Strengthening Environmental Enforcement and
Compliance Capacity Technical Assistance
(SEECCTA) Project

EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

The report on the study conducted under the auspices of the Strengthening Environmental Enforcement and Compliance Capacity Technical Assistance (SEECCTA) Project consists of the following:

Report 1a: Assessment of the Legal Framework, Organizational Structure and Environmental Function of the Environmental Management Bureau (EMB)

Report 1b: Strategic Plan for the EMB

Report 2: Mainstreaming the Use of the Environmental User Fee

Report 3: Strengthening the Public Disclosure Program

Report 1: Assessment of the Legal Framework, Organizational Structure and Environmental Function of the Environmental Management Bureau and Strategic Plan for the EMB

Background

The overarching goal of the assessment of EMB's legal framework, organizational structure and management functions is to help address the worsening problems of air and water pollution and waste accumulation in urban areas that have had documented adverse effects on people's health and livelihood. More specifically, the study is motivated by the challenges posed by the various mandates embodied in existing environmental laws that the DENR-EMB is tasked to implement. The underlying premise of the study is that there are critical generic functions for any environmental management unit (research, education, fund generation, policy and enforcement), and they must be properly integrated so as to achieve synergy toward an increasingly more effective management.

Methodologically, the research team aimed to

- specify the various directives emanating from the five environmental laws or the EMB mandate;
- determine the directives that have not been operationalized and implemented (absolute gaps);
- determine the quality of the implementation of the other directives (relative or qualitative gaps);
- present a range of strategic options to address the absolute and qualitative gaps, which constitute the elements of a strategic plan;
- specify the priority actions in the area of research, policy formulation, enforcement, and fund generation; and
- propose an alternative organizational structure, staffing pattern, financial plan, and strategy for human resource development.

The Evolving Mandates of the EMB

The historical evolution of the EMB and its mandates may be gleaned from five laws (the Pollution Control Law of 1976 or PD984, the Environmental Impact Statement System of 1978 or PD 1586, the Toxic Substances and Hazardous and Nuclear Waste Management Act or RA 6969, the Clean Air Act or RA 8749, and the Ecological Solid Waste Management Act). The EMB directives that emanate from national legislations are reinforced by the country's international environmental commitments.

EMB's directives, as derived from the legal documents and administrative orders, the activities presented in the work plans of the Central and Regional Offices to operationalize the mandates and interviews with EMB officials, fall under five generic environmental management functions:

- enforcement (including monitoring and determining compliance; issuing a notice of violation and cease and desist order, pollution adjudication, implementing a permit system, conducting firm surveys, developing databases and other activities attendant to enforcement, like classification, legal support, and information management)

- policy formulation and planning (including the formulation and issuance of administrative orders, regulations, guidelines, procedures, the development of manuals and standard operating procedures, information management, and the generation of reports for policy purposes)

- research and development involving the development of environmental standards, the conduct of scientific experiments and the preparation of project proposals

- education involving capability building activities, information, education and communucation activities, lecture and the conduct of seminars and trainings

- fund generation and management including the assessment and collection of fees, fine and penalties and the sourcing out of funds to support EMB's functions and the management of fund mechanisms

Understandably, EMB's performance along the five functions has been uneven, reflecting the Bureau's evolution and development through time.

- From its inception to the passage of the Clean Air Act in 1999, the Bureau served as an advisory staff with limited research and policy formulation functions, and consequently, a limited enforcement role. The provision of technical assistance and advice at the time seems to have been based more on experience and stock knowledge of the EMB technical staff who came from the defunct NPCC and NEPC, rather than research. Research was formally confined to the substantive areas of effective means of pollution control and abatement and its activities limited to meagerly funded field data gathering activities and laboratory testing of water quality samples. Policy formulation focused on the development of effluent, stream, ambient and emission standards and the promulgation of rules and regulation while education activities zeroed in only on the dissemination of annual or periodic environmental

reports. As to its enforcement function, the Bureau focused on the inspection-monitoring activities of regional offices, the permit and penalty system and the pollution adjudication of the PAB.

- RA 6969 of 1990 expanded the tasks and responsibilities of the DENR and with it, the EMB. The Act made it imperative for the agency to explicitly undertake more information generation and research activities for the purpose of policy formulation and the conduct of education campaigns. With regards to enforcement, the regional offices were also expected to be involved in field enforcement activities such as inspection, monitoring, stoppage of vehicles suspected of transporting hazardous wastes and confiscation.

- While RA 6969 of 1990 expanded the traditional regulatory functions of the EMB, the Clean Air Act of 1999 (RA 8749) further extended the Bureau's directives. It not only mandated the application and strengthening of traditional approaches to air quality management, it also introduced new approaches such as air shed management, emission charges, trading of emission rights and public disclosure. RA 8749 added to EMB's traditional standard setting, ambient monitoring and minimum fuel quality assurance tasks, the development of an Integrated Air Quality Improvement Framework and an Air Quality Control Action Plan. Moreover, it requires the reorganization of EMB as a line bureau with a larger budget and personnel and compels EMB to guide, and coordinate with, the DOTC, MMDA and LGUs.

- The new mandate to network, collaborate with, build alliances and work with other agencies and groups is not confined to the management of air quality. RA 9003 assigns the Director of the EMB the role of head of the National Ecology Center, a unit tasked with providing consulting, information, training and networking services on solid waster management. Thus, EMB is also expected to help build networks for toxic and solid waste management.

While developments in the last two decades augur well for the visibility and significance of EMB, its personnel distribution and budget vis-à-vis other bureaus within the DENR do not yet match the increase in work demands associated with more recent legislation. Among the mandate-related units, for instance, the earlier laws on the Environmental Impact Assessment System and the Air and Water Quality Management Sections have a much greater share of the personnel. In comparison to other units, the EMB has three times less personnel than other resource-development oriented bureaus like the Mines and Geosciences Bureau and the Lands Management Bureau. The budgets of these offices are also five to nine times bigger than the EMB.

Even if the Bureau sticks to its traditional environmental management approach, in which it monitors the compliance of industry and other pollution sources to the set standards for air and water quality, with violation of such standards resulting in a pollution adjudication process that would entail fines or closures, the new mandates would entail more inspection-monitoring activities covering air quality sampling stations in attainment and non-attainment areas, landfills and hazardous waste generators or treatment-storage-disposal facilities. These tasks would further overload the monitoring and adjudication system of the Bureau, which is already swamped with an increasing

number of docketed cases. If there are no changes in the existing resources, organization and regulatory structure of the EMB, the EMB might not be able to meet its expanded responsibilities.

Current Gaps in the Fulfillment of EMB Directives

A total of 239 directives are identified across all the five mandates, with the enforcement function having the most number of directives (87), followed by policy (73), education (36) and fund generation (29). Research has the least number of directives at 14.

The Report enumerates the directives for which the agency has not undertaken any significant activity. The inaction vis-à-vis a directive is referred to in the Report as an absolute gap. Out of a total of 239 directives, 50 directives have not yet been operationalized. While this constitutes only 21% of all directives, there is still much more to be done in terms of substantiating each one of them and linking various activities along the directives under an environmental framework. The unfulfilled directives are enumerated in the Tables in the full report.

The absolute gaps are due to the relative youth of EMB as an institution, the lack of guidelines and standard operating procedures, the lack of coordinative mechanisms within EMB and between the Bureau and other agencies and organizations, the absence of appropriate capabilities among some of the Bureau's personnel and its limited resources.

The Report discusses in detail the accomplishments of the EMB in implementing various mandate directives by function, the quality of its implementation efforts and the limitations and issues that have constrained its performance.

- The EMB has undertaken 419 activities that operationalize and carry out 189 directives. The lopsided distribution of the activities between the central and regional offices in favor of the former, particularly in the area of planning and preparation of educational materials for dissemination is partly the result of the absence of a direct link between the Environment and Education Division of the EMB CO and the information offices of the EMB RO. Resource persons say that the EMB RO Information officers are closer to the DENR RPAOs than to the EMB central office. The need to link these offices is necessary now that the EMB is a line bureau with mandated education directives.

- The EMB has participated in various multi-agency task forces, technical working groups, secretariats, commissions or committees where it interacts with other government agencies, private sector and civil society groups and academics. It is a member of 84 inter-agency committees or projects created by law to address particular environmental issues and concerns. In the various committees, the EMB serves either as a lead agency/secretariat or member. The involvement of the agency in these inter-agency committees may be viewed positively or negatively depending on whether one looks at the raison d'etre or leadership mission of the Bureau or its administrative overload in the face of structural and resource constraints.

- The Report assesses the performance of the EMB by function and identifies some of the salient issues.

  - In terms of enforcement, the issues include the unspecified universe of regulated establishments, the relatively small proportion of the regulated community under an inspection-monitoring system, and the need to prioritize the classification of principal rivers and tributaries and develop a program for their protection and management; delays in enforcement due to the uneven implementation of inspection, the involvement of regional enforcers in other tasks, the ambiguous guidelines on the permit to operate, the practice of unannounced visits and the resistance of firms to inspection and other regulatory processes; and problems in the adjudication process including the aversion on the part of the EMB to use fines and the absence of formal guidelines on the sanctions for a variety of non-compliance.

  - Regarding policy formulation and planning, the EMB has been hampered by outdated policies and guidelines; a limited capacity for policy analysis and formulation that falls primarily on ad hoc committees or external project consultants because EMB has no policy division; inconsistency in policy directions and lack of proactive policies; and inadequacy of approaches and structures to address gray areas in environmental management.

  - There have been interesting initiatives to improve the research capability of the EMB including partnership with the private sector. However, the Bureau's research activities are confined to enforcement requirements and not directed to policy questions. It is also constrained by among others, the lack of adequate laboratory facilities.

  - As to education, the development of the staff to handle the increasing demand for education-related work is highlighted in the report. While the EMB staff has a deep well of experiences, there is a need for more formal graduate training to keep them up to date with technical developments, and closer ties with local government enforcers and citizen groups.

  - As to fund generation and management, more fines and penalties could have been collected had more firms been frequently monitored. Moreover, the EMB does not benefit as much from the funds it generates because whatever is collected, accrues to the national treasury rather than to it. Other fund generation and management issues include the desirability of maintaining special funds; the need for uniform implementation of minimum legal requirements and enforcement of environmental standards across the country while mindful of the nuances underlying regional variations; and the absence of comprehensive and centralized records on the collection of fines.

  - Enlightened by models from other countries, the Report highlights the urgency to reorganize the EMB to enable it to meet its expanded and multiple functions.

Priority Actions and Directions

The proposed strategic objectives to address the absolute and relative gaps of the EMB are the following:

- move away from a structure organized along historically given laws with its traditional programmatic approach focusing on air and water pollution and move towards a more environmental management function-based organization. A comprehensive environmental framework is crucial to this move;

- enhance the agency's capacity to address the priority environmental problems of the country and establish an internal policy and research development process and capability;

- strengthen the Bureau's enforcement capacity by improving the process of inspection, monitoring, detection of violation and adjudication process, on one hand, and complementing these with market-based policy instruments, external linkages and peoples' participation and compliance promotion through education;

- institute an environmental user fee system for air, water and land discharges and establish an environmental fund for pollution abatement and environmental restoration and damage compensation;

- promote strategic alliances by encouraging the pluralization of the enforcement function and broad-based participation in environmental management; and

- link information and education to enforcement and promote compliance through greater awareness among the regulated sectors, groups, and communities

In order to realize the above strategic objectives, a number of priority actions along the functions of research, policy, enforcement, and fund generation have been identified for immediate implementation. (The last section of this executive summary provides a list of priority actions and issues to resolve.) It is through the process of implementing these priority actions that the bureau will grow in strength. Also, in order to effect a substantive transition of EMB to a more autonomous, stronger organization, a human resource development strategy is proposed, based on the present education-age profile of the staff and the gaps it must face to fulfill its mandate. The HRD strategy provides the various training topics and cost.

Report 2: Mainstreaming the Environmental User Fee (EUF)

Since 1995, the Philippine Government has considered several initiatives to encourage "the regulated community" to meet environmental standards without resorting to government sanctions (ADB, 2001). The Department of Environment and Natural Resources recognized the importance of a market-based approach that would decrease pollution from all sectors, improve ambient environmental quality, and protect valuable natural resources. As an initial step, the Laguna Lake Development Authority

implemented a system of environmental user fee based on the concept of pollution charges.

Over a seven-year period (1993-2000), Biological Oxygen Demand (BOD) discharges to the lake declined by 75 percent, indicating that the policy tools adopted by LLDA (fees, investment support from the fee revenues) had made a significant contribution to these reductions. Nationwide implementation of a similar system was then suggested prompting the Environmental Management Bureau to embark on a study and design of a framework for national implementation. The World Bank-funded SEECCTA Project follows up on these efforts by providing technical assistance to EMB in developing mechanisms to extend the environmental user fee concept to the national level.

The approval and signing of DENR-EMB National User's Fee of 2002 (DENR Administrative Order No. 16 Series of 2002) served as impetus to the other SEECCTA outputs. DAO 2002-16 is designed as an industrial and commercial wastewater discharge permitting system that amends the implementing rules and regulation of PD 984. The environmental user fee is comprised of a fixed and variable component related, respectively, to the volumetric rate of discharge and pollution loads. However, the amount of the variable fee component for a given establishment would be subject to a cap equal to ten times the amount of the fixed fee.

To support its actual implementation, among other reports, SEECCTA also came up with the National Environmental User Fee (NEUF) Procedural Manual and a proposed DAO on NEUF Implementing Rules and Regulations (IRR). These outputs were further refined as a result of a series of national and regional consultations and trainings which involved various sectors of the society.

Report 3: Strengthening the Public Disclosure Program

To deal with environmental issues brought about by developmental activities, different countries have adopted various environmental management strategies. Under conventional environmental regulatory system, the performance of a firm is categorized either as "*in compliance*" or "*not in compliance*". These compliance criteria are evaluated based on the prescriptions and requirements of environmental regulations. However, compliance does not automatically happen once regulations are issued. Achieving a significant degree of compliance requires a huge investment in efforts to encourage as well as compel the necessary behavioral changes in the regulated community to achieve compliance.

The Public Disclosure Program is intended to support the main thrust of DENR's enforcement strategy through compliance promotion. One key element, the rating system under the EcoWatch deviated from the dichotomous approach of a conventional regulatory system. Instead, environmental performances are assessed in terms of several categories. Also, the premise of EcoWatch is compliance promotion through the public disclosure of the environmental performances of firms composing the regulated community.

The Industrial EcoWatch System was officially adopted on 29 June 1998 through the issuance of DAO 98-51. Experiences from the original EcoWatch show extreme degrees of compliance with environmental regulations. On one hand, there are world-class firms that use clean technology, while on the other extreme, some firms go to extraordinary lengths to resist regulatory efforts to reduce pollution.

Performance Indicator	Color Code	Criteria
Efforts beyond legal requirements	GOLD	Pre-requisite: SILVER rating for 2 years; EMS in place; Commitment for waste reduction in all media; Community environmental outreach program in place; Products are eco-labelled
	SILVER	Pre-requisite: GREEN rating; Clean technology, energy and water conservation program in use
Effort level sufficient to comply	GREEN	Pre-requisite: BLUE rating; Effluents/emissions better than standards by 20%; Well-functioning flowmeter/measuring devices; Easily accessible discharge/emission point/s
	BLUE	Pollution level of effluent/emission is better than standards; Full compliance with ALL regulatory requirements; Average or well-maintained pollution control facility/system; Self-monitoring report complete and accurate
Effort not sufficient for compliance	RED	Failure to comply with effluent/emission standards despite presence of fully-operational pollution control devices
No effort to comply	BLACK	Failure to comply with effluent/emission standards; Inspectors were refused entry into the firm premises; Absence or lack of required pollution control device/s; Inaction to an existing and legitimate complaint; Misrepresentation or falsification of report/s

To support the findings of the Project, the following implementation instruments were developed:

- A Strengthened Self-Monitoring Report (SMR) System – consisting of a *new* format for SMR and its reference guide; a procedural guide on the submission, acceptance and evaluation of the SMR; and a draft DENR Administrative Order (DAO) to implement the strengthened SMR system.

- A Strengthened Industrial EcoWatch System – consisting of a procedural guide for the rating exercise; a draft DAO to implement the strengthened Industrial EcoWatch System; and an *Environmental Information Management System (EIMS)* to provide information system support.

Priority Actions and Issues[1]

Research Agenda (with policy and organizational implications)

General Concern

- Document baseline environmental quality conditions and changes.
- Determine the underlying factors and the immediate causes of the changes, and assess the impacts of such environmental quality changes on health, mortality risks, and public welfare.
- Determine the environmental impacts of development projects, draw the policy implications, and undertake related policy studies.

On Air

- Collect air monitoring, meteorological data and information on existing pollution sources in order to delineate and designate the air shed coverage, and the attainment and non-attainment areas, and to formulate guidelines and implementing mechanism.
- Review and compare emission standards with international standards, and appraise and draw the lessons from the environmental standards in other countries.
- Assess the impact of such standards on the regulated community.
- Obtain information on air pollution control technologies – their cost, energy requirement, emission reduction benefits or environmental impact.
- Establish an inventory of available pollution control technologies, including the LAER control technology that may be used in determining a pollution charge policy on the basis of abatement costs.
- Clarify the policy implication of emission offsets and quotas in the non-attainment areas:

  In the non-attainment areas, will the registration and use of new vehicles or industrial facilities entail the phase out of old vehicles and facilities?

- Inventory POP and PCBs and design a national program to reduce, if not eliminate POPs, dioxins, furans.

[1] Identified on the basis of strategic and critical importance to an enhanced EMB effectiveness; many existing activities in EMB are noted to be already along some of these themes.

On Land and Water

- Characterize the leachate in landfills, and determine the environmental impacts, for instance on aquifer in order to determine the basis for standards formulation.

- Inventory the waste disposal facilities and sites, and the cleaner production/ technologies for solid waste management.

- Survey recycling markets in order to establish a national recycling network.

Policy Agenda (with implications for enforcement)

General Concern

- Establish a venue for the restitution of environmental or health damages and compensation to livelihood or income losses due to pollution.

  If the PAB or the Technical Conference will be the venue, then the PAB Secretariat and regional enforcers, and RDD must be equipped with the skill, capability, and resources to conduct health risk assessment, studies on health damages, livelihood or income losses, resource and environmental valuation, restoration costs,

- Change the present legal-policy perspective on pollution as a change in environmental quality that diverges from a standard. This perspective assumes that there is neither damage nor need for compensation if quality is restored. With the restoration of environmental quality, the cost of health damages or livelihood losses prior to restoration can be disregarded.

- Establish the basis for determining priority facilities for inspection and formulate the guidelines to determine the number of inspections and the prioritization of facility inspection.

  Use health risk, threats to livelihood, the non-compliant sources, and those with toxic, hazardous and infectious wastes to determine facilities selection for regular monitoring and inspection.

- Prioritize on the basis of type of violation (e.g. the level of health risk) and the extent of non-compliance of the pollution source.

On Air

- Design a regular emission fee from industrial dischargers as part of emission permitting system.

- Prioritize the establishment of conditions for an emission charge system alongside the more difficult requirements to set-up an emissions trading system.

On Land and Water

- Determine the appropriate disposal method for hazardous, infectious (e.g. hospital) waste, specifically the use of incinerators.

- Clarify the overlapping functions of the MWSS, DOH, WD, and DENR-EMB with respect to sewage discharges on water or land. Who should monitor and process sewage discharge permits? Penalty for sewage, waste(water) discharges on land?

Organizational Development Thrust

- Establish an in-house research capacity and a policy division.

  Form work relations with external experts and research/ academic institutions.

  Establish a thesis-dissertation research internship program with university departments or colleges.

- Regionalize the PAB process, i.e. establish a regional PAB in Luzon, Visayas and Mindanao to de-clog the accumulating cases in the CO.

- Improve laboratory facilities that it can host a 'clean room'.

- Establish regional laboratory center.

- Establish the Air shed Governing Board, and assist LGUs in the preparation of action plans.

- Determine the feasibility of establishing a multi-sectoral commission as the oversight body for air quality management.

- Convene a multi-sectoral monitoring team for each LGU to conduct periodic inspections of pollution sources and assess compliance.

Enforcement Agenda

- Complete or prioritize the classification of principal rivers, particularly the "hotspots".

- Undertake regular monitoring of classified rivers and establish an operational database on ambient water quality.

- Implement a sustained program of prioritization of river protection and management; it may involve national government agencies managing water resources (NIA, NPC) in the management and protection of principal rivers. Identify and devolve to LGUs the management and protection of other smaller

rivers. Devolve to local communities the management and protection of tributaries.

- Obtain the support of LGUs and resolve jurisdictional conflicts.
- Undertake IEC activities for the LGUs, and raise the environmental consciousness of local lawyers and judges.
- Determine the actual size or universe of regulated community so as to increase the number of registered industrial establishments in EMB's database.
- Prepare inspection manual for particular types of industry in order to standardize data collection, assessment and inspection.

Recommended Enforcement Practices

- Involve or deputize local government enforcement agencies in the imposing fines or CDO on violating firms. Deputize the environmental unit of PEZA.
- Assess and improve the quality of the PCO's report.
- Impose disciplinary action on PCO for falsification or failure to submit report.
- Use the self-monitoring reports upon validation to inform the decision for inspection.
- Require the use of Air, Water Monitoring Manuals or media-specific checklists as guide for inspection. Provide training on the use of these manuals to ensure uniform implementation of protocol. Particular regional enforcers must specialize in inspection. Institute multi-media inspection.
- Extend permit life issued to low-risk firms.
- Use different graduated administrative responses to various forms and degree of noncompliance.
- Reduce reliance on the issuance of CDO, and improve the deterrence value of fines.
- Avoid long negotiations in the Technical Conference meetings. Refrain from the issuance of multiple temporary lifting orders (TLOs) that results in the prolongation of the compliance period.
- Make the adjudication process more transparent. Open the Technical Conference and PAB meetings to the public.
- Reduce the long period before the attainment of compliance.

- Avoid unnecessary delays. Involve the press in order to promote compliance.

- Facilitate the completion of remediation plans. Provide information, if not subsidies from the environmental fund for the acquisition of abatement technologies.

- Use the CDO as a tool of last resort.

- Establish formal guidelines on what enforcement to take from a variety of noncompliance.

Fund Generation Agenda

- Clarify the procedures or the requirements of PD 1586 for gaining access to the Special Fund in order to ensure compliance.

- Take the necessary steps to ensure that all expenses charged against the Fund are allowable within the limits of government budgeting, accounting and auditing rules.

- Improve the present system of recording receipts and incomes in the CO and ROs in order to obtain a comprehensive account of all fees fines and penalties.

- Formalize the draft guidelines for EMB-CO and ROs to use the RA 6969 Special Fund, as well as the guidelines for the use of the Air Quality Management Fund. Set the requirements for eligibility and criteria for fund availment.

- Reformulate the basis of payments to the Environmental Guarantee Fund to reflect potential risks, damages, or cost of remediation.

- Collect regular emission fees from industrial dischargers as part of emission permitting system.

CONCLUSION

The challenges facing a young undermanned organization like the EMB are daunting. However, the Bureau has among its staff and directors potential strategic managers who can map out creative short-, medium- and long-term strategies toward the revitalization and expansion of the Bureau as its transitions into a relatively autonomous line agency. Given the gravity of existing environmental problems, the Bureau cannot but move on and lead in negotiating a turn away from a degraded environment toward one that would enhance the quality of life of future generations of Filipinos.