

**Implementation and Enforcement of Environmental
Laws, Case Handling and Adjudication in Philippines: The
Stories in the Trial Courts and the Court of Appeals**

August 14, 2019

**Radisson Blu Hotel, Cebu City
Philippines**

By:

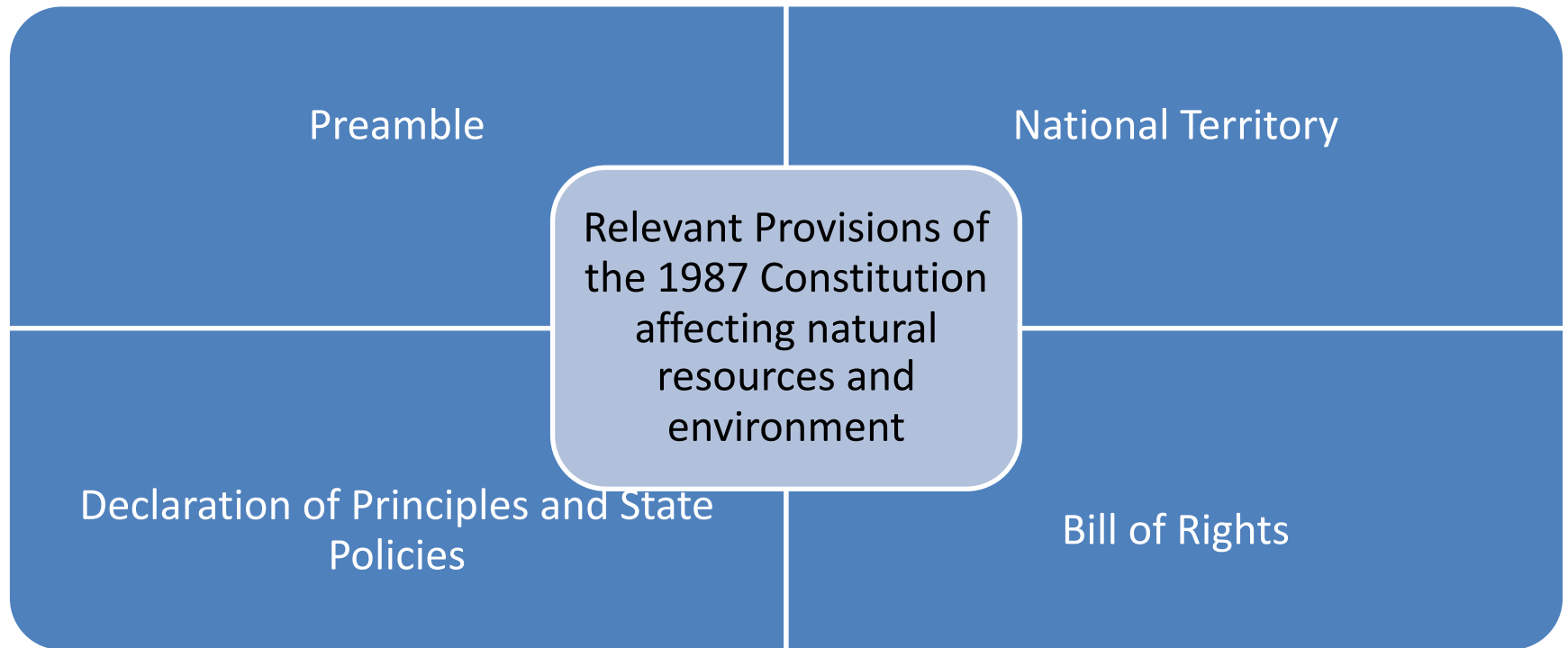
Justice Marilyn B. Lagura-Yap

Court of Appeals

Cebu Station

judgeyap@yahoo.com

IV. ADJUDICATION OF ENVIRONMENTAL CASES IN THE PHILIPPINES



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Preamble

We, the sovereign people, imploring the aid of Almighty God, in order to build a just and humane society and establish a government that shall embody our ideals and aspirations, promote the common good, *conserve and develop our patrimony*, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

IV. ADJUDICATION OF ENVIRONMENTAL CASES IN THE PHILIPPINES

National Territory

. . . comprises the Philippine archipelago, with all islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions form part of the internal waters of the Philippines.

IV. ADJUDICATION OF ENVIRONMENTAL CASES IN THE PHILIPPINES

**Constitution of the Republic of the Philippines
1987**

Declaration of Principles and State Policies

THE BILL OF RIGHTS
(Part I: Civil Rights)

Sec. 15; Right to health is a fundamental right. (LLDA v. CA, 231 SCRA 292)

Sec. 16; Right to a balanced ecology is an enforceable legal right. (Minors v. DENR, 224 SCRA 792)

Right to Due Process of Law (Sec. 1)
Right to Privacy (Sec. 2)
Right of Access to Information (Sec. 7)

Enforcing environmental laws

lawmakers

enforcer

complying
party

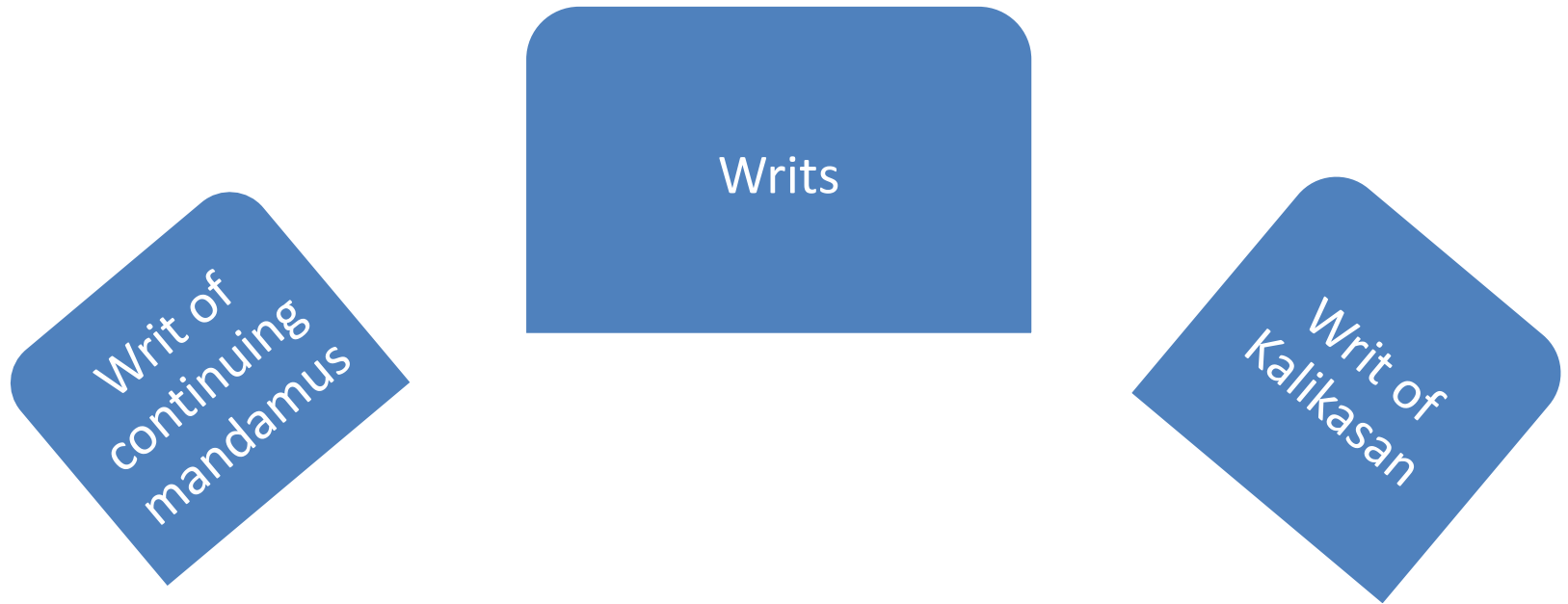
affected
party

judges

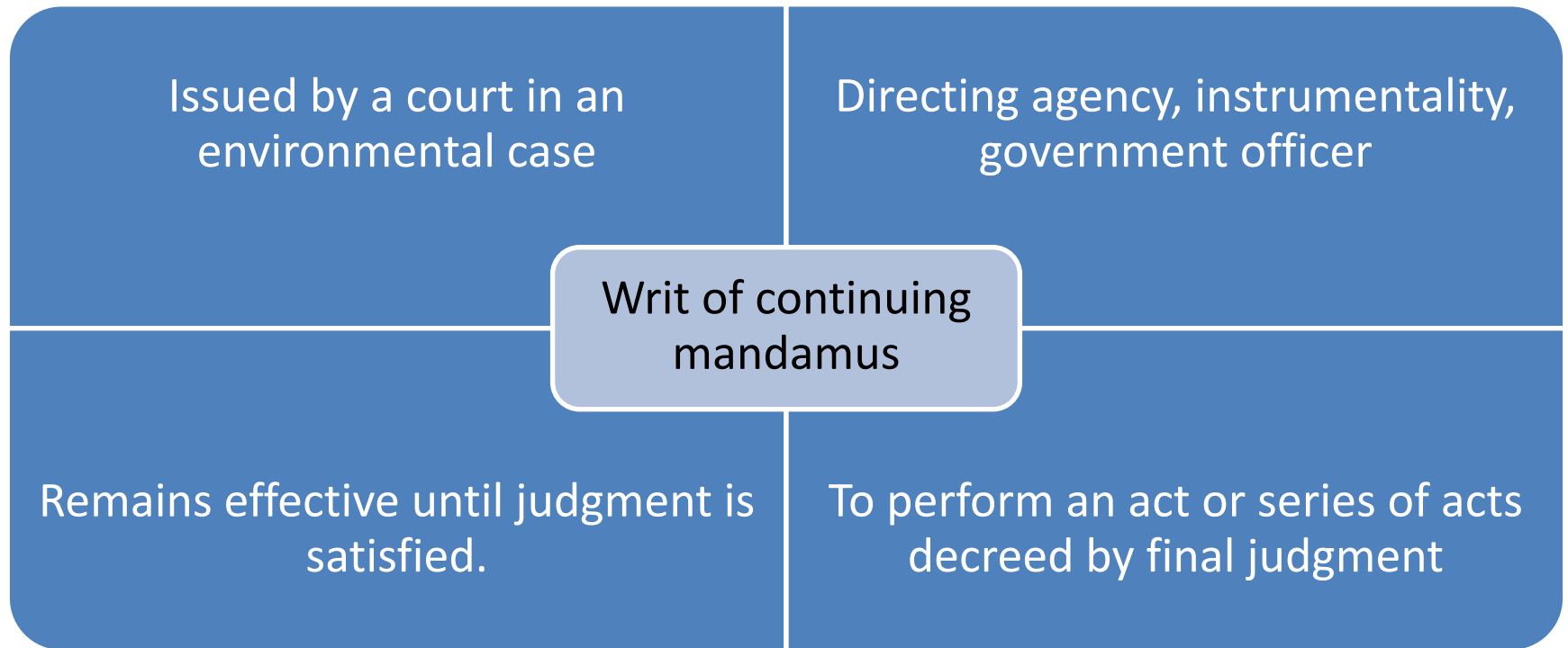
Courts

- Interpret laws
- Determine if the executive has enforced laws correctly
- Determine if implementing rules are promulgated by executive within delegated authority

Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, April 29, 2010



Sec. 4[c], Rule I, Part I, Rules of Procedure for
Environmental Cases
A.M. No. 09-6-8-SC



Section 2, Rule 8, Part III, Rules of Procedure for Environmental Cases

Where to file petition for writ of continuing mandamus

- a. RTC with territorial jurisdiction where actionable neglect or omission occurred
- b. Court of Appeals
- c. Supreme Court

Section 5, Rule 8, Part III, Rules of Procedure for Environmental Cases

When duly filed, court may issue:

- orders to expedite proceedings and
- grant Temporary Environmental Protection Order (TEPO) for the preservation of rights of parties pending proceedings
- TEPO, if it appears that the matter is of extreme urgency
- applicant will suffer grave injustice and irreparable injury.

Sec. 1, Rule 7, Part III, Rules of Procedure for Environmental Cases A.M. No. 09-6-8-SC

Available to natural person, juridical person, people's organization, to non-governmental organization or any accredited public interest group

Violation or threatened violation caused by an unlawful act or omission and public official/employee, private individual, private individual/entity is responsible

Writ of Kalikasan

Actual violation of the constitutional right to a balanced and healthful ecology not required, sufficient that right is threatened

Unlawful act or omission involves environmental damage to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Section 3, Rule 7, Part III, Rules of Procedure for Environmental Cases

Where to file petition for Writ of Kalikasan

- a. With the Supreme Court or
- b. With any of the stations of the Court of Appeals

Section 5, Rule 7, Part III, Rules of Procedure for Environmental Cases

If petition is sufficient in form and substance, Court shall give an order within three days from filing:

- a. Issuing the writ
- b. Requiring respondent to file a verified return
- c. Clerk of Court issues the Writ of Kalikasan under the seal of the Court including cease and desist order, and temporary reliefs effective until further orders

Sec. 15, Rule 7, Part III, Rules of Procedure for Environmental Cases

Reliefs under the writ

Order to permanently cease and desist from committing acts or neglecting performance of duty in violation of environmental law resulting to destruction

Order public official. . . To make periodic reports on the execution of final judgment

Order public official, private person or entity to protect, rehabilitate environment

Order public official. . .to monitor strict compliance with decision and orders

Other reliefs relating to the right to a balance and healthful ecology or to the protection. . .of the environment except award of damages to individual petitioners.

CASE NO. 1

SP. Civil Action No. MDE-182

Bantayan Group of Islands, Petitioner



- Northwestern portion of Cebu in the Visayas
- Joined by residents, taxpayers and citizens
- With an enforceable “right to a healthful and balanced ecology for the protection of the natural and national patrimony”.

Proclamation No. 2151

- Issued on December 29, 1981
- “Declaring Certain Islands and/or Parts of the Country as Wilderness Area”
- Includes the Island of Bantayan located at the Visayan Sea in the Province of Cebu

Proclamation No. 1234

- Issued on May 27, 1998
- “Declaring the Tanon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to RA 7586 (NIPAS Act of 1992) and Shall be Known as Tanon Strait Protected Seascape”

Department of Environment and Natural Resources (DENR) and Officers, Respondents

- Patrimonial malpractice
- Failure to enforce the National Integrated Protected Areas System Act of 1992 (NIPAS Law), Water Code (PD 1067)
- Failure to promulgate Management Plan
- Filing fees of P 10,885.00

APPLICATION FOR TRO

- To prohibit DENR from issuing Environmental Compliance Certificates (ECCs)
- To order DENR to remove all structures located in the easement zones.



The ocular inspection on May 18, 2009



Partial Judgment on August 25, 2009

- To clear 20-meter margin of the seashores in the beach resorts in 60 days
- To conduct inspection sites of the shores
- To document structures or constructions that violate easement zone
- To submit Report



Demolition of structures



PD 1067 - The Water Code of the Philippines

The banks of rivers and streams and the shores . . . throughout their entire length and within a zone of 3 meters in urban areas, 20 meters in agricultural areas and 40 meters in forest areas, along their margins subject to the easement of public use . . . of recreation, navigation, floatage, fishing and salvage. . .”

Reasons for the prohibition

- Public use for recreation, salvage and navigation
- Access to the shoreline
- Protection from scouring
- Protection from storm surges

Preliminary mandatory injunction granted.

- No Rules of Procedure for Environmental Cases yet.
- Public respondents enjoined from processing and approving applications for ECCS to constructions and projects in Bantayan Island.

Order became final.

- Department of Environment and Natural Resources did not question order
- Readiness to fulfill responsibility
- Writ of execution was issued

House Bill -2127 filed 28 July 2016

An Act Declaring Certain Lands of the Public Domain, Located in the Municipalities of Bantayan, Daanbantayan, Madridejos and Sta. Fe, Province of Cebu, as Agricultural Land for Agricultural, Commercial, Residential, Tourism and other Similar Productive Purposes, Amending for the Purpose Presidential Proclamation No. 2151 “Declaring Certain Islands and/or Parts of the Country Wilderness Areas

Some relevant questions

- Whether there can ever be a Protected Area Management Plan;
- Whether the gains achieved in the enforcement of environmental laws in the Island will prove futile;
- Whether development plans for the Island can be translated to sustainable development if such law is passed.

CASE NO. 2

PHIL EARTH CENTER, represented by Atty. Gloria E. Ramos, et. al. vs. Secretary, Department of Natural Resources (DENR), et. al.

Environmental Case No. MA- 6461

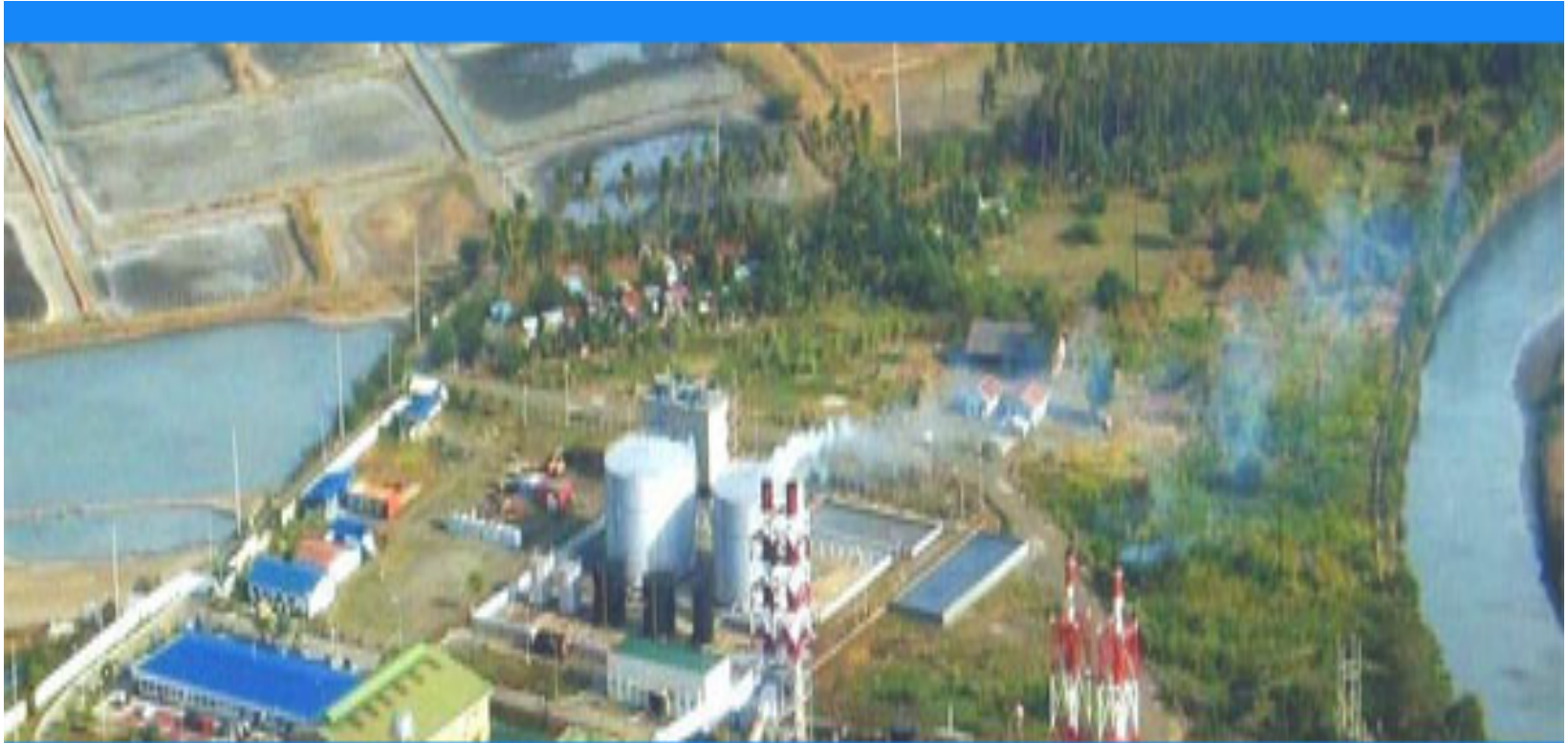
FOR: Environmental Protection Order with Prayer for Temporary Environmental Protection Order & Writ of Continuing Mandamus

- Filed August 12, 2110
- Exempt from payment of filing fee
- One of those earlier filed after the Rules took effect

KEPCO POWER PLANT (NAGA CITY)



TOLEDO CITY COAL POWER PLANT



OUR PLANTS

GBPC is the umbrella company of several power plants in the Visayas Region and Mindoro Island.

Application for TEPO

Temporary Environmental Protection Order (TEPO) to restrain the coal power plants from transporting outside premises, coal combustion residuals (CCRs) generated from operation.

- Temporary Environmental Protection Order (TEPO) was issued.
- Private respondents immediately enjoined from disposing coal ash from its power plants indiscriminately as they do not have sanitary landfill.
- Scientific and medical basis that coal ash contains hazardous chemicals that may lead to serious threats to persons exposed to such and irreversible damage to the environment.

- Opinion by the United States Environmental Protection Agency (EPA) which says that *“coal combustion residuals commonly known as coal ash . . . contain contaminants like mercury, cadmium and arsenic associated with cancer and various other health effects.”* Based on *“EPA’s risk assessment and damage cases, these contaminants can leach into the groundwater and often migrate to drinking water resources, posing significant health concerns.”*

- The precautionary principle as provided in Section 4(f), Rule 1 in the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) which took effect on April 29, 2010, 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 and diminish that threat.”*

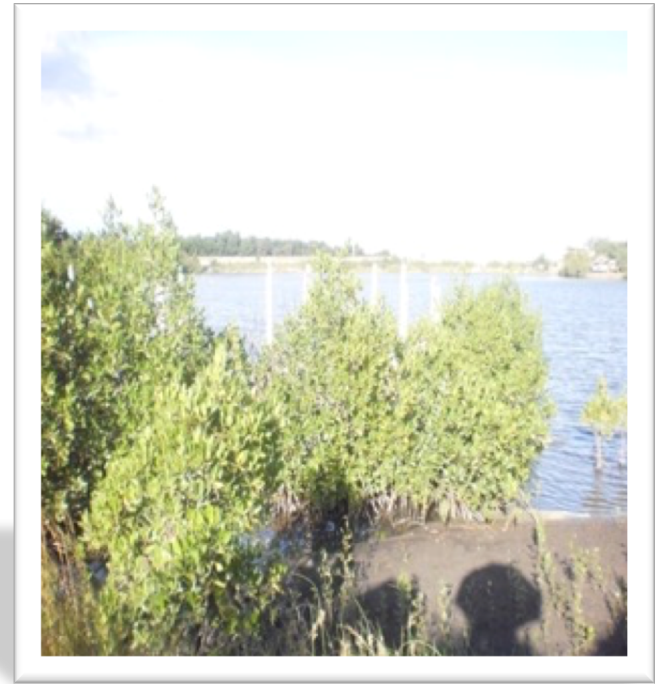
- ex-parte Temporary Environmental Protection Order (TEPO), enjoining and restraining private respondents TOLEDO POWER CORP., owner and operator of original coal-fired power plant in Barangay Sangi, Toledo City; CEBU ENERGY DEVELOPMENT CORP. and/or GLOBAL BUSINESS POWER CORP., owners and operators of additional coal-fired power plants in Barangay, Sangi, Toledo City; SPC POWER CORP. (SALCON POWER CORP.), owner and operator of original coal-fired power plant in Barangay Colon, Naga City; and KEPCO-SPC, owner and operator of additional coal-fired power plants in Barangay Colon, Naga City and their respective agents or representatives

- disposing, dumping and transporting outside the premises of their respective coal-fired power plants, the coal ash or coal combustion residuals which are generated from the operations of such plants.

Ocular inspection on November 7, 2010



- Land tract of coal ash
- Waste water from coal power plant
- Shallow river with coal deposits



- Coal ash deposits near mangroves in government land
- Ash deposits near the sea

Ash ponds and landfill



Chapter III, Section 43 of the Revised Forestry Code (PD 705)

- *Strips of mangrove forest bordering numerous islands which protect the shoreline . . . from the destructive force of the sea during high winds and typhoons, shall be maintained and shall not be alienated.*
- *Must be kept free from artificial obstruction so that flood water will flow unimpeded to the sea to avoid flooding or inundation of cultivated areas in the upstream.*

AIR POLLUTANT

- *Any matter in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, inert gases in natural or normal concentrations*
- *Detrimental to health and environment*
- *Includes smoke, dust, soot, cinders, fly ash, solid particles of any kind, gases, fumes, chemical mists, steam and radioactive substances*

Coal ash not hazardous waste

Elements Analyzed (TCLP)	Laboratory Sample No. 10-0752	Laboratory Sample No. 10-0753	Laboratory Sample No. 10-0754	Laboratory Sample No. 10-0755	Laboratory Sample No. 10-0756
Cadmium, mg/L	0.015	0.020	0.040	0.043	0.040
Chromium, mg/L	<0.050	<0.050	<0.050	<0.050	<0.050
Copper, mg/L	<0.010	<0.010	<0.010	<0.010	<0.010
Lead, mg/L	<0.050	<0.050	<0.050	<0.050	<0.050
Mercury, mg/L	<0.020	<0.020	<0.020	<0.020	<0.020

R.A. 9003

- Coal ash is considered solid waste requiring proper disposal
- *“Solid waste shall refer to all discarded household, commercial waste, non-hazardous institutional and industrial wastes . . .”*

TEPO EXTENDED

- Overwhelming evidence of large quantities of coal ash dumped in many places
- During the pendency and until termination of the case.
- Results of the ocular inspection validated the necessity of extending the TEPO.

CASE NO. 3

Concerned residents of Iligan City and the Center for Alternative Legal Forum and Injustice Inc., filed against the City Government of Iligan, Mines and Geo Sciences Bureau, the DENR Secretary, the DILG Secretary, the National Defense Secretary, PNP Chief, Chief of Staff of the AFP, Prov'l Gov't of Lanao del Sur, Prov'l Govt of Bukidnon and COA.

Objectives

- to compel the respondents to take serious action and attention on environmental and safety concerns and
- to prevent “human factors” that aggravated the damage brought by Typhoon Sendong



Extremely Urgent Measures

- City government to provide relocation to residents living in danger areas such as river banks and shorelines with access to livelihood opportunities
- City government to formulate a comprehensive City Disaster Risk Reduction and Management Plans and City Climate Change Action Plans

TEPO Granted

To remove all timbers deposited in ponds and riverbanks

- Bansayan, Panoroganan, Iligan City
- Kappai-Bayug river junction, Lanao del Sur

Confiscate, deposit logs

- City Environment Officer
- DENR

Assist in execution of directives

- Anti-Illegal Logging Task Force

CASE NO. 4

Winley DeLa Fuente, Hon. Venci Requiros Del Mar, Francis Amper Dejero, Adonis V. Laborte and Macaraig Canton representing Movement for Livable Cebu vs. Hon. Valdemar Chiong, in his capacity as Mayor of Naga City, Cebu, Obdulla Lescano in her official capacity as City Environment Officer and Demetrio Ignacio in his capacity as Environment Undersecretary, Isabelo Montejo in his capacity as DENR 7 Regional Executive Director of the Department of Environment and Natural Resources

CA-GR SP No. 0002 WK CEB

- Petition for Writ of Kalikasan with Prayer for TEPO
- To enjoin respondents from cutting the trees within the Naga City Central School
- Resolution granting the application for TEPO and setting summary hearing whether TEPO should be extended and whether Writ of Kalikasan is the proper remedy

- 58 trees included in the Special Permit were already cut, hence, there is no longer extreme urgency to justify extension.
- Infirmities as failure to furnish copy of petition to the proper government agency and lack of relevant and material evidence
- Irregularities in the issuance of Special Permit, lack of consultation with the townsfolk do not fall within the ambit of the Petition.

- Petitioners failed to show that their right to a balanced and healthful ecology was violated and the cutting of the 58 trees would damage the environment of two or more cities or provinces.
- TEPO dissolved and Petition for Writ of Kalikasan is dismissed

Case 5

JOEL CAPILI GARGANERA for and on his behalf, and in representation of the People of the Cities of Cebu and Talisay, and the future generations, including the unborn vs. MAYOR TOMAS R. OSMENA, in his capacity as City Mayor of Cebu; ENGR. WILLIAM P. CUNADO, in his capacity as Officer-in-Charge of Environmental Management Bureau (EMB) VII; EMMA E. MELANA, in her capacity as Regional Director of the Department of Environment and Natural Resources VII (DENR 7), in representation of the Secretary of the DENR

CA-GR SP NO. 0004 WK

- Petition for Writ of Kalikasan with TEPO seeking to enjoin reopening and operation of the sanitary landfill in Inayawan, Pardo, Cebu City
- Serious environmental damage affecting residents of Cebu City and Talisay City which threatens and violates their right to a balanced and healthful ecology, including that of petitioner and future generations.

- Inayawan landfill operation violates RA 9003, RA 8749, RA 9275, PD 856 and DAO No. 2003-30
- Precautionary principle invoked in the TEPO application
- With supporting documents such as Resolutions and Minutes of Executive Session of Cebu SP, news articles, affidavits of residents, notice of violations issued by EMB-DENR addressed to Mayor Osmena, Inspection Report from DOH

- Court granted writ on Oct 6, 2016 and required respondents to file verified return
- Summary hearing set for application of TEPO
- Verified return by Mayor Osmena
- Affirmative defences of Mayor : condition precedent under RA 9003 and RA 8749 requiring 30-day notice to public officer in filing citizens' suit, issuance of ECC in siting the landfill established in 1998

- Respondents EMB-DENR officials filed verified return
- Affirmative defences as: petitioner has no capacity to bring suit for lack of proper representation, magnitude of supposed environmental damage based on mere presumptions without scientific bases, Cunado and Melana not remiss in their official duties
- Court conducted hearings on the TEPO application

- ISSUES: legal capacity of petitioner; propriety of filing the instant petition without petitioner's compliance with prior notice required under RA 9003 and RA 8749 and rule on exhaustion of administrative remedies; sufficiency of petitioner's cause of action for a writ of kalikasan

- HELD: Respondents' act or omission in allowing the resumption of the garbage dumping at the landfill has caused an actual or threatened violation of petitioner's constitutional right to a balanced and healthful ecology which involves serious environmental damage so as to prejudice the life and health of residents in both Cebu City and Talisay City.

“air pollution” (Sec. 5b, Art. Two, RA 8749)

- Any alteration of the physical, chemical and biological properties of the atmospheric air or any discharge of any liquid, gaseous or solid substances that will or is likely to create or render air resources harmful. . .to public health. . . which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.

“water pollution” (Sec. 4pp, Art. 2, RA 9275)

- Any alteration of the physical, chemical or biological or radiological properties of a water body resulting in the impairment of its purity or quality.

- Landfill has already generated air pollution due to foul odor which affected well-being and livelihood of nearby inhabitants per EMB Compliance Evaluation Report (CER).
- Dumping operation violated the criteria under DENR Administrative Order No. 34-01 specifically to the proper leachate collection and treatment at the landfill and the regular water quality monitoring of surface and ground waters. . .

- Right to balanced and healthful ecology necessarily includes freedom to breathe clean and fresh air and to enjoy clear and untainted waters.
- Solid waste disposal at the landfill has contravened this constitutional right. . . detrimental to life and health of the nearby residents
- Puts weight to DOH's finding of high risks of residents in acquiring illness due to pollution.

- Except the timeline of its implementation, parties acknowledged necessity of closing landfill.
- Court can no longer wait for concrete actions from parties.
- More deplorable if elected and appointed officials remiss of their bounden duties aggravated by deep-seated emotions due to political differences.

DISPOSITIVE:

1. Respondent Mayor/representatives to permanently cease and desist from dumping garbage or solid waste at the Inayawan landfill
2. . . to continue rehabilitation of landfill
3. DENR-EMB to regularly monitor strict compliance with Court's judgment
4. In case of non-compliance, DENR-EMB to file/recommend filing of appropriate charges
5. DENR-EMB to submit monthly progress reports (12/15/2016)



SOURCES

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- YouTube, Typhoon Sendong, December 16, 2011
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