

dated 30 June 2011 and Resolution² dated 18 April 2012 in CA-G.R. SP No. 107626.

The CA upheld the Order of the Department of Environment and Natural Resources—Pollution Adjudication Board (DENR-PAB) in DENR-PAB Case No. NCR-00760-06 to fine N. Dela Merced & Sons, Inc. (Dela Merced & Sons), for violation of Section 28 of Republic Act No. (R.A.) 9275 (*The Clean Water Act of 2004*). The appellate court, however, reduced the fine from ₱3.98 million to ₱2.63 million.

THE FACTS

The Guadalupe Commercial Complex is a commercial building owned and operated by Dela Merced & Sons.³ Situated alongside the Pasig River, the complex operates a wet market and houses eateries or kitchenettes in the same building.⁴

On 13 July 2006, the Environmental Management Bureau-National Capital Region (EMB-NCR) of the DENR inspected the Guadalupe Commercial Complex. The inspection team found that Dela Merced & Sons had violated the following: 1) Section 1 of DENR Administrative Order No. 2004-26 for operating air pollution source installations (generator set) without a permit to operate; and 2) Section 27(i) of R.A. 9275 for operating a facility that discharged regulated water pollutants without a discharge permit.

Thus, the EMB-NCR served a notice of violation (NOV)⁵ dated 28 August 2006 upon Dela Merced & Sons, stating the charges and ordering the latter to comply with the requirements.⁶ Dela Merced & Sons requested and was granted an extension of time to comply with the NOV requirements.⁷

On 11 October 2006, however, the EMB-NCR conducted another inspection of the Guadalupe Commercial Complex to monitor Dela Merced & Sons' compliance with R.A. 8749 (*The Clean Air Act of 1999*) and R.A. 9275, as well as their respective Implementing Rules and Regulations (IRRs). The inspection team collected effluent⁸ sample from the facility, and the results of the laboratory tests showed that the sample collected failed to conform to the DENR Effluent Standards.⁹

² Id. at 53-55

³ Id. at 8.

⁴ Id. at 42.

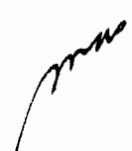
⁵ Id. at 106. NOV-608-203

⁶ Id. at 29-30.

⁷ Id. at 30-31.

⁸ R.A. 9275, Article 2, Sec. 4(m). Effluent means discharges from known source which is passed into a body of water or land, or wastewater flowing out of a manufacturing plant, industrial plant including domestic, commercial and recreational facilities.

⁹ *Rollo* (G.R. No. 201658), p. 31.



Consequently, on 6 February 2007, the DENR Secretary, upon the recommendation of the EMB-NCR, issued a cease and desist order (CDO) to Dela Merced & Sons for violation of R.A. 9275 and the IRR thereof.¹⁰ In the same Order, the company was informed that no temporary lifting order (TLO)¹¹ shall be issued in its favor, unless it would submit the documents required under the law.¹²

On 30 March 2007, the EMB-NCR went ahead to partially execute the CDO by sealing the kitchen sinks of the locators identified as sources of wastewater at the Guadalupe Commercial Complex. On the other hand, the wet market and the kitchenettes or *turo-turo* on the ground floor of the building were only given warnings.¹³

On 3 April 2007, Dela Merced & Sons filed a Motion for Reconsideration (MR) of the imposition of the CDO and submitted the required documents for the issuance of a TLO.¹⁴ The DENR-PAB issued the TLO on 3 July 2007.¹⁵

Meanwhile, on 9 August 2007, the EMB-DENR issued a Certificate of Non-Coverage (CNC) to Dela Merced & Sons pursuant to Presidential Decree (P.D.) No. 1586 (*Philippine Environmental Impact Statement System*).¹⁶

By 14 November 2007, another effluent sampling was conducted. Subsequently, the results were submitted to the EMB laboratory for analysis and verification. The findings showed that the effluent conformed to the DENR Effluent Standards.¹⁷ Thus, the DENR-PAB issued a Notice of Technical Conference to Dela Merced & Sons for a discussion of the imposition of fines during the period of violation of R.A. 9275.¹⁸

Attached to the notice was an initial computation of the fine in the total amount of ₱3.98 million. The notice also directed Dela Merced & Sons to submit its position paper regarding the fine.

¹⁰ Id. at 107-109.

¹¹ Definition of Terms, Rule II, Sec. 1(gg), Revised Rules of the Pollution Adjudication Board (PAB) 'On Pleading, Practice and Procedure in Pollution Cases, PAB Resolution No. 01, Series of 2010. "Temporary Lifting Order (TLO)" shall mean an order issued by the Board, after a satisfactory showing of the respondent's compliance with specified conditions, to provisionally set aside the effect of a Cease and Desist Order and allow the limited operation of a facility or business but only for a specific purpose or for a limited period.

¹² *Rollo* (G.R. No. 201658), pp. 31-32. These documents are: 1) a comprehensive pollution control program, including the plans and specifications of the firm's anti-pollution facility, budget and Gantt Chart of the activities relative thereto, 2) a surety bond equivalent to 25% of the total cost of the pollution control program, 3) a detailed description of the interim remedial measure to be instituted to mitigate pollution pending the completion of the pollution control program, 4) proof of employment of the newly appointed Pollution Control Officer (PCO) duly accredited by the DENR, and 5) a notarized undertaking by the President of the firm to comply with the conditions set in the Order.

¹³ Id. at 33.


¹⁴ Id. at 33 and 113-131.

¹⁵ Id. at 132.

¹⁶ Id. at 93.

¹⁷ Id. at 34.

¹⁸ Id. at 134.



The fine covered the alleged 398 days that Dela Merced & Sons had violated R.A. 9275. The rate was ₱10,000 per day of violation in accordance with Sec. 28 of the law. The period covered was from **12 October 2006**—when the collected effluent from the facility failed the DENR Effluent Standards—to **13 November 2007**, which marked the end of the period when, by the next day, the sampling gathered by the EMB-NCR had already passed the DENR Standards.¹⁹

In its Position Paper,²⁰ Dela Merced & Sons prayed that the fine be discarded for being imposed without due process of law. It argued that the fine was violative of Sections 1 and 19(1), Article III of the Constitution. It also contended that the period from the issuance of the TLO (3 July 2007) up to the date it had complied with the requirements (13 November 2007) should not be included in the computation.²¹

Following the recommendation of the PAB Committee on Fines, the DENR-PAB issued an Order²² dated 13 November 2008 imposing a fine of ₱3.98 million on Dela Merced & Sons. The latter moved for reconsideration, but its motion was denied in an Order dated 30 January 2009.²³

THE RULING OF THE COURT OF APPEALS

Aggrieved, Dela Merced & Sons filed with the CA a Petition for Review under Rule 43 of the Rules of Court, with a prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writs of Preliminary and Mandatory Injunction²⁴.

In its Resolution²⁵ dated 1 March 2010, the CA denied the prayer for the issuance of a TRO and/or Injunction when it found that Dela Merced & Sons had not been deprived of its constitutional right to due process. The CA also found that the company had failed to show any grave and irreparable damage or injury that would have been caused, had the DENR-PAB's Orders been executed.²⁶

As to the main petition, Dela Merced & Sons assailed the DENR-PAB Orders imposing the fine amounting to ₱3.98 million and denying the former's MR. Dela Merced & Sons claimed that it was exempt from the requirements of R.A. 9275 by virtue of the CNC.²⁷ It also argued that the imposition of the fine was unconstitutional for being excessive.²⁸

¹⁹ Id. at 34 and 135.

²⁰ Id. at 136-140.

²¹ Id. at 35.

²² Id. at 95-97.

²³ Id. at 98-100.

²⁴ Id. at 72-91

²⁵ Id. at 175-180, penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro.

²⁶ Id. at 177-178. Dela Merced & Sons filed a Motion for Reconsideration, which was denied (*see* Id. at 181-184 and 240-243.

²⁷ Id. at 85-86.

²⁸ Id. at 88-89.

On 30 June 2011, the CA rendered a Decision²⁹ affirming the assailed Orders of the DENR-PAB, except as to the imposable fine which was reduced to ₱2.63 million. According to the appellate court, the fine should be reduced in view of the EMB-NCR's unreasonable delay in complying with the order to conduct an effluent sampling of Dela Merced & Sons' Wastewater Treatment Facility.³⁰

Both parties filed their respective MRs which were both denied in a Resolution³¹ dated 18 April 2012. Hence, they both came to this Court with their respective petitions.

PETITION BEFORE THIS COURT

The DENR-PAB filed a Petition for Review on Certiorari with this Court on 5 June 2012, docketed as G.R. No. 201501. The petition is contesting the downgraded fine imposed by the CA on Dela Merced & Sons.³² In turn, the latter party filed its own Petition for Review on Certiorari on 8 June 2012, docketed as G.R. No. 201658. The petition is questioning the fine imposed upon it and is contesting the constitutionality of the provision on the imposition of the fine.³³ The two petitions have been consolidated.³⁴

ISSUES

The issues raised by both parties are summarized as follows:

1. Whether Dela Merced & Sons was denied due process.
2. Whether the issuance of a CNC means exemption from compliance with R.A. 9275.
3. Whether Sec. 28 of R.A. 9275 on the imposition of fines is unconstitutional under Section 19(1), Article III of the Constitution for being excessive.
4. Whether the amount of the fine imposed was correct, assuming that its imposition was proper.

OUR RULING

We deny Dela Merced & Sons' petition, but grant that of the DENR-PAB.

²⁹ Id. at 28-52.

³⁰ Id. at 51.

³¹ Id. at 53-55.

³² *Rollo* (G.R. No. 201501), pp.8-30.

³³ *Rollo* (G.R. No. 201658), pp. 8-27.

³⁴ Id. at 262-263.

***Dela Merced & Sons was Not Denied
Due Process***

Dela Merced & Sons argues that the fine was imposed without due process of law because the company was “never given an opportunity to present its evidence to dispute the alleged violation of the law.”³⁵ It also claims that the DENR-PAB simply entered the former’s premises and unilaterally conducted an inspection and thereafter assessed excessive fines without first conducting conferences or a trial.³⁶

We are not persuaded.

As for the inspection, the EMB-NCR was only performing its mandated duty under R.A. 9275³⁷ and the IRR³⁸ thereof when it inspected the premises of the Guadalupe Commercial Complex.³⁹ Clearly, the EMB had legal authority when it conducted the inspection.

The specific claims of denial of due process are belied by the records of the case. We quote with approval the findings of the CA on this matter:

[The opportunity to be heard] was made completely available to petitioner [Dela Merced & Sons] who **participated in all stages** of the administrative proceeding before the DENR-PAB. x x x, [T]he respondent [PAB] after issuing the **notice of violation and possible imposition of fines** to the petitioner, gave it time to comply with the requirements of the environmental laws. The petitioner even requested for **extension of time** to comply with the requirements which the respondent granted. But a **subsequent inspection** of the facility showed that the petitioner still failed to comply with the DENR effluent standards despite the extension given by respondent. Thus, the respondent was compelled to issue a **cease and desist order**.

³⁵ *Rollo*, (G.R. No. 201658), p. 20.

³⁶ *Id.*

³⁷ Section 14. *Discharge Permits*. — The Department shall require owners or operators of facilities that discharge regulated effluents pursuant to this Act to secure a permit to discharge. The discharge permit shall be the legal authorization granted by the Department to discharge wastewater: *Provided*, That the discharge permit shall specify among others, the quantity and quality of effluent that said facilities are allowed to discharge into a particular water body, compliance schedule and monitoring requirement.

x x x x

Section 23. *Requirement of Record-keeping, Authority for Entry to Premises and Access to Documents*. — x x x Pursuant to this Act, **the Department**, through its authorized representatives, shall have the right to: (a) enter any premises or to have access to documents and relevant materials as referred to in the herein preceding paragraph; (b) **inspect any pollution or waste source, control device, monitoring equipment or method required; and (c) test any discharge**. (Emphasis supplied)

³⁸ DENR Administrative Order 2005-10; 4.1 *Authorized inspection* — means inspection, whether announced or unannounced, conducted at any time by the multi-partite monitoring teams in relation to their function, or by a Department inspector where the inspector presents a valid Department inspector's identification duly signed by the Secretary, EMB Director or EMB Regional Director to enter and inspect a pollution source. **Inspections of effluents** discharged outside the facility may be conducted at any time. (Emphasis supplied)

³⁹ *Rollo* (G.R. No. 201658), p. 44.

x x x x

Upon full compliance of the petitioner with all the requirements, the respondent **issued a TLO** in its favor. x x x EMB-NCR conducted **another inspection** of the facility and found that the effluents x x x conformed to the DENR Effluent Standards. Thereafter, the respondent invited the petitioner to a **technical conference** wherein the latter was instructed to submit a position paper on the amount of fines to be imposed and **gave it a copy of the respondent's initial computation of fines**. The petitioner, in its **Position Paper**, pleaded that the computation be discarded x x x. After **due deliberation of petitioner's arguments**, the respondent DENR-PAB imposed x x x fines x x x. The petitioner **moved for its reconsideration** which was denied.⁴⁰ (Emphases supplied)

The above findings overwhelmingly show that Dela Merced & Sons was not denied due process. In a real sense, it was able to take advantage of the available opportunities to explain its side and to question the acts and orders of the DENR-PAB. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.⁴¹

It is wrong for Dela Merced & Sons to insist that a trial-type proceeding is necessary. Administrative due process cannot be fully equated with due process in its strict judicial sense. In the former, a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied.⁴² It is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as is the case here.⁴³

In any event, whatever procedural defect there may have been in the subject proceedings was cured when Dela Merced & Sons moved for reconsideration.⁴⁴

***No Exemption from Compliance with
Environmental Laws, Even if Issued
a CNC***

Dela Merced & Sons contends that it was exempt from complying with the environmental requirements of R.A. 9275 because it was issued a CNC.⁴⁵

⁴⁰ Id. at 46-48.


⁴¹ *PEZA v. Pearl City Manufacturing Corp.* 623 Phil. 191, 201 (2009).

⁴² *Disciplinary Board, Land Transportation Office v. Gutierrez*, G.R. No. 224395, 3 July 2017, citing *Vivo v. PAGCOR*, 723 Phil. 34 (2013).

⁴³ See *PEZA v. Pearl City Manufacturing Corp.* *supra*, at 204.

⁴⁴ See *SEC v. Universal Rightfield Property Holdings, Inc.*, 764 Phil. 267 (2015).

⁴⁵ *Rollo* (G.R. No. 201658) p.19.



This argument deserves scant consideration.

As explained in *Special People, Inc. Foundation v. Canda*,⁴⁶ the CNC is a certification issued by the EMB certifying that a project is not covered by the Environmental Impact Statement (EIS) System and that the project proponent is not required to secure an Environmental Compliance Certificate. The EIS System was established pursuant to P.D. No. 1151, which required all entities to submit an EIS for projects that would have a significant effect on the environment.⁴⁷

In 1981, Proclamation No. 2146 was issued, enumerating the areas and types of projects that are environmentally critical and within the scope of the EIS System. The areas and projects not included in the enumeration were considered non-critical to the environment and thus, were entitled to a CNC.⁴⁸

This Court notes that the Guadalupe Commercial Complex is not included in the list of environmentally critical projects or areas under Proclamation No. 2146. As an environmentally non-critical project, it is not covered by the EIS System and, consequently, a CNC was rightly issued in its favor.

Nevertheless, the CNC only exempts Dela Merced & Sons from securing an Environmental Compliance Certificate. It does not exempt it from complying with other environmental laws. Section 5 of P.D. 1586 is clear on this matter:

Section 5. *Environmentally Non-Critical Projects*. — All other projects, undertakings and areas not declared by the President as environmentally critical shall be considered as **non-critical** and shall **not be required to submit an environmental impact statement**. The National Environmental Protection Council, thru the Ministry of Human Settlements **may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary**. (Emphases supplied)

Based on the law, environmentally non-critical projects such as the Guadalupe Commercial Complex are still expected to provide additional environmental safeguards as deemed necessary. Hence, Dela Merced & Sons is still bound to abide by environmental laws such as the *Clean Water Act*, even if it possesses a CNC. As held in *Leynes v. People*,⁴⁹ an entity is not exempted from compliance with applicable environmental laws, rules, and regulations despite the issuance of a CNC in its name.

⁴⁶ 701 Phil. 365 (2013).

⁴⁷ Id. at 380-383.

⁴⁸ Id.

⁴⁹ G.R. No. 224804, 21 September 2016.

The Constitutionality of Section 28 of R.A. 9275 Was Not Properly Questioned

Another main contention of Dela Merced & Sons is that Section 28⁵⁰ of R.A. 9275 violates Section 19 (1), Article III of the Constitution, because the former section provides for the imposition of excessive fines.

We note at the outset that Dela Merced & Sons' attempt to assail the constitutionality of Sec. 28 of R.A. 9275 constitutes a collateral attack. This is contrary to the rule that issues of constitutionality must be pleaded directly.⁵¹ Unless a law is annulled in a direct proceeding, the legal presumption of the law's validity remains.⁵²

Nevertheless, even if the issue of constitutionality was properly presented, Dela Merced & Sons still failed to satisfy the fourth requisite for this Court to undertake a judicial review.⁵³ Specifically, the issue of constitutionality of Sec. 28 of R.A. 9275 is not the *lis mota* of this case.

The *lis mota* requirement means that the petitioner who questions the constitutionality of a law must show that the case cannot be resolved unless the disposition of the constitutional question is unavoidable.⁵⁴ Consequently, if there is some other ground (*i.e.* a statute or law) upon which the court may rest its judgment, that course should be adopted and the question of constitutionality avoided.⁵⁵

In this case, Dela Merced & Sons failed to show that the case cannot be legally resolved unless the constitutional issue it has raised is resolved. Hence, the presumption of constitutionality of Sec. 28 of R.A. 9275 stands.

The Fine Imposed Is Not Excessive Under the Constitution

Even if We were to rule on the constitutionality of Sec. 28 of R.A. 9275 despite the procedural lapses, Dela Merced & Sons' petition would still be denied.

⁵⁰ Section 28. *Fines, Damages and Penalties*. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, **shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (₱10,000.00) nor more than Two hundred thousand pesos (₱200,000.00) for every day of violation.** x x x x (Emphasis supplied)

⁵¹ *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132 (2013).

⁵² *Id.*

⁵³ *Saguisag v. Ochoa*, G.R. Nos. 212426 & 212444, 12 January 2016, 779 SCRA 241. The requisites are: (a) there is an actual case or controversy; (b) the petitioner possesses *locus standi*; (c) the question of constitutionality is raised at the earliest opportunity; and (d) the issue of constitutionality is the *lis mota* of the case.

⁵⁴ *Kalipunan ng Damayang Mahihirap, Inc., v. Robredo*, 739 Phil. 283.

⁵⁵ *Id.* See also *Garcia v. Executive Secretary*, 602 Phil. 64 (2009).

At the outset, Dela Merced & Sons' invocation of Article III, Section 19(1) of the Constitution is erroneous. The constitutional prohibition on the imposition of excessive fines applies only to criminal prosecutions.⁵⁶ In contrast, this case involves an administrative proceeding and, contrary to the supposition of Dela Merced & Sons,⁵⁷ the fine imposed is not a criminal penalty. Hence, the proscription under Article III, Section 19 is inapplicable to this case.

Besides, even if the Bill of Rights were applicable, the fines under R.A. 9275 still cannot be classified as excessive.

For a penalty to be considered obnoxious to the Constitution, it needs to be more than merely being harsh, excessive, out of proportion, or severe.⁵⁸ To come under the prohibition, the penalty must be flagrantly and plainly oppressive⁵⁹ or so disproportionate to the offense committed as to shock the moral sense of all reasonable persons as to what is right and proper under the circumstances.⁶⁰ Dela Merced & Sons failed to satisfy these jurisprudential standards.

In questioning the constitutionality of the fine, Dela Merced & Sons merely alleges that the amount is "exorbitant,"⁶¹ "arbitrary, unconscionable,"⁶² and "too excessive as to cause grave impact on the business operations, nay [the] very survival of petitioner as a business entity [and] its employees as a whole."⁶³ These unsubstantiated allegations are not enough to strike down the fine as unconstitutional for being excessive.

Moreover, Sec. 28 of R.A. 9275 cannot be declared unconstitutional simply because the fine imposed may cause grave impact on Dela Merced & Sons' business operations. Indeed, the possibility that a law may work hardship does not render it unconstitutional.⁶⁴

Also, it should be noted that the basis for the amount of fine imposed by the PAB and the CA (i.e. ₱10,000 per day of violation) is the minimum imposable amount under the law. Since penalties are prescribed by statute, their formulation is essentially and exclusively legislative. Having no authority to modify the penalties already prescribed, the courts can only interpret and apply them.⁶⁵ As held in *U.S. v. Borromeo*, "[t]he fixing of penalties for the violation of statutes is primarily a legislative function, and

⁵⁶ *Serrano v. NLRC*, 387 Phil. 345 (2000).

⁵⁷ *Rollo* (G.R. No. 201658), p.20.

⁵⁸ *People v. Dionisio*, 131 Phil. 408, 411(1968).

⁵⁹ *Id.*

⁶⁰ *People v. De la Cruz*, 92 Phil. 906, 908 (1953).

⁶¹ *Rollo* (G.R. No. 201658), p.21.

⁶² *Id.* at 24.

⁶³ *Id.* at 20.

⁶⁴ *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974).

⁶⁵ *People v. Muñoz*, G.R. Nos. L-38969-70, 9 February 1989.

the courts hesitate to interfere, unless the fine provided for is so far excessive as to shock the sense of mankind.”⁶⁶

During the deliberations on Senate Bill No. 2115 (which was the origin of R.A. 9275), one of the senators made the following statement:

The lack of usable, clean water resources is a problem that confronts us today. This is the reason, Mr. President, this committee thought of submitting this measure as our humble contribution in finding alternative solutions. x x x

x x x x

This bill is not lacking in incentives and rewards and **it has muscle to penalize acts that further pollute all our water sources as well. We increased the fines so that with strict implementation, we can curb the damage we continue to inflict, ironically, to our life source.** x x x

x x x x

[T]he quality of the nation’s water resources is of great interest because it is so integrally linked to a long-term availability of water that is clean and safe for drinking, recreation and that is suitable for industry, irrigation and habitat for fish and wildlife.⁶⁷(Emphasis supplied)

Clearly, the legislature saw the need to protect and conserve our water resources. To this end, it formulated rules with concomitant penalties to ensure compliance with the law. We will not interfere with its wisdom in drafting the law, especially since the presumption of its constitutionality has not been overturned.

The Fine imposed by the DENR-PAB was Erroneously Reduced by the CA

The DENR-PAB contests the reduction by the CA of the amount of fine the former could impose on Dela Merced & Sons, an issue that involves a question of fact. Since there is a conflict between the finding of the CA and that of PAB,⁶⁸ we are constrained to delve into this factual issue.

At the rate of ₱10,000 per day of violation,⁶⁹ the fine was computed by the PAB in the amount of ₱3.98 million, which covered the period of **12 October 2006** (when the collected effluent from the facility failed the

⁶⁶ 23 Phil. 279, 289 (1912), citing *McMahon v. State*, 70 Neb., 722.

⁶⁷ 1 RECORD, SENATE 12TH CONGRESS 2ND REGULAR SESSION 117 (5 August 2002).

⁶⁸ See *Co v. Vargas*, 676 Phil. 463 (2011) citing *Development Bank of the Philippines vs. Traders Royal Bank*, 642 Phil. 547, 556-557 (2010).

⁶⁹ Section 28 of RA 9275 provides: *Fines, Damages and Penalties*. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, **shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (₱10,000.00) nor more than Two hundred thousand pesos (₱200,000.00) for every day of violation.** xxx (Emphasis supplied)

DENR standards) to **13 November 2007** (the day before the effluent sampling was gathered, which eventually passed the DENR standards)—a total of **398 days**.

On the other hand, the CA reduced the fine to ₱2.63 million, because the period of violation it considered covered only **263 days**—from **12 October 2006** to **3 July 2007** (the date of issuance of the TLO). The CA reduced the fine in view of EMB-NCR's "unreasonable delay" in complying with the order in the TLO to conduct the effluent sampling of the company's Wastewater Treatment Facility.⁷⁰

The PAB pointed out that the effluent samples were collected on 14 November 2007, which was still within the 150-day time frame⁷¹ prescribed in the TLO.⁷² It claimed that the period of effectivity of the TLO was based on the Construction Timetable of the Water Treatment Facility attached to Dela Merced & Sons' MR filed with the PAB. The timetable provided a period of 150 to 180 days before completion.⁷³

Furthermore, it was only through a letter dated **26 November 2007** that PAB was informed by Dela Merced & Sons that the latter's Permanent Wastewater Treatment Facility had been completed on 9 November 2007 and a trial run conducted on 12 November 2007.⁷⁴

Based on the foregoing, it was improper for the CA to indicate the date of issuance of the TLO as the end of the period of violation. As pointed out by the PAB, Dela Merced & Sons merely submitted documentary evidence to convince the former of the company's sincere intention to comply with the DENR standards. Hence, the grant of the request for the issuance of a TLO cannot be equated with compliance or proof that the company's effluent has already passed the standards.⁷⁵

Any delay in conducting the influent and effluent sampling of the Water Treatment Facility cannot be characterized as unreasonable, especially since the period of sampling was well within the 150-day period provided in the TLO. Consequently, the amount of fine imposed by DENR-PAB must be upheld.

⁷⁰ *Rollo* (G.R. No. 201658), pp. 50-51.

⁷¹ See *Rollo* (G.R. No. 201501), p. 154. The TLO states: WHEREFORE, in view of the foregoing, [PAB] hereby resolves to issue in favor of [Dela Merced & Sons] a **Temporary Lifting Order for a period of one hundred fifty (150) days** which shall be reckoned from receipt hereof. **Within the TLO period, the Regional office is hereby instructed to conduct influent and effluent sampling** of [Dela Merced & Son]'s Wastewater Treatment Facility (WTF) and to transmit to [PAB] the results of laboratory analysis of samples collected within fifteen (15) days from the termination of the sampling activity.

⁷² *Id.* at 25.

⁷³ *Id.* at 151.

⁷⁴ *Id.* at 155.

⁷⁵ *Id.* at 26-27.

A Final Note

The importance of water resources for our existence cannot be overstated. These resources are vital not only for our individual well-being, but also for the survival of society as a whole. Yet, we have continued to abuse them, as if they were inexhaustible.

Pollution has been a perennial problem affecting our water resources. In his sponsorship speech for the Clean Water Bill, one senator cited the Pasig River to illustrate this point. He said, “[i]f we were to present a body of water that typifies the chronic water pollution problem in the country, nothing leads us closer than the notoriously polluted Pasig River. x x x Pasig River is considered biologically dead x x x. [It] is just one of the bodies of water that has been severely prostituted.”⁷⁶ This is the same river to which the Guadalupe Commercial Complex has discharged its wastewater.⁷⁷

Our legislators saw the need for a concerted effort of the government and society to abate, control, and prevent the pollution of our country’s water resources.⁷⁸ Hence, the *Clean Water Act* was enacted in the hope that “this vital measure will offer the future generation an abundant supply of potable water, clean rivers to swim [in], and a better access to safe water for their daily use.”⁷⁹

All of us benefit from clean water, and we are all responsible for its preservation. Dela Merced & Sons is no exception. Thus, we should all do our part in the protection and conservation of our water resources. As the authors of the Clean Water Act have reminded us, we must use our water wisely, for it is the selfsame prosperity we ought to hand down to our children.⁸⁰

WHEREFORE, premises considered, the Petition in **G.R. No. 201501** is **GRANTED**, while that in **G.R. No. 201658** is **DENIED**. The Ruling of the Court of Appeals in CA-G.R. SP. No. 107626 dated 30 June 2011 and its Resolution on 18 April 2012, are hereby **AFFIRMED WITH MODIFICATION** as to the amount of fine imposed.

Following the DENR-PAB’s Order dated 13 November 2008 in DENR-PAB Case No. NCR-00760-06, N. Dela Merced and Sons, Inc. is hereby **ORDERED** to pay a fine in the amount of **₱3,980,000 (three million nine hundred eighty thousand pesos)**.

⁷⁶ I RECORD, SENATE 12TH CONGRESS 2ND REGULAR SESSION 119 (5 August 2002).

⁷⁷ *Rollo* (G.R. No. 201658), p. 42.

⁷⁸ I RECORD, SENATE 12TH CONGRESS 2ND REGULAR SESSION 119 (5 August 2002).

⁷⁹ *Id.*

⁸⁰ I RECORD, SENATE 12TH CONGRESS 2ND REGULAR SESSION 118 (5 August 2002).

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice

Serrita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice