

## EN BANC

[ G.R. Nos. 171947-48, December 18, 2008 ]

**METROPOLITAN MANILA DEVELOPMENT AUTHORITY,  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,  
DEPARTMENT OF EDUCATION, CULTURE AND SPORTS,<sup>[1]</sup>  
DEPARTMENT OF HEALTH, DEPARTMENT OF AGRICULTURE,  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,  
DEPARTMENT OF BUDGET AND MANAGEMENT, PHILIPPINE  
COAST GUARD, PHILIPPINE NATIONAL POLICE MARITIME  
GROUP, AND DEPARTMENT OF THE INTERIOR AND LOCAL  
GOVERNMENT, PETITIONERS, VS. CONCERNED RESIDENTS OF  
MANILA BAY, REPRESENTED AND JOINED BY DIVINA V. ILAS,  
SABINIANO ALBARRACIN, MANUEL SANTOS, JR., DINAH DELA  
PEÑA, PAUL DENNIS QUINTERO, MA. VICTORIA LLENOS, DONNA  
CALOZA, FATIMA QUITAIN, VENICE SEGARRA, FRITZIE  
TANGKIA, SARAH JOELLE LINTAG, HANNIBAL AUGUSTUS BOBIS,  
FELIMON SANTIAGUEL, AND JAIME AGUSTIN R. OPOSA,  
RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

The need to address environmental pollution, as a cause of climate change, has of late gained the attention of the international community. Media have finally trained their sights on the ill effects of pollution, the destruction of forests and other critical habitats, oil spills, and the unabated improper disposal of garbage. And rightly so, for the magnitude of environmental destruction is now on a scale few ever foresaw and the wound no longer simply heals by itself.<sup>[2]</sup> But amidst hard evidence and clear signs of a climate crisis that need bold action, the voice of cynicism, naysayers, and procrastinators can still be heard.

This case turns on government agencies and their officers who, by the nature of their respective offices or by direct statutory command, are tasked to protect and preserve, at the first instance, our internal waters, rivers, shores, and seas polluted by human activities. To most of these agencies and their official complement, the pollution menace does not seem to carry the high national priority it deserves, if their track records are to be the norm. Their cavalier attitude towards solving, if not mitigating, the environmental pollution problem, is a sad commentary on bureaucratic efficiency and commitment.

At the core of the case is the Manila Bay, a place with a proud historic past, once brimming with marine life and, for so many decades in the past, a spot for different contact recreation activities, but now a dirty and slowly dying expanse mainly because of the abject official indifference of people and institutions that could have otherwise made a difference.

This case started when, on January 29, 1999, respondents Concerned Residents of Manila Bay filed a complaint before the Regional Trial Court (RTC) in Imus, Cavite against several government agencies, among them the petitioners, for the cleanup, rehabilitation, and protection of the Manila Bay. Ruffled to Branch 20 and docketed as Civil Case No. 1851-99 of the RTC, the complaint alleged that the water quality of the Manila Bay had fallen way below the allowable standards set by law, specifically Presidential Decree No. (PD) 1152 or the Philippine Environment Code. This environmental aberration, the complaint stated, stemmed from:

x x x [The] reckless, wholesale, accumulated and ongoing acts of omission or commission [of the defendants] resulting in the clear and present danger to public health and in the depletion and contamination of the marine life of Manila Bay, [for which reason] ALL defendants must be held jointly and/or solidarily liable and be collectively ordered to clean up Manila Bay and to restore its water quality to class B waters fit for swimming, skin-diving, and other forms of contact recreation.<sup>[3]</sup>

In their individual causes of action, respondents alleged that the continued neglect of petitioners in abating the pollution of the Manila Bay constitutes a violation of, among others:

- (1) Respondents' constitutional right to life, health, and a balanced ecology;
- (2) The Environment Code (PD 1152);
- (3) The Pollution Control Law (PD 984);
- (4) The Water Code (PD 1067);
- (5) The Sanitation Code (PD 856);
- (6) The Illegal Disposal of Wastes Decree (PD 825);
- (7) The Marine Pollution Law (PD 979);
- (8) Executive Order No. 192;
- (9) The Toxic and Hazardous Wastes Law (Republic Act No. 6969);
- (10) Civil Code provisions on nuisance and human relations;
- (11) The Trust Doctrine and the Principle of Guardianship; and
- (12) International Law

*Inter alia*, respondents, as plaintiffs *a quo*, prayed that petitioners be ordered to clean the Manila Bay and submit to the RTC a concerted concrete plan of action for the purpose.

The trial of the case started off with a hearing at the Manila Yacht Club followed by an ocular inspection of the Manila Bay. Renato T. Cruz, the Chief of the Water Quality Management Section, Environmental Management Bureau, Department of

Environment and Natural Resources (DENR), testifying for petitioners, stated that water samples collected from different beaches around the Manila Bay showed that the amount of fecal coliform content ranged from 50,000 to 80,000 most probable number (MPN)/ml when what DENR Administrative Order No. 34-90 prescribed as a safe level for bathing and other forms of contact recreational activities, or the "SB" level, is one not exceeding 200 MPN/100 ml.<sup>[4]</sup>

Rebecca de Vera, for Metropolitan Waterworks and Sewerage System (MWSS) and in behalf of other petitioners, testified about the MWSS' efforts to reduce pollution along the Manila Bay through the Manila Second Sewerage Project. For its part, the Philippine Ports Authority (PPA) presented, as part of its evidence, its memorandum circulars on the study being conducted on ship-generated waste treatment and disposal, and its *Linis Dagat* (Clean the Ocean) project for the cleaning of wastes accumulated or washed to shore.

### **The RTC Ordered Petitioners to Clean Up and Rehabilitate Manila Bay**

On September 13, 2002, the RTC rendered a Decision<sup>[5]</sup> in favor of respondents. The dispositive portion reads:

WHEREFORE, finding merit in the complaint, judgment is hereby rendered ordering the abovenamed defendant-government agencies, jointly and solidarily, to clean up and rehabilitate Manila Bay and restore its waters to SB classification to make it fit for swimming, skin-diving and other forms of contact recreation. To attain this, defendant-agencies, with defendant DENR as the lead agency, are directed, within six (6) months from receipt hereof, to act and perform their respective duties by devising a consolidated, coordinated and concerted scheme of action for the rehabilitation and restoration of the bay.

In particular:

Defendant MWSS is directed to install, operate and maintain adequate [sewerage] treatment facilities in strategic places under its jurisdiction and increase their capacities.

Defendant LWUA, to see to it that the water districts under its wings, provide, construct and operate sewage facilities for the proper disposal of waste.

Defendant DENR, which is the lead agency in cleaning up Manila Bay, to install, operate and maintain waste facilities to rid the bay of toxic and hazardous substances.

Defendant PPA, to prevent and also to treat the discharge not only of ship-generated wastes but also of other solid and liquid wastes from docking vessels that contribute to the pollution of the bay.

Defendant MMDA, to establish, operate and maintain an adequate and appropriate sanitary landfill and/or adequate solid waste and liquid disposal as well as other alternative garbage disposal system such as re-use or recycling of wastes.

Defendant DA, through the Bureau of Fisheries and Aquatic Resources, to revitalize the marine life in Manila Bay and restock its waters with indigenous fish and other aquatic animals.

Defendant DBM, to provide and set aside an adequate budget solely for the purpose of cleaning up and rehabilitation of Manila Bay.

Defendant DPWH, to remove and demolish structures and other nuisances that obstruct the free flow of waters to the bay. These nuisances discharge solid and liquid wastes which eventually end up in Manila Bay. As the construction and engineering arm of the government, DPWH is ordered to actively participate in removing debris, such as carcass of sunken vessels, and other non-biodegradable garbage in the bay.

Defendant DOH, to closely supervise and monitor the operations of septic and sludge companies and require them to have proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks.

Defendant DECS, to inculcate in the minds and hearts of the people through education the importance of preserving and protecting the environment.

Defendant Philippine Coast Guard and the PNP Maritime Group, to protect at all costs the Manila Bay from all forms of illegal fishing.

No pronouncement as to damages and costs.

SO ORDERED.

The MWSS, Local Water Utilities Administration (LWUA), and PPA filed before the Court of Appeals (CA) individual Notices of Appeal which were eventually consolidated and docketed as CA-G.R. CV No. 76528.

On the other hand, the DENR, Department of Public Works and Highways (DPWH), Metropolitan Manila Development Authority (MMDA), Philippine Coast Guard (PCG), Philippine National Police (PNP) Maritime Group, and five other executive departments and agencies filed directly with this Court a petition for review under Rule 45. The Court, in a Resolution of December 9, 2002, sent the said petition to the CA for consolidation with the consolidated appeals of MWSS, LWUA, and PPA,

docketed as CA-G.R. SP No. 74944.

Petitioners, before the CA, were one in arguing in the main that the pertinent provisions of the Environment Code (PD 1152) relate only to the cleaning of specific pollution incidents and do not cover cleaning in general. And apart from raising concerns about the lack of funds appropriated for cleaning purposes, petitioners also asserted that the cleaning of the Manila Bay is not a ministerial act which can be compelled by mandamus.

### **The CA Sustained the RTC**

By a Decision<sup>[6]</sup> of September 28, 2005, the CA denied petitioners' appeal and affirmed the Decision of the RTC *in toto*, stressing that the trial court's decision did not require petitioners to do tasks outside of their usual basic functions under existing laws.<sup>[7]</sup>

Petitioners are now before this Court praying for the allowance of their Rule 45 petition on the following ground and supporting arguments:

THE [CA] DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE PASSED UPON BY THE HONORABLE COURT, I.E., IT AFFIRMED THE TRIAL COURT'S DECISION DECLARING THAT SECTION 20 OF [PD] 1152 REQUIRES CONCERNED GOVERNMENT AGENCIES TO REMOVE ALL POLLUTANTS SPILLED AND DISCHARGED IN THE WATER SUCH AS FECAL COLIFORMS.

#### ARGUMENTS

##### I

[SECTIONS] 17 AND 20 OF [PD] 1152 RELATE ONLY TO THE CLEANING OF SPECIFIC POLLUTION INCIDENTS AND [DO] NOT COVER CLEANING IN GENERAL

##### II

THE CLEANING OR REHABILITATION OF THE MANILA BAY IS NOT A MINISTERIAL ACT OF PETITIONERS THAT CAN BE COMPELLED BY MANDAMUS.

The issues before us are two-fold. *First*, do Sections 17 and 20 of PD 1152 under the headings, *Upgrading of Water Quality* and *Clean-up Operations*, envisage a cleanup in general or are they limited only to the cleanup of specific pollution incidents? And *second*, can petitioners be compelled by mandamus to clean up and rehabilitate the Manila Bay?

On August 12, 2008, the Court conducted and heard the parties on oral arguments.

## **Our Ruling**

We shall first dwell on the propriety of the issuance of mandamus under the premises.

### **The Cleaning or Rehabilitation of Manila Bay Can be Compelled by Mandamus**

Generally, the writ of mandamus lies to require the execution of a ministerial duty. [8] A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." [9] It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." [10] Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.

Petitioners maintain that the MMDA's duty to take measures and maintain adequate solid waste and liquid disposal systems necessarily involves policy evaluation and the exercise of judgment on the part of the agency concerned. They argue that the MMDA, in carrying out its mandate, has to make decisions, including choosing where a landfill should be located by undertaking feasibility studies and cost estimates, all of which entail the exercise of discretion.

Respondents, on the other hand, counter that the statutory command is clear and that petitioners' duty to comply with and act according to the clear mandate of the law does not require the exercise of discretion. According to respondents, petitioners, the MMDA in particular, are without discretion, for example, to choose which bodies of water they are to clean up, or which discharge or spill they are to contain. By the same token, respondents maintain that petitioners are bereft of discretion on whether or not to alleviate the problem of solid and liquid waste disposal; in other words, it is the MMDA's ministerial duty to attend to such services.

We agree with respondents.

First off, we wish to state that petitioners' obligation to perform their duties as defined by law, on one hand, and how they are to carry out such duties, on the other, are two different concepts. While the implementation of the MMDA's mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by mandamus. We said so in *Social Justice Society v. Atienza* [11] in which the Court directed the City of Manila to enforce, as a matter of ministerial duty, its Ordinance No. 8027 directing the three big local oil players to cease and desist from operating their business in the so-called "Pandacan

Terminals" within six months from the effectivity of the ordinance. But to illustrate with respect to the instant case, the MMDA's duty to put up an adequate and appropriate sanitary landfill and solid waste and liquid disposal as well as other alternative garbage disposal systems is ministerial, its duty being a statutory imposition. The MMDA's duty in this regard is spelled out in Sec. 3(c) of Republic Act No. (RA) 7924 creating the MMDA. This section defines and delineates the scope of the MMDA's waste disposal services to include:

Solid waste disposal and management which include formulation and implementation of policies, standards, programs and projects for proper and sanitary waste disposal. It shall likewise include the **establishment and operation of sanitary land fill and related facilities** and the implementation of other alternative programs intended to reduce, reuse and recycle solid waste. (Emphasis added.)

The MMDA is duty-bound to comply with Sec. 41 of the Ecological Solid Waste Management Act (RA 9003) which prescribes the minimum criteria for the establishment of sanitary landfills and Sec. 42 which provides the minimum operating requirements that each site operator shall maintain in the operation of a sanitary landfill. Complementing Sec. 41 are Secs. 36 and 37 of RA 9003,<sup>[12]</sup> enjoining the MMDA and local government units, among others, after the effectivity of the law on February 15, 2001, from using and operating open dumps for solid waste and disallowing, five years after such effectivity, the use of controlled dumps.

The MMDA's duty in the area of solid waste disposal, as may be noted, is set forth not only in the Environment Code (PD 1152) and RA 9003, but in its charter as well. This duty of putting up a proper waste disposal system cannot be characterized as discretionary, for, as earlier stated, discretion presupposes the power or right given by law to public functionaries to act officially according to their judgment or conscience.<sup>[13]</sup> A discretionary duty is one that "allows a person to exercise judgment and choose to perform or not to perform."<sup>[14]</sup> Any suggestion that the MMDA has the option whether or not to perform its solid waste disposal-related duties ought to be dismissed for want of legal basis.

A perusal of other petitioners' respective charters or like enabling statutes and pertinent laws would yield this conclusion: these government agencies are enjoined, as a matter of statutory obligation, to perform certain functions relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay. They are precluded from choosing not to perform these duties. Consider:

(1) The DENR, under Executive Order No. (EO) 192,<sup>[15]</sup> is the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources. Sec. 19 of the Philippine Clean Water Act of 2004 (RA 9275), on the other hand, designates the DENR as the primary government agency responsible for its enforcement and implementation, more particularly over all aspects of water quality management. On water pollution, the

DENR, under the Act's Sec. 19(k), exercises jurisdiction "over all aspects of water pollution, determine[s] its location, magnitude, extent, severity, causes and effects and other pertinent information on pollution, and [takes] measures, using available methods and technologies, to prevent and abate such pollution."

The DENR, under RA 9275, is also tasked to prepare a National Water Quality Status Report, an Integrated Water Quality Management Framework, and a 10-year Water Quality Management Area Action Plan which is nationwide in scope covering the Manila Bay and adjoining areas. Sec. 19 of RA 9275 provides:

Sec. 19 *Lead Agency*.—The [DENR] shall be the primary government agency responsible for the implementation and enforcement of this Act x x unless otherwise provided herein. As such, it shall have the following functions, powers and responsibilities:

- a) Prepare a National Water Quality Status report within twenty-four (24) months from the effectivity of this Act: Provided, That the Department shall thereafter review or revise and publish annually, or as the need arises, said report;
- b) Prepare an Integrated Water Quality Management Framework within twelve (12) months following the completion of the status report;
- c) Prepare a ten (10) year Water Quality Management Area Action Plan within 12 months following the completion of the framework for each designated water management area. Such action plan shall be reviewed by the water quality management area governing board every five (5) years or as need arises.

The DENR has prepared the status report for the period 2001 to 2005 and is in the process of completing the preparation of the Integrated Water Quality Management Framework.<sup>[16]</sup> Within twelve (12) months thereafter, it has to submit a final Water Quality Management Area Action Plan.<sup>[17]</sup> Again, like the MMDA, the DENR should be made to accomplish the tasks assigned to it under RA 9275.

Parenthetically, during the oral arguments, the DENR Secretary manifested that the DENR, with the assistance of and in partnership with various government agencies and non-government organizations, has completed, as of December 2005, the final draft of a comprehensive action plan with estimated budget and time frame, denominated as *Operation Plan for the Manila Bay Coastal Strategy*, for the rehabilitation, restoration, and rehabilitation of the Manila Bay.

The completion of the said action plan and even the implementation of some of its phases should more than ever prod the concerned agencies to fast track what are assigned them under existing laws.



(2) The MWSS, under Sec. 3 of RA 6234,<sup>[18]</sup> is vested with jurisdiction, supervision, and control over all waterworks and sewerage systems in the territory comprising what is now the cities of Metro Manila and several towns of the provinces of Rizal and Cavite, and charged with the duty:

- (g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System; x x x

(3) The LWUA under PD 198 has the power of supervision and control over local water districts. It can prescribe the minimum standards and regulations for the operations of these districts and shall monitor and evaluate local water standards. The LWUA can direct these districts to construct, operate, and furnish facilities and services for the collection, treatment, and disposal of sewerage, waste, and storm water. Additionally, under RA 9275, the LWUA, as attached agency of the DPWH, is tasked with providing sewerage and sanitation facilities, inclusive of the setting up of efficient and safe collection, treatment, and sewage disposal system in the different parts of the country.<sup>[19]</sup> In relation to the instant petition, the LWUA is mandated to provide sewerage and sanitation facilities in Laguna, Cavite, Bulacan, Pampanga, and Bataan to prevent pollution in the Manila Bay.

(4) The Department of Agriculture (DA), pursuant to the Administrative Code of 1987 (EO 292),<sup>[20]</sup> is designated as the agency tasked to promulgate and enforce all laws and issuances respecting the conservation and proper utilization of agricultural and fishery resources. Furthermore, the DA, under the Philippine Fisheries Code of 1998 (RA 8550), is, in coordination with local government units (LGUs) and other concerned sectors, in charge of establishing a monitoring, control, and surveillance system to ensure that fisheries and aquatic resources in Philippine waters are judiciously utilized and managed on a sustainable basis.<sup>[21]</sup> Likewise under RA 9275, the DA is charged with coordinating with the PCG and DENR for the enforcement of water quality standards in marine waters.<sup>[22]</sup> More specifically, its Bureau of Fisheries and Aquatic Resources (BFAR) under Sec. 22(c) of RA 9275 shall primarily be responsible for the prevention and control of water pollution for the development, management, and conservation of the fisheries and aquatic resources.

(5) The DPWH, as the engineering and construction arm of the national government, is tasked under EO 292<sup>[23]</sup> to provide integrated planning, design, and construction services for, among others, flood control and water resource development systems in accordance with national development objectives and approved government plans and specifications.

In Metro Manila, however, the MMDA is authorized by Sec. 3(d), RA 7924 to perform metro-wide services relating to "flood control and sewerage management which include the formulation and implementation of policies, standards, programs

and projects for an integrated flood control, drainage and sewerage system."

On July 9, 2002, a Memorandum of Agreement was entered into between the DPWH and MMDA, whereby MMDA was made the agency primarily responsible for flood control in Metro Manila. For the rest of the country, DPWH shall remain as the implementing agency for flood control services. The mandate of the MMDA and DPWH on flood control and drainage services shall include the removal of structures, constructions, and encroachments built along rivers, waterways, and *esteros* (drainages) in violation of RA 7279, PD 1067, and other pertinent laws.

(6) The PCG, in accordance with Sec. 5(p) of PD 601, or the Revised Coast Guard Law of 1974, and Sec. 6 of PD 979, [24] or the Marine Pollution Decree of 1976, shall have the primary responsibility of enforcing laws, rules, and regulations governing marine pollution within the territorial waters of the Philippines. It shall promulgate its own rules and regulations in accordance with the national rules and policies set by the National Pollution Control Commission upon consultation with the latter for the effective implementation and enforcement of PD 979. It shall, under Sec. 4 of the law, apprehend violators who:

- a. discharge, dump x x x harmful substances from or out of any ship, vessel, barge, or any other floating craft, or other man-made structures at sea, by any method, means or manner, into or upon the territorial and inland navigable waters of the Philippines;
- b. throw, discharge or deposit, dump, or cause, suffer or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft or vessel of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state into tributary of any navigable water from which the same shall float or be washed into such navigable water; and
- c. deposit x x x material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed or increase the level of pollution of such water.

(7) When RA 6975 or the Department of the Interior and Local Government (DILG) Act of 1990 was signed into law on December 13, 1990, the PNP Maritime Group was tasked to "perform all police functions over the Philippine territorial waters and rivers." Under Sec. 86, RA 6975, the police functions of the PCG shall be taken over by the PNP when the latter acquires the capability to perform such functions. Since the PNP Maritime Group has not yet attained the capability to assume and perform the police functions of PCG over marine pollution, the PCG and PNP

Maritime Group shall coordinate with regard to the enforcement of laws, rules, and regulations governing marine pollution within the territorial waters of the Philippines. This was made clear in Sec. 124, RA 8550 or the Philippine Fisheries Code of 1998, in which both the PCG and PNP Maritime Group were authorized to enforce said law and other fishery laws, rules, and regulations.<sup>[25]</sup>

(8) In accordance with Sec. 2 of EO 513, the PPA is mandated "to establish, develop, regulate, manage and operate a rationalized national port system in support of trade and national development."<sup>[26]</sup> Moreover, Sec. 6-c of EO 513 states that the PPA has police authority within the

ports administered by it as may be necessary to carry out its powers and functions and attain its purposes and objectives, without prejudice to the exercise of the functions of the Bureau of Customs and other law enforcement bodies within the area. Such police authority shall include the following:

x x x x

b) To regulate the entry to, exit from, and movement within the port, of persons and vehicles, as well as movement within the port of watercraft.  
<sup>[27]</sup>

Lastly, as a member of the International Marine Organization and a signatory to the International Convention for the Prevention of Pollution from Ships, as amended by MARPOL 73/78,<sup>[28]</sup> the Philippines, through the PPA, must ensure the provision of adequate reception facilities at ports and terminals for the reception of sewage from the ships docking in Philippine ports. Thus, the PPA is tasked to adopt such measures as are necessary to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators. When the vessels are not docked at ports but within Philippine territorial waters, it is the PCG and PNP Maritime Group that have jurisdiction over said vessels.

(9) The MMDA, as earlier indicated, is duty-bound to put up and maintain adequate sanitary landfill and solid waste and liquid disposal system as well as other alternative garbage disposal systems. It is primarily responsible for the implementation and enforcement of the provisions of RA 9003, which would necessary include its penal provisions, within its area of jurisdiction.<sup>[29]</sup>

Among the prohibited acts under Sec. 48, Chapter VI of RA 9003 that are frequently violated are dumping of waste matters in public places, such as roads, canals or *esteros*, open burning of solid waste, squatting in open dumps and landfills, open dumping, burying of biodegradable or non- biodegradable materials in flood-prone areas, establishment or operation of open dumps as enjoined in RA 9003, and operation of waste management facilities without an environmental

compliance certificate.

Under Sec. 28 of the Urban Development and Housing Act of 1992 (RA 7279), eviction or demolition may be allowed "when persons or entities occupy danger areas such as *esteros*, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks and playgrounds." The MMDA, as lead agency, in coordination with the DPWH, LGUs, and concerned agencies, can dismantle and remove all structures, constructions, and other encroachments built in breach of RA 7279 and other pertinent laws along the rivers, waterways, and *esteros* in Metro Manila. With respect to rivers, waterways, and *esteros* in Bulacan, Bataan, Pampanga, Cavite, and Laguna that discharge wastewater directly or eventually into the Manila Bay, the DILG shall direct the concerned LGUs to implement the demolition and removal of such structures, constructions, and other encroachments built in violation of RA 7279 and other applicable laws in coordination with the DPWH and concerned agencies.

(10) The Department of Health (DOH), under Article 76 of PD 1067 (the Water Code), is tasked to promulgate rules and regulations for the establishment of waste disposal areas that affect the source of a water supply or a reservoir for domestic or municipal use. And under Sec. 8 of RA 9275, the DOH, in coordination with the DENR, DPWH, and other concerned agencies, shall formulate guidelines and standards for the collection, treatment, and disposal of sewage and the establishment and operation of a centralized sewage treatment system. In areas not considered as highly urbanized cities, septage or a mix sewerage-septage management system shall be employed.

In accordance with Sec. 72<sup>[30]</sup> of PD 856, the Code of Sanitation of the Philippines, and Sec. 5.1.1<sup>[31]</sup> of Chapter XVII of its implementing rules, the DOH is also ordered to ensure the regulation and monitoring of the proper disposal of wastes by private sludge companies through the strict enforcement of the requirement to obtain an environmental sanitation clearance of sludge collection treatment and disposal before these companies are issued their environmental sanitation permit.

(11) The Department of Education (DepEd), under the Philippine Environment Code (PD 1152), is mandated to integrate subjects on environmental education in its school curricula at all levels.<sup>[32]</sup> Under Sec. 118 of RA 8550, the DepEd, in collaboration with the DA, Commission on Higher Education, and Philippine Information Agency, shall launch and pursue a nationwide educational campaign to promote the development, management, conservation, and proper use of the environment. Under the Ecological Solid Waste Management Act (RA 9003), on the other hand, it is directed to strengthen the integration of environmental concerns in school curricula at all levels, with an emphasis on waste management principles.<sup>[33]</sup>

(12) The Department of Budget and Management (DBM) is tasked under Sec. 2, Title XVII of the Administrative Code of 1987 to ensure the efficient and sound utilization of government funds and revenues so as to effectively achieve the

country's development objectives.<sup>[34]</sup>

One of the country's development objectives is enshrined in RA 9275 or the Philippine Clean Water Act of 2004. This law stresses that the State shall pursue a policy of economic growth in a manner consistent with the protection, preservation, and revival of the quality of our fresh, brackish, and marine waters. It also provides that it is the policy of the government, among others, to streamline processes and procedures in the prevention, control, and abatement of pollution mechanisms for the protection of water resources; to promote environmental strategies and use of appropriate economic instruments and of control mechanisms for the protection of water resources; to formulate a holistic national program of water quality management that recognizes that issues related to this management cannot be separated from concerns about water sources and ecological protection, water supply, public health, and quality of life; and to provide a comprehensive management program for water pollution focusing on pollution prevention.

Thus, the DBM shall then endeavor to provide an adequate budget to attain the noble objectives of RA 9275 in line with the country's development objectives.

All told, the aforementioned enabling laws and issuances are in themselves clear, categorical, and complete as to what are the obligations and mandate of each agency/petitioner under the law. We need not belabor the issue that their tasks include the cleanup of the Manila Bay.

Now, as to the crux of the petition. Do Secs. 17 and 20 of the Environment Code encompass the cleanup of water pollution in general, not just specific pollution incidents?

### **Secs. 17 and 20 of the Environment Code Include Cleaning in General**

The disputed sections are quoted as follows:

*Section 17. Upgrading of Water Quality.* — Where the quality of water has deteriorated to a degree where its state will adversely affect its best usage, the government agencies concerned shall take such measures as may be necessary to upgrade the quality of such water to meet the prescribed water quality standards.

*Section 20. Clean-up Operations* — It shall be the responsibility of the polluter to contain, remove and clean-up water pollution incidents at his own expense. In case of his failure to do so, the government agencies concerned shall undertake containment, removal and clean-up operations and expenses incurred in said operations shall be charged against the persons and/or entities responsible for such pollution.

When the Clean Water Act (RA 9275) took effect, its Sec. 16 on the subject, *Cleanup Operations*, amended the counterpart provision (Sec. 20) of the Environment Code (PD 1152). Sec. 17 of PD 1152 continues, however, to be operational.

The amendatory Sec. 16 of RA 9275 reads:

SEC. 16. *Cleanup Operations*.— Notwithstanding the provisions of Sections 15 and 26 hereof, any person who causes pollution in or pollutes water bodies in excess of the applicable and prevailing standards shall be responsible to contain, remove and clean up any pollution incident at his own expense to the extent that the same water bodies have been rendered unfit for utilization and beneficial use: Provided, That in the event emergency cleanup operations are necessary and the polluter fails to immediately undertake the same, the [DENR] in coordination with other government agencies concerned, shall undertake containment, removal and cleanup operations. Expenses incurred in said operations shall be reimbursed by the persons found to have caused such pollution under proper administrative determination x x x. Reimbursements of the cost incurred shall be made to the Water Quality Management Fund or to such other funds where said disbursements were sourced.

As may be noted, the amendment to Sec. 20 of the Environment Code is more apparent than real since the amendment, insofar as it is relevant to this case, merely consists in the designation of the DENR as lead agency in the cleanup operations.

Petitioners contend at every turn that Secs. 17 and 20 of the Environment Code concern themselves only with the matter of cleaning up in specific pollution incidents, as opposed to cleanup in general. They aver that the twin provisions would have to be read alongside the succeeding Sec. 62(g) and (h), which defines the terms "cleanup operations" and "accidental spills," as follows:

- g. Clean-up Operations [refer] to activities conducted in removing the pollutants discharged or spilled in water to restore it to pre-spill condition.
- h. Accidental Spills [refer] to spills of oil or other hazardous substances in water that result from accidents such as collisions and groundings.

Petitioners proffer the argument that Secs. 17 and 20 of PD 1152 merely direct the government agencies concerned to undertake containment, removal, and cleaning operations of a specific polluted portion or portions of the body of water concerned. They maintain that the application of said Sec. 20 is limited only to "water pollution incidents," which are situations that presuppose the occurrence of specific, isolated pollution events requiring the corresponding containment, removal, and cleaning

operations. Pushing the point further, they argue that the aforementioned Sec. 62(g) requires "cleanup operations" to restore the body of water to pre-spill condition, which means that there must have been a specific incident of either intentional or accidental spillage of oil or other hazardous substances, as mentioned in Sec. 62(h).

As a counterpoint, respondents argue that petitioners erroneously read Sec. 62(g) as delimiting the application of Sec. 20 to the containment, removal, and cleanup operations for accidental spills only. Contrary to petitioners' posture, respondents assert that Sec. 62(g), in fact, even expanded the coverage of Sec. 20. Respondents explain that without its Sec. 62(g), PD 1152 may have indeed covered only pollution accumulating from the day-to-day operations of businesses around the Manila Bay and other sources of pollution that slowly accumulated in the bay. Respondents, however, emphasize that Sec. 62(g), far from being a delimiting provision, in fact even enlarged the operational scope of Sec. 20, by including accidental spills as among the water pollution incidents contemplated in Sec. 17 in relation to Sec. 20 of PD 1152.

To respondents, petitioners' parochial view on environmental issues, coupled with their narrow reading of their respective mandated roles, has contributed to the worsening water quality of the Manila Bay. Assuming, respondents assert, that petitioners are correct in saying that the cleanup coverage of Sec. 20 of PD 1152 is constricted by the definition of the phrase "cleanup operations" embodied in Sec. 62(g), Sec. 17 is not hobbled by such limiting definition. As pointed out, the phrases "cleanup operations" and "accidental spills" do not appear in said Sec. 17, not even in the chapter where said section is found.

Respondents are correct. For one thing, said Sec. 17 does not in any way state that the government agencies concerned ought to confine themselves to the containment, removal, and cleaning operations when a specific pollution incident occurs. On the contrary, Sec. 17 requires them to act even in the absence of a specific pollution incident, as long as water quality "has deteriorated to a degree where its state will adversely affect its best usage." This section, to stress, commands concerned government agencies, when appropriate, "to take such measures as may be necessary to meet the prescribed water quality standards." In fine, the underlying duty to upgrade the quality of water is not conditional on the occurrence of any pollution incident.

For another, a perusal of Sec. 20 of the Environment Code, as couched, indicates that it is properly applicable to a specific situation in which the pollution is caused by polluters who fail to clean up the mess they left behind. In such instance, the concerned government agencies shall undertake the cleanup work for the polluters' account. Petitioners' assertion, that they have to perform cleanup operations in the Manila Bay **only** when there is a water pollution incident and the erring polluters do not undertake the containment, removal, and cleanup operations, is quite off mark. As earlier discussed, the complementary Sec. 17 of the Environment Code comes into play and the specific duties of the agencies to clean up come in even if there

are no pollution incidents staring at them. Petitioners, thus, cannot plausibly invoke and hide behind Sec. 20 of PD 1152 or Sec. 16 of RA 9275 on the pretext that their cleanup mandate depends on the happening of a specific pollution incident. In this regard, what the CA said with respect to the impasse over Secs. 17 and 20 of PD 1152 is at once valid as it is practical. The appellate court wrote: "PD 1152 aims to introduce a comprehensive program of environmental protection and management. This is better served by making Secs. 17 & 20 of general application rather than limiting them to specific pollution incidents."<sup>[35]</sup>

Granting *arguendo* that petitioners' position thus described vis-à-vis the implementation of Sec. 20 is correct, they seem to have overlooked the fact that the pollution of the Manila Bay is of such magnitude and scope that it is well-nigh impossible to draw the line between a specific and a general pollution incident. And such impossibility extends to pinpointing with reasonable certainty who the polluters are. We note that Sec. 20 of PD 1152 mentions "water pollution incidents" which may be caused by polluters in the waters of the Manila Bay itself or by polluters in adjoining lands and in water bodies or waterways that empty into the bay. Sec. 16 of RA 9275, on the other hand, specifically adverts to "any person who causes pollution in or pollutes water bodies," which may refer to an individual or an establishment that pollutes the land mass near the Manila Bay or the waterways, such that the contaminants eventually end up in the bay. In this situation, the water pollution incidents are so numerous and involve nameless and faceless polluters that they can validly be categorized as beyond the specific pollution incident level.

Not to be ignored of course is the reality that the government agencies concerned are so undermanned that it would be almost impossible to apprehend the numerous polluters of the Manila Bay. It may perhaps not be amiss to say that the apprehension, if any, of the Manila Bay polluters has been few and far between. Hence, practically nobody has been required to contain, remove, or clean up a given water pollution incident. In this kind of setting, it behooves the Government to step in and undertake cleanup operations. Thus, Sec. 16 of RA 9275, previously Sec. 20 of PD 1152, covers for all intents and purposes a general cleanup situation.

The cleanup and/or restoration of the Manila Bay is only an aspect and the initial stage of the long-term solution. The preservation of the water quality of the bay after the rehabilitation process is as important as the cleaning phase. It is imperative then that the wastes and contaminants found in the rivers, inland bays, and other bodies of water be stopped from reaching the Manila Bay. Otherwise, any cleanup effort would just be a futile, cosmetic exercise, for, in no time at all, the Manila Bay water quality would again deteriorate below the ideal minimum standards set by PD 1152, RA 9275, and other relevant laws. It thus behooves the Court to put the heads of the petitioner-department-agencies and the bureaus and offices under them on continuing notice about, and to enjoin them to perform, their mandates and duties towards cleaning up the Manila Bay and preserving the quality of its water to the ideal level. Under what other judicial discipline describes as "continuing mandamus,"<sup>[36]</sup> the Court may, under extraordinary circumstances,



issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference. In India, the doctrine of continuing mandamus was used to enforce directives of the court to clean up the length of the Ganges River from industrial and municipal pollution.<sup>[37]</sup>

The Court can take judicial notice of the presence of shanties and other unauthorized structures which do not have septic tanks along the Pasig-Marikina-San Juan Rivers, the National Capital Region (NCR) (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycuayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and connecting waterways, river banks, and *esteros* which discharge their waters, with all the accompanying filth, dirt, and garbage, into the major rivers and eventually the Manila Bay. If there is one factor responsible for the pollution of the major river systems and the Manila Bay, these unauthorized structures would be on top of the list. And if the issue of illegal or unauthorized structures is not seriously addressed with sustained resolve, then practically all efforts to cleanse these important bodies of water would be for naught. The DENR Secretary said as much.<sup>[38]</sup>

Giving urgent dimension to the necessity of removing these illegal structures is Art. 51 of PD 1067 or the Water Code,<sup>[39]</sup> which prohibits the building of structures within a given length along banks of rivers and other waterways. Art. 51 reads:

**The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.** (Emphasis added.)

Judicial notice may likewise be taken of factories and other industrial establishments standing along or near the banks of the Pasig River, other major rivers, and connecting waterways. But while they may not be treated as unauthorized constructions, some of these establishments undoubtedly contribute to the pollution of the Pasig River and waterways. The DILG and the concerned LGUs, have, accordingly, the duty to see to it that non-complying industrial establishments set up, within a reasonable period, the necessary waste water treatment facilities and infrastructure to prevent their industrial discharge, including their sewage waters, from flowing into the Pasig River, other major rivers, and connecting waterways. After such period, non-complying establishments shall be shut down or asked to transfer their operations.

At this juncture, and if only to dramatize the urgency of the need for petitioners-agencies to comply with their statutory tasks, we cite the Asian Development Bank-

commissioned study on the garbage problem in Metro Manila, the results of which are embodied in the *The Garbage Book*. As there reported, the garbage crisis in the metropolitan area is as alarming as it is shocking. Some highlights of the report:

1. As early as 2003, three land-filled dumpsites in Metro Manila - the Payatas, Catmon and Rodriguez dumpsites - generate an alarming quantity of lead and leachate or liquid run-off. Leachate are toxic liquids that flow along the surface and seep into the earth and poison the surface and groundwater that are used for drinking, aquatic life, and the environment.
2. The high level of fecal coliform confirms the presence of a large amount of human waste in the dump sites and surrounding areas, which is presumably generated by households that lack alternatives to sanitation. To say that Manila Bay needs rehabilitation is an understatement.
3. Most of the deadly leachate, lead and other dangerous contaminants and possibly strains of pathogens seeps untreated into ground water and runs into the Marikina and Pasig River systems and Manila Bay.<sup>[40]</sup>

Given the above perspective, sufficient sanitary landfills should now more than ever be established as prescribed by the Ecological Solid Waste Management Act (RA 9003). Particular note should be taken of the blatant violations by some LGUs and possibly the MMDA of Sec. 37, reproduced below:

*Sec. 37. Prohibition against the Use of Open Dumps for Solid Waste.*—No open dumps shall be established and operated, nor any practice or disposal of solid waste by any person, including LGUs which [constitute] the use of open dumps for solid waste, be allowed after the effectivity of this Act: Provided, further that **no controlled dumps shall be allowed (5) years following the effectivity of this Act.** (Emphasis added.)

RA 9003 took effect on February 15, 2001 and the adverted grace period of five (5) years which ended on February 21, 2006 has come and gone, but no single sanitary landfill which strictly complies with the prescribed standards under RA 9003 has yet been set up.

In addition, there are rampant and repeated violations of Sec. 48 of RA 9003, like littering, dumping of waste matters in roads, canals, *esteros*, and other public places, operation of open dumps, open burning of solid waste, and the like. Some sludge companies which do not have proper disposal facilities simply discharge sludge into the Metro Manila sewerage system that ends up in the Manila Bay. Equally unabated are violations of Sec. 27 of RA 9275, which enjoins the pollution of water bodies, groundwater pollution, disposal of infectious wastes from vessels, and unauthorized transport or dumping into sea waters of sewage or solid waste and of Secs. 4 and 102 of RA 8550 which proscribes the introduction by human or

machine of substances to the aquatic environment including "dumping/disposal of waste and other marine litters, discharge of petroleum or residual products of petroleum of carbonaceous materials/substances [and other] radioactive, noxious or harmful liquid, gaseous or solid substances, from any water, land or air transport or other human-made structure."

In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.

The importance of the Manila Bay as a sea resource, playground, and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the State, through petitioners, has to take the lead in the preservation and protection of the Manila Bay.

The era of delays, procrastination, and *ad hoc* measures is over. Petitioners must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. We are disturbed by petitioners' hiding behind two untenable claims: (1) that there ought to be a specific pollution incident before they are required to act; and (2) that the cleanup of the bay is a discretionary duty.

RA 9003 is a sweeping piece of legislation enacted to radically transform and improve waste management. It implements Sec. 16, Art. II of the 1987 Constitution, which explicitly provides that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

So it was that in *Oposa v. Factoran, Jr.* the Court stated that the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications.<sup>[41]</sup> Even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they and the men and women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.

**WHEREFORE**, the petition is **DENIED**. The September 28, 2005 Decision of the CA in CA-G.R. CV No. 76528 and SP No. 74944 and the September 13, 2002 Decision of the RTC in Civil Case No. 1851-99 are **AFFIRMED** but with **MODIFICATIONS** in view of subsequent developments or supervening events in the case. The *fallo* of the RTC Decision shall now read:

WHEREFORE, judgment is hereby rendered ordering the abovenamed defendant-government agencies to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation.

In particular:

(1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its *Operational Plan for the Manila Bay Coastal Strategy* for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991,<sup>[42]</sup> the DILG, in exercising the President's power of general supervision and its duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers, waterways, *esteros*, and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275,<sup>[43]</sup> the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

(4) Pursuant to RA 9275,<sup>[44]</sup> the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550,<sup>[45]</sup> the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513<sup>[46]</sup> and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.

(8) The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and *esteros* in Metro Manila. The DPWH, as the principal implementor of programs and projects for flood control services in the rest of the country more particularly in Bulacan, Bataan, Pampanga, Cavite, and Laguna, in coordination with the DILG, affected LGUs, PNP Maritime Group, HUDCC, and other concerned government agencies, shall remove and demolish all structures, constructions, and other encroachments built in breach of RA 7279 and other applicable laws along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other rivers, connecting waterways, and *esteros* that discharge wastewater into the Manila Bay.

In addition, the MMDA is ordered to establish, operate, and maintain a sanitary

landfill, as prescribed by RA 9003, within a period of one (1) year from finality of this Decision. On matters within its territorial jurisdiction and in connection with the discharge of its duties on the maintenance of sanitary landfills and like undertakings, it is also ordered to cause the apprehension and filing of the appropriate criminal cases against violators of the respective penal provisions of RA 9003,<sup>[47]</sup> Sec. 27 of RA 9275 (the Clean Water Act), and other existing laws on pollution.

(9) The DOH shall, as directed by Art. 76 of PD 1067 and Sec. 8 of RA 9275, within one (1) year from finality of this Decision, determine if all licensed septic and sludge companies have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks. The DOH shall give the companies, if found to be non-complying, a reasonable time within which to set up the necessary facilities under pain of cancellation of its environmental sanitation clearance.

(10) Pursuant to Sec. 53 of PD 1152,<sup>[48]</sup> Sec. 118 of RA 8550, and Sec. 56 of RA 9003,<sup>[49]</sup> the DepEd shall integrate lessons on pollution prevention, waste management, environmental protection, and like subjects in the school curricula of all levels to inculcate in the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago.

(11) The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.

(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing mandamus," shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

No costs.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, and Brion, JJ., concur.*

*Corona, J., on leave.*

*Leonardo-De Castro, J., on official leave.*

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[1] Now the Department of Education (DepEd).

[2] Gore, AN INCONVENIENT TRUTH 161.

[3] *Rollo*, p. 74.

[4] *Id.* at 53.

[5] *Id.* at 109-123. Penned by Executive Judge Lucenito N. Tagle (now retired Court of Appeals Justice).

[6] *Id.* at 47-58. Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Jose C. Reyes, Jr.

[7] *Id.* at 52.

[8] *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301, 306.

[9] BLACK'S LAW DICTIONARY (8th ed., 2004).

[10] *Lamb v. Phipps*, 22 Phil. 456, 490 (1912).

[11] G.R. No. 156052, March 7, 2007, 517 SCRA 657, as subsequently reiterated on February 13, 2008.

[12] RA 9003 was approved on January 26, 2001.

[13] 2 *Feria Noche*, CIVIL PROCEDURE ANNOTATED.

[14] BLACK'S LAW DICTIONARY (8th ed., 2004).

[15] "Providing for the Reorganization of the [DENR], Renaming it as the Department of Environment and Natural Resources, and for Other Purposes."

[16] Per DENR Secretary Jose Atienza, the DENR is preparing an EO for the purpose. TSN of oral arguments, p. 118.

[17] Per information from the Water Quality Management Section, Environmental Management Bureau, DENR, as validated by the DENR Secretary during the oral arguments. TSN, pp. 119-120.

[18] "An Act Creating the [MWSS] and Dissolving the National Waterworks and

Sewerage Authority [NAWASA]; and for Other Purposes."

[19] *Sec. 22. Linkage Mechanism.*—The [DENR] and its concerned attached agencies x x x shall coordinate and enter into agreement with other government agencies, industrial sector and other concerned sectors in the furtherance of the objectives of this Act. The following agencies shall perform the functions specified hereunder:

x x x x

b) DPWH through its attached agencies, such as the MWSS, LWUA, and including other urban water utilities for the provision of sewerage and sanitation facilities and the efficient and safe collection, treatment and disposal of sewage within their area of jurisdiction.

[20] Book IV, Title IV, Sec. 2.

[21] *Sec. 14. Monitoring Control and Surveillance of the Philippine Waters.*—A monitoring, control and surveillance system shall be established by the [DA] in coordination with LGUs and other agencies concerned to ensure that the fisheries and aquatic resources in the Philippine waters are judiciously and wisely utilized and managed on a sustainable basis x x x.

[22] *Sec. 22. Linkage Mechanism.*—x x x x

a) Philippine Coast Guard in coordination with DA and DENR shall enforce for the enforcement of water quality standards in marine waters x x x specifically from offshore sources;

x x x x

c) DA, shall coordinate with the DENR, in the formulation of guidelines x x x for the prevention, control and abatement of pollution from agricultural and aquaculture activities x x x Provided, further, That the x x x BFAR of the DA shall be primarily responsible for the prevention and control of water pollution for the development, management and conservation of the fisheries and aquatic resources.

[23] Book IV, Title V, Sec. 2. *Mandate.*—The [DPWH] shall be the State's engineering arm and is tasked to carry out the policy enumerated above [i.e., the planning, design, construction, and maintenance of infrastructure facilities, especially x x x flood control and water resources development systems].

*Sec. 3. Powers and Functions.*—The Department, in order to carry out its mandate, shall:

x x x x



(2) Develop and implement effective codes, standards, and reasonable guidelines to ensure the safety of all public and private structures in the country and assure efficiency and proper quality in the construction of public works;

(3) Ascertain that all public works plans and project implementation designs are consistent with current standards and guidelines;

x x x x

(8) Provide an integrated planning for x x x flood control and water resource and water resource development systems x x x.

[24] *Sec. 6. Enforcement and Implementation.*—The [PCG] shall have the primary responsibility of enforcing the laws, rules and regulations governing marine pollution. However, it shall be the joint responsibility of the [PCG] and the National Pollution Control Commission to coordinate and cooperate with each other in the enforcement of the provisions of this decree and its implementing rules and regulations, and may call upon any other government office, instrumentality or agency to extend every assistance in this respect.

[25] *Sec. 124. Persons and Deputies Authorized to Enforce this Code* x x x.—The law enforcements of the [DA], the Philippine Navy, [PCG, PNP], PNP-Maritime Command x x x are hereby authorized to enforce this Code and other fishery laws x x x.

[26] (visited November 20, 2008).

[27] EO 513, "Reorganizing the Philippine Ports Authority," Sec. 2 provides further:

Section 6 is hereby amended by adding a new paragraph to read as follows:

*Sec. 6-c. Police Authority.*—x x x Such police authority shall include the following:

x x x x

c) To maintain peace and order inside the port, in coordination with local police authorities;

x x x x

e) To enforce rules and regulations promulgated by the Authority pursuant to law.

[28] "International Convention for the Prevention of Marine Pollution from Ships, 1973 as modified by the Protocol of 1978 Relating Thereto."

[29] Sec. 10. *Role of LGUs in Solid Waste Management.*—Pursuant to the relevant provisions of RA No. 7160, otherwise known as the Local Government Code, the LGUs shall be primarily responsible for the implementation and enforcement of the provisions of this Act within their respective jurisdictions.

[30] Sec. 72. *Scope of Supervision of the Department.*—The approval of the Secretary or his duly authorized representative is required in the following matters:

x x x x

(g) Method of disposal of sludge from septic tanks or other treatment plants.

[31] Sec. 5.1.1.a. It shall be unlawful for any person, entity or firm to discharge untreated effluent of septic tanks and/or sewage treatment plants to bodies of water without obtaining approval from the Secretary of Health or his duly authorized representatives.

[32] Sec. 53. *Environmental Education.*—The [DepEd] shall integrate subjects on environmental education in its school curricula at all levels. It shall also endeavor to conduct special community education emphasizing the relationship of man and nature as well as environmental sanitation and practices.

[33] Sec. 56. *Environmental Education in the Formal and Nonformal Sectors.*—The national government, through the [DepEd] and in coordination with concerned government agencies, NGOs and private institutions, shall strengthen the integration of environmental concerns in school curricula at all levels, with particular emphasis on the theory and practice of waste management principles like waste minimization, specifically resource conservation and recovery, segregation at source, reduction, recycling, re-use, and composing, in order to promote environmental awareness and action among the citizenry.

[34] Title XVII, Sec. 1. *Declaration of Policy.*—The national budget shall be formulated and implemented as an instrument of national development, reflective of national objectives and plans; supportive of and consistent with the socio-economic development plans and oriented towards the achievement of explicit objectives and expected results, to ensure that the utilization of funds and operations of government entities are conducted effectively; formulated within the context of a regionalized governmental structure and within the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of government-owned or controlled corporations; and prepared within the context of the national long-term plans and budget programs of the Government.

[35] *Rollo*, p. 76.

[36] *Vineet Narain v. Union of India*, 1 SCC 226 (1998).

[37] *M.C. Mehta v. Union of India*, 4 SC 463 (1987).

[38] TSN, p. 121.

[39] Repealed Art. 638 of the CIVIL CODE. See E.L. Pineda, PROPERTY 399 (1999).

[40] Asian Development Bank, THE GARBAGE BOOK 44-45 (November 2006).

[41] G.R. No. 101083, July 30, 1993, 224 SCRA 792, 805.

[42] Sec. 25. *National Supervision over Local Government Units*.—(a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.

[43] Sec. 8. *Domestic Sewage Collection, Treatment and Disposal*.—Within five (5) years following the effectivity of this Act, the Agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in [RA] 7160, in coordination with LGUs, shall be required to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system. Provided, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless the sources had already utilized their own sewerage system: Provided, further, That all sources of sewage and septage shall comply with the requirements herein.

[44] Supra note 19.

[45] Sec. 65. *Functions of the Bureau of Fisheries and Aquatic Resources*.—As a line bureau, the BFAR shall have the following functions:

x x x x

q. assist the LGUs in developing their technical capability in the development, management, regulation, conservation, and protection of fishery resources;

x x x x

s. perform such other related function which shall promote the development, conservation, management, protection and utilization of fisheries and aquatic resources.

[46] Supra notes 26 & 27.

[47] Among the prohibited and penalized acts under Sec. 48 of RA 9003 are: (1) littering and dumping of waste matters in public places; (2) open burning of solid wastes; (3) squatting in open dumps and landfills; (4) transporting and dumping in bulk of collected domestic, industrial, commercial and institutional wastes in areas other than centers and facilities prescribed under the Act; (5) construction or operation of waste management facilities without an Environmental Compliance Certificate; and (6) construction or operation of landfills or any waste disposal facility on any aquifer, groundwater reservoir or watershed area.

[48] Supra note 32.

[49] Supra note 33.



Source: Supreme Court E-Library

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