 11-256, RTC, Branch 58 in Makati City) and criminal complaint (Complaint-Affidavit for Reckless Imprudence, Office of the Provincial Prosecutor of Makati City) filed against them, the individual directors and officers of FPIC and FGC are not liable in their individual capacities.

The Court will refrain from ruling on the finding of the CA that the individual directors and officers of FPIC and FGC are not liable due to the explicit rule in the Rules of Procedure for Environmental cases that in a petition for a writ of

kalikasan,the Court cannot grant the award of damages to individual petitioners under Rule 7, Sec. 15(e) of the Rules of Procedure for Environmental Cases. As duly noted by the CA, the civil case and criminal complaint filed by petitioners against respondents are the proper proceedings to ventilate and determine the individual liability of respondents, if any, on their exercise of corporate powers and the management of FPIC relative to the dire environmental impact of the dumping of petroleum products stemming from the leak in the WOPL in Barangay Bangkal, Makati City.

Hence, the Court will not rule on the alleged liability on the part of the FPIC and FGC officials which can, however, be properly resolved in the civil and criminal cases now pending against them.

Other Matters

The CA's resolution on petitioners' September 9, 2011 Manifestation (Re: Current Developments) with Omnibus Motion on the remediation plan in Barangay Bangkal by directing the Inter-Agency Committee on Environmental Health to submit its evaluation of the said plan prepared by CH2M Philippines, Inc., for FPIC to strictly comply with the stipulations embodied in the permits issued by the DENR, and to get a certification from the DENR of its compliance thereto is well taken. DENR is the government agency tasked to implement the state policy of "maintaining a sound ecological balance and protecting and enhancing the quality of the environment"[57] and to "promulgate rules and regulations for the control of water, air, and land pollution."[58] It is indubitable that the DENR has jurisdiction in overseeing and supervising the environmental remediation of Barangay Bangkal, which is adversely affected by the leak in the WOPL in 2010.

With regard to petitioners' March 29, 2012 Supplemental Manifestation about a recent possible leak in the pipeline, the CA appropriately found no additional leak. However, due to the devastating effect on the environs in Barangay Bangkal due to the 2010 leak, the Court finds it fitting that the pipeline be closely and regularly monitored to obviate another catastrophic event which will prejudice the health of the affected people, and to preserve and protect the environment not only for the present but also for the future generations to come.

Petitioner's January 10, 2013 Motion for Partial Recommendation of the CA's Report need not be discussed and given consideration. As the CA's Report contains but the appellate court's *recommendation* on how the issues should be resolved, and not the adjudication by this Court, there is nothing for the appellate court to reconsider.

As to petitioner's October 2, 2013 Motion for Reconsideration with Motion for Clarification, the matters contained therein have been considered in the foregoing discussion of the primary issues of this case. With all these, We need not belabor the other arguments raised by the parties.

IN VIEW OF THE FOREGOING, the Motion for Partial Reconsideration is hereby **DENIED**. The Motion for Reconsideration with Motion for Clarification is **PARTLY GRANTED**. The Court of Appeals' recommendations, embodied in its December 21, 2012 Report and Recommendation, are hereby **ADOPTED** with the following **MODIFICATIONS**:

I. The Department of Energy (DOE) is hereby **ORDERED** to oversee the strict implementation of the following activities:

A. Preparatory to the Test Run of the entire stretch of the WOPL:

1) FPIC shall perform the following:

a. Continue submission of monitoring charts, data/reading, accomplishment reports, and project status for all related activities/works. Respond to comments and prepare for site inspection.

b. Continue gas testing along the right-of-way using the monitoring wells or boreholes. Prepare for inspection of right-of-way and observation of gas testing activities on monitoring wells and boreholes.

c. Explain the process of the selection of borehole location and identify those located in pipeline bends, bodies of water, highways, residential areas, repaired portions of the pipelines, dents and

welded joints, as well other notable factors, circumstances, or exposure to stresses.

d. Set up additional boreholes and monitoring wells sufficient to cover the entire stretch of the WOPL, the number and location of which shall be determined by the DOE.

e. Continue submitting status report to the concerned government agency/ies relating to "Project Mojica," or the on-going pipeline segment realignment activity being undertaken by FPIC to give way to a flood control project of the MMDA in the vicinity of Mojica St. and Pres. Osmeña Highway, and prepare for site inspection.

2) The DOE shall perform the following undertakings:

a. Conduct onsite inspection of the pipeline right-of-way, the area around the WOPL and the equipment installed underground or aboveground.

b. Review and check the condition of the 22 patches reinforced with Clockspringsleeves by performing the following:

i. Determine the location of the sleeves

ii. Review the procedure for the repair of the sleeves

iii. Inspect the areas where the affected portions of the WOPL are located and which are easily accessible.

c. Inspect onsite the cathodic protection rectifier to check the following:

i. old and current readings

ii. the segment/s covered by the cathodic protection system

iii. review the criteria for prioritization of corrective action.

d. Observe and witness the running/operation of the intelligent and cleaning pigs.

e. Check and calibrate the instruments that will be used for the actual tests on the pipeline, and validate the calibration certificates of these instruments.

B. During the Actual Test Run:

1) FPIC shall perform the following:

a. Perform Cleaning Pig run and witness the launching and receiving of the intelligent and cleaning pigs.

b. Demonstrate and observe the various pressure and leakage tests, including the following:

i. "Blocked-in pressure test" or the pressure test conducted while all the WOPL's openings are blocked or closed off; and

ii. "In-operation test" or the hourly monitoring of pressure rating after the pipeline is filled with dyed water and pressurized at a specified rate.

c. Continue, inspect, and oversee the current gas monitoring system, or the monitoring of gas flow from the boreholes and monitoring wells of the WOPL.

d. Check the mass or volume balance computation during WOPL test run by conducting:

i. 30 days baseline data generation

ii. Computational analysis and monitoring of the data generated.

II. After FPIC has undertaken the activities prescribed in the preceding paragraph 1, the DOE shall determine if the activities and the results of the test run warrant the re-opening of the WOPL. In the event that the DOE is satisfied that the WOPL is safe for continued commercial operations, it shall issue an order allowing FPIC to resume the operations of the pipeline.

III. Once the WOPL is re-opened, the DOE shall see to it that FPIC strictly complies with the following directives:

a. Continue implementation of its Pipeline Integrity Management System (PIMS), as reviewed by the DOE, which shall include, but shall not be limited to:

1. the conduct of daily patrols on the entire stretch of the WOPL, every two hours;

2. continued close monitoring of all the boreholes and monitoring wells of the WOPL pipeline;

3. regular periodic testing and maintenance based on its PIMS; and

4. the auditing of the pipeline's mass input versus mass output;

b. submit to the DOE, within ten (10) days of each succeeding month, monthly reports on its compliance with the above directives and any other conditions that the DOE may impose, the results of the monitoring, tests, and audit, as well as any and all activities undertaken on the WOPL or in connection with its operation. The concerned government agencies, namely: the Industrial Technology Development Institute (ITDI) and the Metals Industry Research and Development Center (MIRDC), both under the Department of Science and Technology (DOST), the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), the Bureau of Design (BOD) of the Department of Public Works and Highways (DPWH), the University of the Philippines – National Institute of Geological Science (UP-NIGS) and University of the Philippines - Institute of Civil Engineering (UP-ICE), the petitioners, intervenors and this Court shall likewise be furnished by FPIC with the monthly reports. This shall include, but shall not be limited to: realignment, repairs, and maintenance works; and

c. continue coordination with the concerned government agencies for the implementation of its projects.

IV. Respondent FPIC is also **DIRECTED** to undertake and continue the remediation, rehabilitation and restoration of the affected Barangay Bangkal environment until full restoration of the affected area to its condition prior to the leakage is achieved. For this purpose, respondent FPIC must strictly comply with the measures, directives and permits issued by the DENR for its remediation activities in Barangay Bangkal, including but not limited to, the Wastewater Discharge Permit and Permit to Operate. The DENR has the authority to oversee and supervise the aforesaid activities on said affected barangay.

V. The Inter-Agency Committee on Environmental Health under the City Government of Makati shall **SUBMIT** to the DENR its evaluation of the Remediation Plan prepared by CH2M Hill Philippines, Inc. within thirty (30) days from receipt hereof.

VI. Petitioners' prayer for the creation of a special trust fund to answer for similar contingencies in the future is **DENIED**.

SO ORDERED.

Sereno, C. J., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Jardeleza, JJ.*, concur.

Carpio, J., no part prior inhibition.
Peralta, J., no part and on official leave.
Villarama, Jr., J., no part.
Leonen, J., see separate dissenting and on official leave. (left my vote)

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 16, 2015 a Decision, copy attached herewith, was rendered by the Supreme Court in the above entitled case, the original of which was received by this Office on July 16, 2015 at 1:55 p.m.

Very truly yours,
(SGD.)
FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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[1] Namely: (1) The Catholic Bishop's Conference of the Philippines, represented by Most. Rev. Bishop Tobias, D.D. and Most Rev. Bishop Antonio Tobias, D.D.; (2) *Kilusang Makabansang Ekonomiya*, represented by Mr. Jaime Regalario; (3) Alliance Against the presence of Oil Depot in Manila, represented by Councilor Maria Lourdes "Bonjay" Isip-Garcia; (4) The Women's Business Council of the Philippines, represented by its President, Ms. Pacita Juan; (5) Zonta International Makati Ayala, represented by Vicky Santos Abraham; (6) Junior Chamber International – San Juan Chapter, represented by Atty. Irene Joy Besido-Garcia; (7) Various Individuals, most of whom are residents of West Tower and Barangay Bangkal, Makati City; (8) Consolidated Mansions Condominium Corporation, represented by its President, Mr. Enrique R. Estacion. (Petition, p. 4).

[2] *Rollo*, pp. 162-165.

[3] Id. at 238-280.

[4] Id. at 288-319.

[5] Id. at 472-477.

[6] Id. at 504-507.

[7] Id. at 542-548.

[8] Civil Case No. 11-256 before the RTC-Br. 58 in Makati City for *Violation of Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990), Republic Act No. 8749 (Philippine Clean Air Act of 1999) and its Implementing Rules and Regulations, Republic Act No. 9275 (Philippine Clean Water Act of 2004) and Damages* against respondents; and Complaint-Affidavit against FPIC, FGC and their respective directors and officers before the Office of the Provincial Prosecutor of Makati City for *Violation of Article 365 of the Revised Penal Code* (Reckless Imprudence).

[9] *Rollo*, pp. 865-869, Resolution dated May 31, 2011.

[10] Id. at 1039-1047.

[11] Id. at 1249-1254.

[12] Under Sec. 4(f), Rule 1 of the Rules of Procedure for Environmental Cases, the precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish the threat.

[13] *Rollo*, pp. 1269-1273.

[14] Id. at 1398-1403. On February 7, 2012, the records of the instant case were ordered to be forwarded to the CA.

[15] By its Resolutions dated April 13 and 23, 2012.

[16] The persons appointed were:

1) Mapua Institute of Technology Mechanical Engineering (MIT-ME);

2) Philippine Council for Health Research and Development of the Department of Science and Technology (PCHRD-DOST);

3) Dr. Benjamin R. de Jesus, Jr., a Professional Environmental Specialist;

4) Engr. Erwin R. Rabino, a licensed Mechanical Engineer;

5) University of the Philippines (UP) National Institute of Geological Sciences (UP-NIGS);

6) UP College of Engineering (UP-CE);

7) UP Institute of Civil Engineering (UP-ICE);

8) An expert from the DOE; and

9) Inter-Agency Committee on Environmental Health-Technical Working Group ("IACEH-TWG") composed of:

a. Representatives from the Department of Environment and Natural Resources (DENR);

b. Department of Health (DOH);

c. National Poison Management and Control Center; and

d. Makati City Government.

[17] *Rollo*, pp. 2799-2800. The following filed their reports:

(a) UP-NIGS, through Dr. Carlo A. Arcilla;

(b) UP-ICE, through Maria Antonia N. Tanchuling;

(c) Engr. Rabino; and

(d) Dr. de Jesus.

UP-CE did not submit its report. MIT-ME and PCHRD-DOST both declined for lack of experts on the field.

[18] Penned by Justice Fernanda Lampas Peralta and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

[19] *Rollo*, pp. 3192-3231.

[20] Id. at 3235-3238.

[21] Id. at 3239.

[22] Id. at 3412-3422.

[23] The Resolution specified the following sleeves and patches:

Log Distance	Sleeves	Patches
99961-104442	33	2
94853-99961	21	13
91900-94853	32	2
86105-91900	13	-
76422-86105	70	1
73198-76422	21	-
69009-73198	33	-
63268-69009	23	-
56600-63268	39	-
46200-56600	19	6
40500-46200	10	-
36746-40500	16	-
30586-36746	6	-
18342-30586	16	-
8250-18342	19	2
0000-8250	24	1
0000-5951 (Chevron Leg)	4	-
0000-7125 (Shell Leg)	77	-

[24] *Rollo*, p. 3003.

[25] Id. at 3097.

[26] In so arguing, respondents cited the Department of Energy Act of 1992 (RA 7638) and Downstream Oil Industry Deregulation Act of 1998 (RA 7638).

[27] *Rollo*, p. 3135.

[28] *See* Hopkins, Phil., The Structural Integrity of Oil and Gas Transmission Pipelines, Comprehensive Structural Integrity Vol. 1, Elsevier Publishers (2002) <http://www.penspen.com/downloads/papers/documents/thestructuralintegrityofoilandgastransmissionpipelines.pdf> (visited July 23, 2013).

[29] *See*<http://www.taiwantoday.tw/ct.asp?xitem=220250&CtNode=416. http://edition.cnn.com/2014/07/31/world/asia/taiwan-explosions> and > (both visited August 18, 2014).

[30] *See*<http://www.reuters.com/article/2013/11/26/us-china-sinopec-blasts-idUSBRE9AP02N20131126> (visited August 18, 2014).

[31] *See*<http://edition.cnn.com/2011/WORLD/africa/09/12/kenya.fire/> (visited August 18, 2014).

[32] *See*<http://www.nytimes.com/2014/04/02/us/pacific-gas-and-electric-charged-with-12-felonies-in-explosion.html> and <http://topics.nytimes.com/top/reference/timestopics/subjects/e/explosions/san_bruno_gas_explosion_2010/index.html> (both visited August 18, 2014).

[33] *See*<http://www3.aiche.org/proceedings/Abstract.aspx?PaperID=40438>and > (both visited August 18, 2014).

[34] *Rollo*, pp. 3864-3866.

[35] Id. at 3864-3866.

[36] Id. at 3865-3866.

[37] Dated March 10, 2015, March 13, 2015, and March 23, 2015, respectively.

[38] CA Report and Recommendation, p. 14.

[39] *Heirs of Jose G. Santiago v. Santiago*, G.R. No. 161238, July 13, 2009, 592 SCRA 409, 415; *citing* Section 2, Rule 3 of the 1997 Rules of Civil Procedure.

[40] Section 2, Rule 3 of the 1997 Rules of Civil Procedure.

[41] *Consumido v. Ros*, G.R. No. 166875, July 31, 2007, 528 SCRA 696, 702; *citing Vidal v. Escueta*, G.R. No. 156228, December 10, 2003, 417 SCRA 617, 634.

[42] Id.; *citing Borlongan v. Madrideo*, G.R. No. 120267, January 25, 2000, 323 SCRA 248, 256 (*citing* 39 Am Jur 858 and the 1997 Rules of Civil Procedure, Rule 3, Section 2).

[43] Approved June 18, 1966.

[44] *Rollo*, p. 39, dated November 12, 2010.

[45] Section 1. *Nature of the Writ*. – The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

[46] SEC. 3. Permanent EPO; writ of continuing mandamus. – In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing mandamus directing the performance of acts which shall be effective until the judgment is fully satisfied.

The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

[47] *See* Integrated Report on the Department of Energy-Prescribed Segment Pressure Test, Borehole Tests and Pressure-Controlled Leak Test on the White Oil Pipeline, November 2010 – December 2011 (*rollo*, pp. 1789-1798, 2014-2023) and Compliance Plan for Pipeline Integrity, West Tower Rehabilitation and Bangkal Remediation (id. at 1862-1870).

[48] Section 12 (b)(1), RA 7638. The Department Energy Act of 1992. Section 5 of RA 7638 also states:

Section 5. *Powers and Functions*. – The Department shall have the following powers and functions:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update the existing Philippine energy program which shall provide for an integrated and comprehensive exploration, development, utilization, distribution and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The program shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry and reduction of dependency on oil-fired plants. Said program shall be updated within nine (9) months from its completion and not later than the fifteenth day of September every year thereafter;

(c) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or nonconventional. (emphasis supplied)

[49] The ITDI was organized under EO 128 dated January 30, 1987, which states:

SEC. 20. *Industrial Technology Development Institute*. There is hereby created the Industrial Technology Development Institute, which shall have the following functions:

Undertake applied research and development to develop technologies and technological innovations in the field of industrial manufacturing, mineral processing and energy;

Undertake the transfer of research results directly to end-users or preferably via linkage units of other government agencies;

Undertake technical services, such as but not limited to, standards, analytical and calibration services mandated by law or as needed by industry;

Conduct training and provide technical advisory and consultancy services to industry clientele and end-users.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary. The Institute shall have the following divisions:

[1] Chemicals and Minerals Division;

x x x x

[3] Fuels and Energy Division;

x x x x

[7] Environmental Division;

x x x x

[10] Standards and Testing Division.

[50] MIRDC was established under RA No. 4724 dated June 18, 1966, as amended by RA 6428 dated May 31, 1972. RA 4724, as amended states, *viz*:

Sec. 4. Establishment of Metals Industry Development Center. — There is hereby established a Metals Industry Development Center, organized jointly by and with the support of the government and private sectors as a non-profit institution, to undertake the following activities:

x x x x

b. Training, Information Exchange and Accreditation Service:

(1) To operate an information exchange center to gather and disseminate information on recent economic and technological developments, both local and foreign, that are of interest to the industry;

(2) To assemble and maintain an up-to-date library on metals economics and technology;

(3) To collect information and statistics for preparation of comprehensive and up-to-date industry studies;

(4) To maintain, in consultation with the Department of Education and with appropriate existing government agencies and training institutions an effective training program for engineers, technicians and craftsmen to cope with the manpower requirements of metal plants and metal fabrication industries;

(5) To correlate studies on the various sectors of the metals and allied industries as a basis for formulating a development program and a framework for investment to induce the rapid and systematic growth of the industry;

(6) To design, develop, and implement a system of accreditation for skilled laborers, technicians and engineers who have attained a degree of experience or proficiency in the various fields of specialization in the metals and allied industries.

c. Control and Testing of Metal Products:

(1) To determine and recommend appropriate standards for the metals and allied industries to protect consumers and end-users and to enable local producers to attain quality that will meet international standards;

(2) To study, recommend and provide upon request suitable production methods that private industry may adopt to improve quality and to standardize products to comply with the close tolerance requirements of mass production and modern engineering products;

(3) To provide umpire services in arbitration cases between suppliers and customers dealing with metals or intermediate and finished products of the metals and allied industries;

d. Metals Research and Development:

(1) To establish a metals research and development laboratory to provide answers to problems encountered by the metals and allied industries;

(2) To provide working experience and opportunities for professional development to creative Filipino engineers at both the professional and student levels in the fields of metals technology. x xx

[51] *See*<http://www.mirdc.dost.gov.ph/> (visited November 27, 2014).

[52] Further, under Executive Order No. 192, EMB is mandated to provide research and laboratory services, *viz*:

SECTION 16. **Environmental Management Bureau**. There is hereby created an Environmental Management Bureau. x xx The Environmental Management Bureau shall have the following functions:

a. Recommend possible legislations, policies and programs for environmental management and pollution control;

b. Advise the Regional Offices in the efficient and effective implementation of policies, programs, and projects for the effective and efficient environmental management and pollution control;

c. Formulate environmental quality standards such as the quality standards for water, air, land, noise and radiations;

d. Recommend rules and regulations for environmental impact assessments and provide technical assistance for their implementation and monitoring;

e. Formulate rules and regulations for the proper disposition of solid wastes, toxic and hazardous substances;

f. Advice the Secretary on the legal aspects of environmental management and pollution control and assist in the conduct of public hearings in pollution cases;

g. Provide secretariat assistance to the Pollution Adjudication Board, created under Section 19 hereof;

h. Coordinate the inter-agency committees that may be created for the preparation of the State of the Philippine Environment Report and the National Conservation Strategy;

i. Provide assistance to the Regional Offices in the formulation and dissemination of information on environmental and pollution matters to the general public;

j. Assist the Secretary and the Regional Officers by providing technical assistance in the implementation of environmental and pollution laws;

k. Provide scientific assistance to the Regional Offices in the conduct of environmental research programs.

[53] *See*<http://www.dpwh.gov.ph/bureau_services/bod/overview.htm> (visited November 27, 2014).

[54] *Smart Communications, Inc. v. National Telecommunications Communication*, G.R. No. 151908, August 12, 2003, 408 SCRA 678; *Pambujan Sur United Mine Workers, v. Samar Mining Company, Inc.*, No. L-5694, May 12, 1954, 94 SCRA 932, 941, *citing* 42 Am. Jur. 698.

[55] *Saavedra v. Securities and Exchange Commission*, G.R. No. 80879, March 21, 1988, 159 SCRA 57, 62.

[56] *Rollo*, p. 1765.

[57] Sec. 1(1), Chapter 1, Title XIV of the Administrative Code of 1987.

[58] Sec. 4(17), id.

DISSENTING OPINION

LEONEN, J.:

I dissent.

The Writ of Kalikasan has served its functions and, therefore, is *functus officio*. The leaks have been found and remedied. The various administrative agencies have identified the next steps that should ensure a viable level of risk that is sufficiently precautionary. In other words, they have shown that they know what to do to prevent future leaks. The rest should be left for them to execute.

The ponencia, by asking the Department of Energy and respondent First Philippine Industrial Corporation to repeat their previous procedures,[1] implies that our function is to doubt that the executive agencies will do what they have committed to undertake and are legally required to do. It implies that the Certification[2] issued on October 25, 2013 is improper based on the irrational fear that disasters that have recently happened in other parts of the world may also happen to us. We are asked to assume that executive agencies do not care as much as we do for the community and their ecologies.

This is not what we should do in cases involving writs of kalikasan. Nowhere in the Constitution or in the Rules are we authorized to breach the separation of powers. We do not endow ourselves with sufficient expertise and resources to check on administrative agencies' technical conclusions without basis.

Furthermore, civil and criminal cases have been filed and are pending.

I

The principle of separation of powers is implied in the division of powers in the Constitution among the three (3) government branches: the executive, the legislative, and the judiciary.[3] "The principle presupposes mutual respect by and between the executive, legislative[,] and judicial departments of the government and calls for them to be left alone to discharge their duties as they see fit."[4]

"The executive power [is] vested in the President of the Philippines."[5] The President has the duty to ensure the faithful execution of the laws.[6] The President has the power of control over "all the executive departments, bureaus, and offices"[7] including, among others, the Department of Energy, the Department of Environment and Natural Resources, the Department of Science and Technology, and the Department of Public Works and Highways.

The Constitution vests legislative power in the Congress.[8] The Congress enacts laws.

Meanwhile, judicial power is vested in the Supreme Court and other courts.[9] Judicial power refers to the "duty of the courts of justice to settle actual controversies involving rights [that] are legally demandable and enforceable, and to determine whether . . . there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[10] Essentially, the judiciary's power is to interpret the law with finality.

The powers specifically vested by the Constitution in each branch may not be legally taken nor exercised by the other branches. Each government branch has exclusive authority to exercise the powers granted to it. Any encroachment of powers is *ultra vires*; it is void.

Thus, the legislative branch is not authorized to execute laws or participate in the execution of these laws. It also cannot make interpretations of the law with finality.[11]

The executive department cannot make legislative enactments. Like the legislative department, it cannot make final interpretations of the law.[12]

The judiciary has no power to execute laws[13] or take an active part in the execution of laws. It has no supervisory power over executive agencies.[14] The judiciary has no power to create laws[15] or revise legislative actions.[16] Even this court cannot assume superiority on matters that require technical expertise. It may only act as a court, settle actual cases and controversies, and, in proper cases and when challenged, declare acts as void for being unconstitutional.

II

Administrative agencies determine facts as a necessary incident to their exercise of quasi-judicial powers or to assist them in discharging their executive functions. Quasi-judicial powers refer to the authority of administrative agencies to determine the rights of parties under its jurisdiction through adjudication.

Registration, issuance of franchises, permits and licenses, and determination of administrative liabilities are instances that require an agency's exercise of quasi-judicial power.[17] These acts require administrative determination of facts, based on which the parties' rights shall be ascertained and official action shall be made.[18]

An administrative agency that exercises its quasi-judicial powers must adhere to the due process requirements as enumerated in *Ang Tibay v. Court of Industrial Relations*.[19] One of these requirements is that issuances must be based on substantial evidence:[20]

> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. . . .
>
> (2) . . . the tribunal must consider the evidence presented. . . .
>
> (3) . . . something to support its decision. . . .
>
> (4) . . . *the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."* . . .
>
> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. . . .
>
> (6) The [hearing officer] must act on its or his own independent consideration of the law and facts of the controversy. . . .
>
> (7) The [administrative agency] should . . . render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.[21] (Emphasis supplied, citations omitted)

The grant of adjudicative (and legislative) functions to administrative agencies results from "the growing complexity of modern society[.]"[22] This court has recognized the competence, experience, and specialization of administrative agencies in their fields.[23] It has also recognized that these agencies' expertise in their fields is essential in resolving issues that are technical in nature.[24] In *Philippine International Trading Corporation v. Presiding Judge Angeles*,[25] this court said of quasi-legislative and quasi-judicial powers:

> Similarly, the grant of quasi-legislative powers in administrative bodies is not unconstitutional. Thus, as a result of the growing complexity of modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities. *Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice*. This is the reason for the increasing vesture of quasi-legislative and quasi-judicial powers in what is now not unreasonably called the fourth department of the government. . . . One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer uniquely judicial function, exercisable only by our regular courts.[26] (Emphasis supplied, citations omitted)

Because of the administrative agencies' specialized knowledge in their fields, we often defer to their findings of fact. Thus, in principle, findings of fact by administrative agencies are not disturbed by this court when supported by substantial evidence,[27] "even if not overwhelming or preponderant."[28] This Rule, however, admits a few exceptions:

First, when an administrative proceeding is attended by fraud, collusion, arbitrary action, mistake of law, or a denial of due process;

Second, when there are irregularities in the procedure that has led to factual findings;

Third, when there are palpable errors committed; and

Lastly, when there is manifest grave abuse of discretion, arbitrariness, or capriciousness.[29]

If the actions of an administrative agency are made under these circumstances, judicial review is justified even if the actions are supported by substantial evidence.[30]

This court summarized the principles of judicial review of administrative decisions in *Atlas Consolidated Mining and Development Corporation v. Hon. Factoran, Jr.*:[31]

> [F]indings of fact in such decision should not be disturbed if supported by substantial evidence, but review is justified when there has been a denial of due process, or mistake of law or fraud, collusion or arbitrary action in the administrative proceeding, where the procedure which led to factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.
>
> . . . "[I]n reviewing administrative decisions, the reviewing Court cannot reexamine the sufficiency of the evidence as if originally instituted therein, and receive additional evidence, that was not submitted to the administrative agency concerned[.]"[32] (Citations omitted)

The above principles of judicial review have been applied in cases brought to the appropriate courts on appeal or by certiorari. Cases brought to the courts on appeal or by certiorari presuppose that there were cases or issues: (1) over which an administrative agency assumed jurisdiction; and for which (2) an administrative agency collected evidence, determined facts, and made an action. In these cases, the court either reviews the administrative action for errors in the application of law or determines whether there has been grave abuse of discretion in the exercise of quasi-judicial functions.

III

The courts' relation with administrative agencies is not limited to reviewing their acts in the exercise of their quasi-judicial functions. Whenever technical issues are brought to the court for determination, courts may ask for their conclusions on the status of private sector activities within their jurisdiction and on matters within their specialized knowledge. This is especially true for cases filed under A.M. No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases (Rules).

The Rules provide for remedies to enforce rights to a "balanced and healthful ecology[.]"[33] A party may file: (1) a complaint alleging violation of environmental laws;[34] (2) a petition for the issuance of a writ of kalikasan alleging violation of the right to healthful ecology;[35] or (3) a petition for the issuance of continuing mandamus alleging neglect in the performance of duty to enforce environmental laws.[36]

Filing a complaint or a petition may result in the issuance of a temporary environmental protection order upon the finding that the complainant will suffer grave injustice or irreparable injury if no protection order is issued.[37] This temporary environmental protection order may be converted to a permanent environmental protection order after judgment, thus:[38]

> **RULE 2**
>
> **PLEADINGS AND PARTIES**
>
> . . . .
>
> SEC. 8. *Issuance of Temporary Environmental Protection Order (TEPO).*—If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by

the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

. . . .

RULE 5

JUDGMENT AND EXECUTION

. . . .

SEC. 3. *Permanent EPO; writ of continuing mandamus*.—In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied.

The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

. . . .

To determine whether the reliefs prayed for in a complaint or petition under the Rules should be granted or denied, courts must necessarily determine facts.

The Rules recognize the role of scientific determination of facts in environmental protection. They require, for example, that a petition for the issuance of a writ of kalikasan and the respondent's verified return contain not only the usual affidavits, documentary, and object evidence, but also scientific and expert studies to support the petition and the verified return.[39] Applying the precautionary principle in resolving the case is also dependent on the existence of a level of scientific certainty that there is a causal link between human activity and environmental effect.[40]

For these reasons, courts must often avail themselves of the assistance of experts.

However, courts cannot take all expert findings as truth. Even expert findings may be wrong or contradictory. The courts have little competence on technical matters to determine which expert finding should be given weight. In environmental cases, courts defer to administrative agencies' technical knowledge. Given their specialization on matters within their jurisdiction, administrative agencies have the competence to sift through the findings, determine which variables and scientific principles are relevant, make germane observations, and arrive at intelligent assessments and conclusions. Their conclusions and opinions on these matters deserve respect. As in their actions on administrative matters, the courts shall respect the findings of administrative agencies as long as these are supported by substantial evidence.

Parties that wish to avail themselves of the remedies under the Rules, however, go directly to the court. Unlike in quasi-judicial proceedings, determination of facts is not solely the province of the administrative agencies. Administrative agencies may not yet have the relevant facts at the time environmental remedies are availed. Courts get access to the facts only when the case is brought to them on appeal. Courts and administrative agencies may get access to the facts at the same time.

For these reasons, the courts' leeway to examine the substantiality of evidence in environmental cases is greater. The court may take a closer look at experts' manifestations and reports and determine whether the findings of administrative agencies are consistent with the experts' conclusions.

Respondent First Philippine Industrial Corporation commissioned Robert A. Teale, a welding consultant specializing in pipeline welding, to review the repairs done to the White Oil Pipeline.[41] Based on his information review, visual inspection, examinations, and ultrasonic inspection, he concluded that the pipe repairs conducted were sound and in accordance with the standards.[42] The pipeline, according to him, was "fit for service[.]"[43]

Robert A. Teale's conclusions were consistent with the conclusions of Dr. Carlo A. Arcilla (Dr. Arcilla) of the University of the Philippines National Institute of Geological Sciences (UP NIGS)[44] and of Societe Generale de Surveillance,[45] the independent observer of the Department of Energy. Dr. Arcilla and Societe Generale de Surveillance, together with the Department of Energy's representatives, participated in the conduct of the tests for White Oil Pipeline's integrity. The UP NIGS conducted a parallel independent monitoring of the White Oil Pipeline.

Based on the conducted leak tests, Dr. Arcilla concluded in his March 12, 2012 Report that the White Oil Pipeline is free from leaks.[46] According to Dr. Arcilla, UP NIGS data showed values consistent with "no leak"[47] along the White Oil Pipeline. There were no significant changes in the pressure values along the pipeline. The monitoring wells also did not indicate the presence of leaks. To ensure the accuracy of the results, the observation time for the pressure test was extended. Even during the extended period, the pressure values remained constant. Thus, Dr. Arcilla concluded that the White Oil Pipeline was free from leaks.[48] His results and conclusions are reproduced below:

> **IV. Results**
>
> Monitoring values independently collected by UP NIGS consistently show an absence of values both for VOCs and LEL. This indicates that the concluded pressure test of the FPIC pipes last December 2012 expectedly showed no leak along its length.
>
> Monitoring values that were recorded in the DOE Command Center displayed no significant changes in the [illegible in *rollo*] pressure along the pipeline. Pressure has been stable and ocular inspection of monitoring wells did not indicate any leaks.
>
> The FPIC has also provided a copy of their monitoring results to UP NIGS. Their results showed no leak along the pipeline. However, monitoring data has also shown a 10% discrepancy in the Chevron line. As the relationship of pressure and temperature are directly proportional, the absence of a Temperature Monitoring Recorder, an instrument to provide more accurate data and reliable monitoring chart due to the effect of temperature on pressure was duly noted.
>
> After several days of data review and analysis and interviews with FPIC technical personnel, UPNIGS [sic] pipeline consultant Pedro Carascon pointed out that some temperature gauges of FPIC were not actually synchronized and connected to the pipeline, leading to the erratic temperature readings. However, further review of the data showed that the pressure did not change significantly to suggest the presence [of] a leak in the pipeline. Also, the time allotted for the pipeline pressure test, was exceeded by at least two days, and the pressure in the pipeline remained constant, suggesting further that there were no more leaks in the pipeline.
>
> **V. Conclusion**
>
> In as much as there wasno [sic] significant changes of pressure drops observed throughout the holding time of pressure testing, it can therefore be concluded that the pressure testing of FPIC White Oil Pipeline is sensible and that it is free of leak at the time of pressure testing.[49]

Meanwhile, Societe Generale de Surveillance noted in its March 30, 2012 Report that the tests were conducted under the approved and standard procedures, methods, and tolerances. There was no evidence of leaks in the pipelines:[50]

> The letter from FPIC to DOE, dated 2 January 2012 reflects accurately the test conditions and results as was verified on site by SGS. . . . The test was carried out as per the approved procedure; the results are well within the tolerances of the method and the applicable standards with no evidence of leakage of the pipelines.[51]

Respondent First Philippine Industrial Corporation appears to have committed itself to ensure that the White Oil Pipeline's integrity is maintained through the following procedures: (1) monitoring wells and borehole testing; (2) in-line inspections; (3) anti-corrosion methods; (4) regular cleaning pig runs; (5) continuous consultations with experts; (6) segment tests; (7) leak tests; (8) inspection of patches; (9) reinforcement of patches; and (10) coordination meetings with LGUs and utility companies.[52]

The Department of Energy Certification dated October 25, 2013 that the White Oil Pipeline is already "safe to resume commercial operations"[53] is, therefore, consistent with the available reports.

Any deviation from the safety standards and procedures will be monitored by the Department of Energy and the Department of Environment and Natural Resources in the exercise of their regulatory powers.[54] Problems related to the compliance of respondent First Philippine Industrial Corporation will be addressed because the Department of Energy Certification is conditioned upon respondent's submission to the Oil Industry Management Bureau's regular monitoring and validation of the implementation of its Pipeline Integrity Management Systems and to tests or inspection by the Department of Energy and Department of Science and Technology.[55]

IV

The purpose of our environmental laws is to maintain or create conditions that are conducive to a harmonious relationship between man and nature. Environmental laws protect nature and the environment from degradation while taking into account people's needs and general welfare. Sections 1 and 2 of the Presidential Decree No. 1151, otherwise known as the Philippine Environmental Policy, embody the purpose of our environmental laws:

> SECTION 1. *Policy*.-It is hereby declared a continuing policy of the State (a) to create, develop, maintain and improve *conditions under which man and nature can thrive in productive and enjoyable harmony* with each other, (b) to fulfill the *social, economic and other requirements of present and future generations* of Filipinos, and (c) to insure the attainment of *an environmental quality that is conducive to a life of dignity and well-being*.
>
> SEC. 2. *Goal*.-In pursuing this policy, it shall be the responsibility of the Government, in cooperation with concerned private organizations and entities, to use all practicable means, consistent with other essential considerations of national policy, **in** *promoting the general welfare* to the end that the Nation may (a) recognize, discharge and fulfill the responsibilities of each generation as trustee and guardian of the environment for succeeding generations, (b) *assure the people of a safe, decent, healthful, productive and aesthetic environment*, (c) *encourage the widest exploitation of the environment without degrading it, or endangering human life, health and safety or creating conditions adverse to agriculture, commerce and industry*, (d) preserve important historic and cultural aspects of the Philippine heritage, (e) *attain a rational and orderly balance between population and resource use*, and (f) improve the utilization of renewable and non-renewable resources. (Emphasis supplied)

This policy espouses the need for a balance between resource exploitation and environmental protection to promote the general welfare of the people. Environmental protection is a necessary means to increase the chances of the human species to subsist.

The ponencia recognized the need to achieve a balance between human necessities and environmental protection, thus:

> The Court is fully cognizant of the WOPL's value in commerce and the adverse effects of a prolonged closure thereof. Nevertheless, there is a need to balance the necessity of the immediate reopening of the WOPL with the more important need to ensure that it is sound for continued operation, since the substances it carries pose a significant hazard to the surrounding population and to the environment.[56] (Citation omitted)

This need for "balance"[57] and the incidence of oil pipeline tragedies[58] prompted the majority to further delay the lifting of the temporary environmental protection order despite findings that support the pipeline's integrity/safety. The majority also ruled that the procedures already conducted in the presence of the Department of Energy should be repeated[59] in light of the uncertainty and fear caused by the cited oil pipeline disasters.[60] In trying to achieve

"balance," therefore, and in adopting the Court of Appeals' findings,[61] the majority adopted a strict application of the precautionary principle. This may result to situations inconsistent with environmental protection.

Under the Rules, the precautionary principle shall be applied in resolving environmental cases when the causal link between human activity and an environmental effect cannot be established with certainty.[62] Based on this principle, an uncertain scientific plausibility of serious and irreversible damage to the environment justifies actions to avoid the threat of damage.[63] Avoidance of threat or damage, as in this case, usually comes in the form of inhibition of action or activity.

Strict application of the precautionary principle means that the mere presence of uncertainty renders the degree of scientific plausibility for environmental damage irrelevant. Speculations may be sufficient causes for the grant of either a temporary environmental protection order or a permanent environmental protection order, regardless of the extent of losses and risks resulting from it.

This interpretation may be inconsistent with the purpose of avoiding threat or damage to the environment and to the people's general welfare.[64] It was argued that:

> If [the precautionary principle] is taken for all that it is worth, it leads in no direction at all. The reason is that risks of one kind or another are on all sides of regulatory choices, and it is therefore impossible, in most real-world cases, to avoid running afoul of the principle. Frequently, risk regulation creates a (speculative) risk from substitute risks or from foregone risk-reduction opportunities. And because of the (speculative) mortality and morbidity effects of costly regulation, any regulation—if it is costly—threatens to run afoul of the Precautionary Principle.[65]

Inhibiting an activity, especially one recognized for its role in commerce, has drawbacks. Although it may ensure that no risk of harm to the environment will directly result from the activity, it can also unjustifiably deprive the public of its benefits.[66] Inhibiting pipeline activities, for example, may deprive the public of the benefits of an oil transport system that can deliver more products at a given time and to a wider area, compared to other modes of distributing oil such as through roads or rails. This will slow down oil distribution along the production and distribution chains. Therefore, it will have a significant negative impact on commerce.

Inhibiting an activity may also unduly create other risks that are not immediately apparent.[67] Inhibition of oil pipeline activities may prevent pipeline leaks from happening again. However, it will also force suppliers to resort to other modes of oil distribution to maintain a supply to address national demands. These other modes may include the use of trucks and trains, which has negative environmental impact as well.

Trucks have relatively limited capacity to distribute oil compared to pipelines. Thus, to keep up with national demands, trucks must be dispatched in greater number and with more frequency. As a result, our highways may have to be constantly lined with trucks. This will cause road congestion and—more certainly than the existence of leaks on the White Oil Pipeline—worsened air pollution. According to the World Health Organization, about seven million deaths in 2012 were linked to air pollution.[68] Air pollution is related to "cardiovascular diseases, such as strokes and ischaemic heart disease, . . . [and] respiratory diseases . . . [such as] acute respiratory infections and chronic obstructive pulmonary diseases."[69] It is also reported to increase the risk of cancer among humans.[70]

Lastly, the delay in lifting the temporary environmental protection order despite evidence that prove that the pipeline is free from leaks, as well as the order to repeat respondent First Philippine Industrial Corporation's procedures, will unnecessarily force not only respondent but also the concerned agencies to spend much needed resources that may be used for other public purposes. In effect, other equally important tasks or projects are deprived of the agencies' resources and attention. This may likewise cause unintended drawbacks that we may not yet realize.

In the end, the inhibition of pipeline activities may in itself be a plausible and equally harmful threat to the general welfare compared to the threat posed by the pipeline. Permitting the increase of air pollution and unnecessary use of public resources may be inconsistent with the precautionary principle that the majority tried to apply in resolving the case.

Thus, dealing with environmental issues is not as simple as applying the precautionary principle in its strict sense when faced with uncertainty. We must recognize the interconnectedness of variables and issues so that we can address them more effectively and truly in accordance with our policy of taking care of the people's general welfare through environmental protection.

The Department of Energy has already issued its Certification stating its conclusion that the White Oil Pipeline is already safe for commercial operations. Its conclusion is consistent with expert findings. When conclusions support the project's operation, and when there is no showing that an error was committed in arriving at such conclusions, the fear of disaster without basis is not a sufficient reason to deny the lifting of an issued temporary environmental protection order. Respondent First Philippine Industrial Corporation, the Department of Energy, and other administrative agencies need not spend more resources only to repeat a procedure that has already been and is still being done.

Accordingly, I vote to **DISMISS** the Petition because it is moot and academic.

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[1] Ponencia, pp. 26-28.

[2] *Rollo*, p. 3135.

[3] *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936) [Per J. Laurel, En Banc].

[4] *Anak Mindanao Party-List Group v. Executive Secretary Ermita*, 558 Phil. 338, 353 (2007) [Per J. Carpio Morales, En Banc], *citing Atitiw v. Zamora*, 508 Phil. 321, 342 (2005) [Per J. Tinga, En Banc].

[5] CONST., art. VII, sec. 1.

[6] CONST., art. VII, sec. 17.

[7] CONST., art. VII, sec. 17.

[8] CONST., art. VI, sec. 1.

[9] CONST., art. VIII, sec. 1.

[10] CONST., art. VIII, sec. 1.

[11] *See Belgica v. Executive Secretary Ochoa Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 107 [Per J. Perlas-Bernabe, En Banc], *citing Government of the Philippine Islands v. Springer*, 277 US 189, 203 (1928).

[12] Id.

[13] Id.

[14] CONST., art. VII, sec. 17.

[15] *See Belgica v. Executive Secretary Ochoa Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 107 [Per J. Perlas-Bernabe, En Banc], *citing Government of the Philippine Islands v. Springer*, 277 US 189, 203 (1928).

[16] *See Vera v. Avelino*, 77 Phil. 192, 201 (1946) [Per J. Bengzon, En Banc], *citing Alejandrino v. Quezon*, 46 Phil. 83, 93 (1924) [Per J. Malcolm, En Banc].

[17] *See Sañado v. Court of Appeals*, 408 Phil. 669, 681 (2001) [Per J. Melo, Third Division].

[18] Id. *See Abella, Jr. v. Civil Service Commission*, 485 Phil. 182, 207 (2004) [Per J. Panganiban, En Banc].

[19] 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

[20] Id. at 642–643.

[21] Id. at 642–644.

[22] *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division].

[23] *See Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division]. *See also Antipolo Realty Corporation v. National Housing Authority*, 237 Phil. 389, 395–396 (1987) [Per J. Feliciano, En Banc].

[24] *See Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division]. *See also Antipolo Realty Corporation v. National Housing Authority*, 237 Phil. 389, 395–396 (1987) [Per J. Feliciano, En Banc].

[25] *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723 (1996) [Per J. Torres, Jr., Second Division].

[26] Id. at 478.

[27] *Atlas Consolidated Mining and Development Corporation v. Hon. Factoran, Jr.*, 238 Phil. 48, 54 (1987) [Per J. Paras, First Division].

[28] Id. at 57.

[29] Id.

[30] Id.

[31] 238 Phil. 48 (1987) [Per J. Paras, First Division].

[32] Id. at 57.

[33] CONST., art. II, sec. 16; ENVTL. PROC. RULE, Rule 1, sec. 3(a).

[34] ENVTL. PROC. RULE, Rule 2, sec. 3.

[35] ENVTL. PROC. RULE, Rule 7, sec. 1.

SEC. 1. *Nature of the writ*.—The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

. . . .

[36] ENVTL. PROC. RULE, Rule 8, sec. 1.

SEC. 1. *Petition for continuing mandamus*.—When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

[37] ENVTL. PROC. RULE, Rule 2, sec. 8.

[38] ENVTL. PROC. RULE, Rule 5, sec. 3.

[39] ENVTL. PROC. RULE, Rule 7, secs. 2 and 8.

[40] ENVTL. PROC. RULE, Rule 20, sec. 1.

[41] *Rollo*, pp. 2422–2441.

[42] Id. at 2432–2433.

[43] Id. at 2433.

[44] Id. at 2442–2446.

[45] Id. at 2391–2396.

[46] Id. at 2446.

[47] Id. at 2445.

[48] Id. at 2446.

[49] Id. at 2445–2446.

[50] Id. at 2395.

[51] Id.

[52] Id. at 3143–3148. These are from respondent First Philippine Industrial Corporation's Interim Report on On-going Compliance with the Writ of Kalikasan (as of October 2013).

[53] Id. at 3135.

[54] Id.

[55] Id.

[56] Ponencia, p. 11.

[57] Id.

[58] Id. at 11–12.

[59] Id. at 26-28.

[60] Id. at 11–12.

[61] Id. at 15, 17-18, and 26-28.

[62] ENVTL. PROC. RULE, Rule 20, sec. 1.

[63] ENVTL. PROC. RULE, Rule 1, sec. 4(f).

[64] Cass R. Sunstein, *The Paralyzing Principle*, REGULATION 34 (Winter 2002–2003 <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (visited June 18, 2015).

[65] Id. at 37.

[66] Cass R. Sunstein, *The Paralyzing Principle*, REGULATION 34 (Winter 2002–2003) <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (visited June 18, 2015).

[67] Id.

[68] *7 million premature deaths annually linked to air pollution*, World Health Organization <http://www.who.int/mediacentre/news/releases/2014/air-pollution/en> (visited June 18, 2015).

[69] Id.

[70] *IARC: Outdoor air pollution a leading environmental cause of cancer deaths*, International Agency for Research on Cancer, World Health Organization <http://www.iarc.fr/en/media-centre/iarcnews/pdf/pr221_E.pdf> (visited June 18, 2015).