

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

**MARIA TERESA S. BONDOC, WILFREDO
DG. DE OCAMPO, CONRADO C.
LUMABAS, JR., MELISSA A. PADILLA,
MACARIA D. LUMABAS, LUCILA S.
SAYAO, MERCY DOLORITO, ARNEL R.
WICO, EDWIN T. RAMOS, JOSEPH RYAN
C. RAYMUNDO, RODOLFO JOSE C.
LAPUS, VICTORIA M. CORREA,
ADELINA C. BALTAZAR, MILAGROS S.
SUAN, VIRGILIO C. DIMANLIG and
ANTONIO P. ROXAS**, collectively referred
to as the **CONCERNED CITIZENS OF
OBANDO**,

Petitioners,

- versus -

HON. RAMON J.P. PAJE in his capacity as
Secretary of the **DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES, LORMELYN E. CLAUDIO**,
in her capacity as the Regional Director of
**ENVIRONMENTAL MANAGEMENT
BUREAU-REGION III, HON. WILHELMINO
M. SY-ALVARADO**, in his capacity as
Governor of the **PROVINCE OF
BULACAN**, the **SANGGUNIANG
PANLALAWIGAN OF BULACAN; HON.
ORENCIO E. GABRIEL** in his capacity as
Mayor of the **MUNICIPALITY OF
OBANDO, BULACAN**, the
**SANGGUNIANG BAYAN OF OBANDO,
BULACAN; SANGGUNIANG BARANGAY
OF SALAMBAO, OBANDO, BULACAN;**
and **ECOSHIELD DEVELOPMENT
CORPORATION**,

Respondents.

x ----- x

G.R. No. 198890

PETITION FOR THE WRIT OF KALIKASAN

(With a Prayer for the Issuance of a
Temporary Environmental Protection Order)

Petitioners, by counsel and invoking their God-given and constitutional right to a balanced and healthful ecology, respectfully state:

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.¹

¹ MMDA, et al. vs. Concerned Residents of Manila Bay, G.R. Nos. 171947-48, Dec. 18, 2008.

Nature of and Urgency of the Petition

1. This is a petition for the issuance of the Writ of Kalikasan with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) under the Rules of Procedure for Environmental Cases, urgently seeking to enjoin the establishment of a so-called sanitary landfill along the coastline of Manila Bay in Bgy. Salambao, Obando, Bulacan.

2. The constitutional right of petitioners and that of present and future generations to a balanced and healthful ecology is threatened, and is actually being violated, by the unlawful acts and omissions of respondents done in reckless haste, without regard to due process or concern for the environment, and in utter disrespect to the order of this High Court. The proposed landfill, as will be more extensively discussed, will destroy a thriving mangrove ecosystem, cause persistent water, air and soil pollution to its immediate environs, aggravate the condition of Manila Bay, destroy the livelihoods of coastal residents, and worsen the current flood problem of Obando, Bulacan and its adjacent towns.

3. Petitioners seek recourse to this extraordinary remedy to stop this looming environmental catastrophe of such magnitude, it will not just affect Obando, Bulacan, but all the surrounding provinces, cities and municipalities that comprise Manila Bay. The proposed project, stripped of its bells and whistles, involves the large-scale dumping of unprocessed garbage into the coastal waters of Obando along Manila Bay, in blatant violation of the continuing mandamus issued by this Court.

4. To date, extraordinary lengths have been taken by public respondents to accommodate and grant all requisite permits needed for the proposed landfill, paving the way for its immediate operation. As it is, a large swath of the mangrove area that has been around for decades has been destroyed, with the DENR relying on its vaunted inefficiency to excuse itself from identifying the culprits.

5. Worse, on 20 October 2011, heavy equipment and implements such as cranes and pipes were moved in place to execute the project. Unless otherwise enjoined, the construction phase alone of the landfill will bring irreversible damage to the waters of Manila Bay to the detriment of countless residents living in nearby cities and provinces.

The Parties

6. Petitioners **MARIA TERESA S. BONDOC, WILFREDO DG. DE OCAMPO, CONRADO C. LUMABAS, JR., MELISSA A. PADILLA, MACARIA D. LUMABAS, LUCILA S. SAYAO, MERCY DOLORITO, ARNEL R. WICO, EDWIN T. RAMOS, JOSEPH RYAN C. RAYMUNDO, RODOLFO JOSE C. LAPUS, VICTORIA M. CORREA, ADELINA C. BALTAZAR, MILAGROS S. SUAN, VIRGILIO C. DIMANLIG** and **ANTONIO P. ROXAS** are all Filipinos, of legal age and residents of Obando, Bulacan. They are collectively referred to as the **CONCERNED CITIZENS OF OBANDO** (hereinafter, "**CCO**"), an informal aggrupation of residents of Obando, Bulacan suing in representation of others, including minors and generations yet unborn, to uphold and protect the constitutional right to a balanced and healthful ecology. They may be served with court processes at the office address of the undersigned counsel.

7. Public respondent **RAMON J.P. PAJE** is of legal age, Filipino and with office address at the DENR Compound, Visayas Avenue, Quezon City, where he may be served with summons and other court processes. He is being sued in his official capacity as Secretary of the **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)**, the primary agency responsible for the enforcement and strict compliance with the Solid Waste Management Act (Republic Act No. 9003)² and the

² An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds therefor, and for Other Purposes [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003, § 8(g) (2000).

Philippine EIS System (Presidential Decree No. 1586).³ The implementation of the latter is through the **ENVIRONMENTAL MANAGEMENT BUREAU (EMB)**, an attached bureau of the DENR.⁴

7.1 The **OFFICE OF THE SOLICITOR-GENERAL (OSG)** is furnished a copy of this petition as the representative of the national government in proceedings before this Honorable Court.

8. Public respondent **LORMELYN E. CLAUDIO** is of legal age, Filipino and with office address at 4th Floor Melvi Building, San Fernando, Pampanga, where she may be served with summons and other court processes. She is being sued in her official capacity as the Regional Director of EMB-Region III, which approved the Environmental Compliance Certificate (ECC) for the construction of the landfill in Obando, contrary to law.

9. Public respondent **WILHELMINO M. SY-ALVARADO** (hereinafter, "**Gov. Sy-Alvarado**"), is of legal age, Filipino and with office address at the Governor's Residence, Provincial Capitol, Malolos City, Bulacan 3000, where he may be served with summons and other court processes. He is being sued in his official capacity as Governor of the Province of Bulacan for signing and approving Kapasiyahan Blg. 176 (2011), contrary to law.

10. Public respondent **SANGGUNIANG PANLALAWIGAN OF BULACAN** (hereinafter, "**SP-Bulacan**") is the local legislative body of the Province of Bulacan with powers and functions provided under the Local Government Code of 1991 (R.A. 7160). It is being impleaded for issuing Kapasiyahan Blg. 176-T'11 (2011), which approved Kapasiyahan Blg. 07-08 (2011), contrary to law. It may be served with summons and other court processes at the Provincial Capitol Building, Malolos City, Bulacan 3000.

11. Public respondent **ORENCIO E. GABRIEL** (hereinafter, "**Mayor Gabriel**") is of legal age, Filipino and with office address at Office of the Mayor, Obando, Bulacan 3021, where he may be served with summons and other court processes. He is being sued in his official capacity as the Mayor of the Municipality of Obando, Bulacan and is being impleaded for approving Resolution No. 07-121 (2011) & Municipal Ordinance No. 07-08 (2011), contrary to law. He is also the duly authorized signatory of the Municipality of Obando to the agreement for the establishment of the disputed landfill.

12. Public respondent **SANGGUNIANG BAYAN OF OBANDO** (hereinafter "**SB-Obando**") is the local legislative body of the Municipality of Obando, Bulacan with powers and functions provided under the Local Government Code. It is being impleaded for issuing Kapasiyahan Blg. 07-102 (2011), 07-105 (2011) and Resolution No. 07-121 (2011), which approved the building and operation of a landfill and the reclassification of the agricultural lands subject of the project into industrial/commercial lands, contrary to law. It may be served with summons and other court processes at the Office of the Sangguniang Bayan, Obando, Bulacan 3021.

13. Public respondent **SANGGUNIANG BARANGAY OF SALAMBEO** (hereinafter "**SBgy-Salambao**") is the local legislative body of Barangay Salambao, Obando, Bulacan with powers and functions provided under the Local Government Code. It is being impleaded for issuing Kapasiyahan Blg. 03 (2010) which expressed the lack of any objection on the part of the barangay to the ECC application for the sanitary landfill, notwithstanding the lack of consultations, contrary to law. It may be served with summons and other court processes at the Barangay Hall, Bgy. Salambao, Obando, Bulacan.

³ Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree 1586 (1978).

⁴ The regulatory functions under the EIS system were subsequently transferred by virtue of Executive Order No. 192 (1987) to the EMB, an attached bureau of the DENR. It became a line agency for a period of two years by virtue of the Clean Air Act (R.A. 8749).

14. Private respondent **ECOSHIELD DEVELOPMENT CORPORATION** (hereinafter, "**EDC**") is a corporation duly organized and existing under Philippine laws with office address at Dominga Building 2113, Chino Roces Ave. corner Dela Rosa St., Makati City, where it may be served summons, notices, orders and other processes. It is the proponent of the disputed landfill project.

Factual Antecedents

15. On 30 November 2010, private respondent EDC wrote a letter to Mayor Gabriel requesting approval for its plan to "establish and operate a sanitary landfill over a 44-hectare land in Brgy. Salambao, Obando, Bulacan" (hereinafter, "**proposed landfill**"). Per its Project Description:

Eco Shield (*sic*) Development Corporation is planning to construct such facility in Obando, Bulacan. The proposed project involves the construction of a domestic landfill (*sic*) existing fish ponds located (*sic*) Obando, Province of Bulacan in order to continue to meet the solid waste disposal needs of Metro Manila and nearby provinces.⁵

15.1 A copy of said **letter** dated 30 November 2011 with the above-stated Project Description is attached herewith and made an integral part hereof as **Annex "A"**.

16. Thereafter, sometime in December 2010, EDC submitted its Initial Environmental Examination (IEE) Report to EMB-Region III. According to this report—

"The components of the proposed Project are includes (*sic*):

- Leachate Treatment Plant
- Storm Water Detention Pond
- Wetland Treatment Area
- Materials Recovery Facility
- Soil Stockpile Area:
- Waste Cells
- Barge Docking Area⁶

16.1 A copy of the **IEE Report** dated December 2010 is attached herewith and made an integral part hereof as **Annex "B"**.

17. For its part, the SBgy-Salambao issued Kapasiyahan Blg. 03 (2010), sans notice or consultation, stating that the barangay does not pose any objection to EDC's application for an ECC with the DENR.

17.1 A copy of **Kapasiyahan Blg. 03** dated 22 December 2010 is attached herewith and made an integral part hereof as **Annex "C"**.

18. On 22 December 2010, notwithstanding the nature of the project, public respondent Claudio of EMB-Region III issued the assailed ECC No. RO3-1012-0592 in favor of EDC as a non-environmentally critical project.

18.1 A copy of **ECC No. RO3-1012-0592** dated 22 December 2010 is attached herewith and made an integral part hereof as **Annex "D"**.

19. Back in the local front, on 24 January 2011, SB-Obando issued Kapasiyahan Blg. 07-102 (2011) which allowed Private Respondent EDC to build and operate a sanitary landfill in Barangay Salambao.

⁵ Annex A, last paragraph, Introduction (*Underscoring supplied*).

⁶ Annex B, p. 4.

19.1 A copy of **Kapasiyahan Blg. 07-102** dated 24 January 2011 is attached herewith and made an integral part hereof as **Annex "E"**.

20. On 07 February 2011, SB-Obando further issued Kapasiyahan Blg. 07-105 (2011) allowing EDC to process the reclassification of the project site from agricultural to commercial/industrial lands.

20.1 A copy of **Kapasiyahan Blg. 07-105** dated 07 February 2011 is attached herewith and made an integral part hereof as **Annex "F"**.

21. This was immediately followed by Resolution No. 07-121 (2011) issued by SB-Obando which approved Ordinance No. 07-08 (2011) reclassifying EDC's lands from agricultural to commercial/industrial.

21.1 A copy of **Resolution No. 07-121** dated 28 February 2011 is attached herewith and made an integral part hereof as **Annex "G"**.

22. On 08 March 2011, both Resolution No. 07-121 (2011) and Ordinance No. 07-08 (2011) were approved and signed by Mayor Gabriel.

23. At this point, knowledge about the proposed landfill was limited to a small circle comprised of respondents and their associates. It was only by sheer chance that petitioners became aware of its existence and the above developments. Petitioners then sought to gain more information about the project and obtain pertinent documents. Upon learning the magnitude of its potential impacts, petitioners formalized its opposition and wrote the SP-Bulacan to review the wisdom and propriety of the actions of SB-Obando. They also appealed to Gov. Sy-Alvarado to stop the implementation of the proposed landfill.

23.1 A copy of CCO's **letter** to SP-Bulacan dated 03 May 2011 is attached herewith and made an integral part hereof as **Annex "H"**.

23.2 A copy of CCO's **letter** to Gov. Sy-Alvarado dated 11 May 2011 is attached herewith and made an integral part hereof as **Annex "I"**.

24. Despite these protestations, the SP-Bulacan issued Kapasiyahan Blg. 176-T'11 (2011) which ratified SB-Obando's Kapasiyahan Blg. 07-08 (2011) reclassifying EDC's lands from agricultural to commercial/industrial.

24.1 A copy of **Kapasiyahan Blg. 176-T'11** dated 08 June 2011 is attached herewith and made an integral part hereof as **Annex "J"**.

25. Meantime, on 21 June 2011, upon invitation, petitioners met with the provincial officials of Bulacan including public respondents Gov. Sy-Alvarado and other members of SP-Bulacan to thresh out the legal, social and environmental infirmities of the proposed landfill. Petitioners reiterated their grounds for opposing the project in another round of correspondences.

25.1 A copy of CCO's **letter** to Gov. Sy-Alvarado dated 21 June 2011 is attached herewith and made an integral part hereof as **Annex "K"**.

25.2 A copy of CCO's **letter** to the SP-Bulacan dated 05 July 2011 is attached herewith and made an integral part hereof as **Annex "L"**.

25.3 A copy of CCO's **letter** to the SP-Bulacan dated 29 July 2011 is attached herewith and made an integral part hereof as **Annex "M"**.

26. Apparently, all these fell on deaf ears as petitioners learned later on that a day after the meeting with petitioners, on 22 June 2011, Gov. Sy-Alvarado signed Kapasiyahan Blg. 176-T'11 approving SB-Obando's Ordinance No. 07-08.

27. Meantime, on 23 August 2011, petitioners were invited for a dialogue by the EMB at its Central Office. The EMB was represented by the National Solid Waste Management Commission's (NSWMC) chair, Ms. Emelita C. Aguinaldo, to discuss the problems with the proposed landfill including the reported cutting of mangroves in the area. To formalize their objections aired during that meeting, petitioners submitted a letter to the EMB.

27.1 A copy of CCO's **letter** to the EMB dated 05 September 2011 is attached herewith and made an integral part hereof as **Annex "N"**.

28. Due to the lack of any action or update taken on after said meeting and its letter, petitioner CCO submitted a follow-up correspondence.

28.1 A copy of CCO's **letter** to the EMB dated 20 September 2011 is attached herewith and made an integral part hereof as **Annex "O"**.

29. On 05 October 2011, petitioners were once more invited for a meeting at the DENR Central Office, this time, with Undersecretary Demetrio Ignacio and EMB Asst. Secretary Gilbert Gonzales, along with public respondent Regional Director Claudio. Petitioners were informed that the EMB Central Office was undertaking a review of the ECC issued by its Region III office, especially in the aftermath of the devastating storm surges in Manila Bay wrought by Typhoon *Pedring*.

30. Unbeknownst to petitioners, while residents of Obando and many parts of Central Luzon were still stranded over rooftops or cramming in evacuation centers, the SB-Obando was convening to pass a resolution authorizing Mayor Gabriel to sign on behalf of the municipality the agreement with EDC for the proposed landfill's operation.

30.1 A copy of **Kapasiyahan Blg. 07-279** dated 03 October 2011 is attached herewith and made an integral part hereof as **Annex "P"**.

31. True enough, on 17 October 2011, Mayor Gabriel signed the Memorandum of Agreement (MOA) between the Municipality of Obando and EDC for the project's full implementation.

31.1 A copy of the **MOA** dated ___ October 2011 is attached herewith and made an integral part hereof as **Annex "Q"**.

32. Finally, on 20 October 2011, private respondent EDC introduced heavy equipment and implements into the area.

32.1 A copy of the **pictures** taken on 24 October 2011 is attached herewith and made an integral part hereof as **Annex "R"**.

32.2 A copy of the **Sinumpaang-Salaysay** of Mercy Dolorito dated 23 October 2011 is attached herewith and made an integral part hereof as **Annex "S"**.

Arguments

- A. THE PROPOSED LANDFILL IS AN ENVIRONMENTALLY CRITICAL PROJECT (ECP) IN AN ENVIRONMENTALLY CRITICAL AREA (ECA) AND REQUIRES THE CONDUCT OF A FULL-BLOWN EIA, NOT THE SUBMISSION OF A MERE IEE.

- B. THE SUBMITTED IEE WAS PURPOSELY DEFICIENT AND THE POST-ECC CONDITIONS REQUIRED BY EMB COULD NOT CURE ITS SUBSTANTIVE AND PROCEDURAL DEFECTS.
- C. THE AREA IDENTIFIED FOR THE PROPOSED DUMPSITE IS ILL-SUITED FOR THE PURPOSE ON LEGAL, ENVIRONMENTAL AND SOCIO-CULTURAL GROUNDS.
- D. THE PROPOSED LANDFILL WILL VIOLATE A NUMBER OF ENVIRONMENTAL LAWS INCLUDING THIS COURT'S CONTINUING MANDAMUS IN MMDA, ET AL. V. CONCERNED RESIDENTS OF MANILA BAY.
- E. THE RECLASSIFICATION OF THE PROPOSED SITE BY PUBLIC RESPONDENT LGUS FROM BULACAN IS VOID FOR FAILURE TO COMPLY WITH LAND RECLASSIFICATION LAWS AND THE LACK OF PUBLIC CONSULTATION.

DISCUSSION

- A. THE PROPOSED LANDFILL IS AN ENVIRONMENTALLY CRITICAL PROJECT (ECP) IN AN ENVIRONMENTALLY CRITICAL AREA (ECA) AND REQUIRES THE CONDUCT OF A FULL-BLOWN EIA, NOT THE SUBMISSION OF A MERE IEE.

33. P.D. 1586 prescribes that “[n]o person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate.”⁷ Pursuant thereto, DENR Administrative Order No. 2003-30 categorizes any proposed undertaking on the basis of its nature and/or its planned location:

Category A. Environmentally Critical Projects (ECPs)⁸ with significant potential to cause negative environmental impacts

Category B. Projects that are not categorized as ECPs, but which may cause negative environmental impacts because they are located in Environmentally Critical Areas (ECAs)⁹

Category C. Projects intended to directly enhance environmental quality or address existing environmental problems not falling under Category A or B.

Category D. Projects unlikely to cause adverse environmental impacts.¹⁰

34. Each of the above categories requires a specific set of procedure and documents. Relevantly, Category A projects require the submission of an EIS¹¹ while new projects falling under Category B are only required to submit an IEE¹² to secure an ECC.

⁷ Presidential Decree 1586, § 4.

⁸ Department of Environment and Natural Resources, Administrative Order No. 2003-30 (DAO 03-30), § 3 (f).

Environmentally Critical Project (ECP) - project or program that has high potential for significant negative environmental impact.

⁹ Id. § 3(g).

Environmentally Critical Area (ECA) - area delineated as environmentally sensitive such that significant environmental impacts are expected if certain types of proposed projects or programs are located, developed or, implemented in it.

¹⁰ Id. § 4.3.

¹¹ Id. § 3(k).

Environmental Impact Statement (EIS) - document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/Program that the proponent will fund and implement to protect the environment.

¹² Id. § 3(s).

35. DAO #2003-30 defines an ECP as a project or program that has high potential for significant negative environmental impact.¹³ In this regard, the proposed landfill has an estimated total project cost of one billion pesos (P1,000,000,000.00) covering an area of approximately forty-five (45) hectares in Bgy. Salambao, Obando, Bulacan.¹⁴ The site is part of Manila Bay (as shown in the Project Fact Sheet), “located along the Paliwas River and can only be reached by motorized boats”.¹⁵ It will involve the construction of a landfill,¹⁶ conduct of reclamation activities wherein retaining walls and embankments will be constructed using existing riprap of fishponds, drainage of water, and removal of live fauna in order to serve as the pit for the dump site.¹⁷ In its own words:

The proposed Project involves the **construction of a domestic landfill in existing fishponds** located in Obando, Province of Bulacan in order to continue **to meet the solid waste disposal needs of Metro Manila and nearby provinces... Waste from the Province of Bulacan and nearby areas will be transported to the area by the used for (sic) motorized sea vessels through navigable waterways.**¹⁸

36. More relevantly, the EMB-Region III cannot feign ignorance over the magnitude of the assailed landfill which, in its own words, has “a capacity of 1,000 metric ton (sic) of wastes per day”¹⁹ and the following components:

- Two (2) sets of Four-Cell each Category 4 landfill
- Two (2) sets Solid Waste Leachate Treatment Facility
- Two (2) sets of Storm Drainage System supporting the Wetland Treatment Area
- Two (2) sets Materials Recovery Facility
- Two (2) sets Soil Cover Stockpile Area; and
- Two (2) sets Barge Docking Area²⁰

37. With all these information at hand, how public respondent Claudio, as Regional Director of EMB-Region III, grafted a theory that it is a non-environmentally critical project strains credulity.

38. To stress the gravity of the proposed landfill’s environmental impacts, just the transport of wastes alone from Metro Manila to Obando is replete with problems. In EDC’s own words, dumping and transit of garbage “will cause contamination and degradation of fresh water quality.”²¹ To mitigate this, EDC will cover the barges with what it hazily calls “duly-approved material” to “minimize” or “eliminate” spillage, and assign personnel to spray water on the loaded vessel to stabilize dust particles.²² Evidently, such measures do not, and must not, cut it. Any high school science student can figure that the crude method of water spraying may settle dust, but will certainly aggravate leaching, unless of course, EDC does not contemplate seepage as a problem.

39. All told, such vague, if not dismissive, solutions to the project’s monumental impacts serve to highlight not only its utter lack of sensitivity to environmental considerations, but its apparent lack of technical expertise to operate such highly critical project. Simply put, the newly-incorporated EDC neither knows nor cares about what it is doing.

Initial Environmental Examination (IEE) Report - document similar to an EIS, but with reduced details and depth of assessment and discussion.

¹³ DAO 03-30, § 3(f).

¹⁴ Annex B, pp. 14, 20.

¹⁵ Id. Project Fact Sheet, p. 5.

¹⁶ Id. p. 12.

¹⁷ Id. pp.16-17.

¹⁸ Id. p. 4 (Emphasis supplied).

¹⁹ Annex D, p. 1.

²⁰ Id.

²¹ Annex B. p. 55.

²² Id.

40. All these notwithstanding, the EMB-Region III only required EDC to submit an IEE, not an EIS, and to undergo a simplified process that does not require any public consultation to secure its coveted ECC.

B. THE SUBMITTED IEE WAS PURPOSELY DEFICIENT AND THE POST-ECC CONDITIONS REQUIRED BY EMB COULD NOT CURE ITS SUBSTANTIVE AND PROCEDURAL DEFECTS.

41. As stated, the IEE Report only came up with snippets of measures to mitigate the ensuing environmental degradation.²³ Truth be told, ten pages or so of environmental actions for the construction and operation of a landfill that will cater to Bulacan and Metro Manila, is downright preposterous. After all, the body of water threatened by the proposed landfill is Manila Bay.

42. To remedy this conundrum and in seeming conspiracy to cheat the public of its right to a healthy environment by taking the less stringent path of the IEE, the EMB—in implicit admission that the proposed landfill should have been properly categorized as an ECP—attempted to “cure” these deficiencies by coming up with a 5-page post-ECC conditions which are just as vague and can never really address the multifarious issues at hand.

43. This is because, by dodging a full-blown EIS, EDC failed to undertake the necessary steps to ensure that all issues concerning the project—whether environmental, economic, or socio-cultural—are properly ventilated. Thus, mandatory procedures under DAO #2003-30 were deliberately side-stepped such as: (a) scoping, in order to identify critical issues and concerns, prepare the proper Environmental Risk Assessment, and determine the other permits and documents the project may require; (b) generation of certificate of zoning viability and municipal land use plan; (c) mandatory consultations with stakeholders; and (d) submission of accountability statement of EIA consultants and the project proponent,²⁴ among others.

44. By not undergoing a full-blown EIS, a yawning divide was created between what EDC’s IEE accomplished and what building a landfill on the waters of Manila Bay actually required. Simply put, there was systemic and institutional failure in terms of assessing the project impacts and identifying measures to address its wide-ranging issues. As a result, the lack of sufficient environmental risk assessment, the lack of public consultations, the lack of cumulative impact assessment, etc., have all resulted in a dismally disproportionate and totally unresponsive approach. That is why coming up with a shopping list of post-ECC requirements based on a mere IEE can never compensate for a project of such environmental magnitude.

C. THE AREA IDENTIFIED FOR THE PROPOSED DUMPSITE IS ILL-SUITED FOR THE PURPOSE ON LEGAL, ENVIRONMENTAL AND SOCIO-CULTURAL GROUNDS.

45. Assuming, without conceding, that EDC went through the full-blown EIS process, the project would still fail because the area chosen is simply not suitable as a landfill site. The Ecological Solid Waste Management Act of 2000 (R.A. 9003), including its Implementing Rules and Regulations (DAO #2001-34) spell out the criteria for siting, to wit:

Sec. 40. Criteria for Siting a Sanitary Landfill - The following shall be the minimum criteria for the siting of sanitary landfills:

- (a) The site selected must be consistent with the overall land use plan of the LGU;
- (b) The site must be accessible from major roadways or thoroughfares;
- (c) The site should have an adequate quantity of earth cover material that is easily handled and compacted;

²³ Id. pp. 52-64.

²⁴ DAO 03-30, § 5.2.1.

- (d) The site must be chosen with regard for the sensitivities of the community's residents;
- (e) The site must be located in an area where the landfill's operation will not detrimentally affect environmentally sensitive resources such as aquifer, groundwater reservoir or watershed area;²⁵

46. Against such criteria, the proposed landfill fails in practically every respect.

Project is inconsistent with overall land-use plan of the Municipality of Obando.

47. The project site is classified as agricultural lands, with existing fishponds, and clearly inconsistent with the land-use plan of the municipality per certification of the Municipal Planning and Development Office (MPDO) of Obando.

47.1 A copy of the **Certification** dated 28 February 2011 is attached herewith and made an integral part hereof as **Annex "T"**.

Project area is inaccessible from major roadways.

48. As a fishing village, Bgy. Salambao has no access to major roadways or thoroughfares. This is especially true in the proposed area of the project that is now inundated by seawater. This fact is attested to Mercy Dolorito, who grew up in said Bgy. Salambao and was its former Punong Barangay.²⁶

No adequate quantity of earth cover material that is easily handled and compacted.

49. This requirement will not be met considering that the project site is mostly under seawater. This fact is admitted by EDC itself and EMB-Region III as evidenced by the reclamation activity that will be undertaken.²⁷ Neither does the IEE mention where it will source the material to be used for earth cover.

Sensitivities of community residents were totally disregarded.

50. First of all, the construction and operation of the proposed landfill poses a tremendous health hazard to the residents of Bgy. Salambao and nearby communities and will affect their main livelihood—fishing.

51. Second, no real public consultations were ever held that could have afforded the community residents the opportunity to air their concerns. Instead, private respondent EDC sought to win their support by making house-to-house calls and promising them lots and jobs in the proposed project.²⁸

52. Third, the historical and cultural significance of the area to the municipality was totally disregarded. At this point, it bears noting that the waters of Bgy. Salambao is an important landmark being the place where the original image of the *Nuestra Señora Immaculada Concepcion de Salambao* was found on June 19, 1763. It is also worth stressing that the festivities honoring the feast of Our Lady of Salambao was mentioned by no less than José Rizal in *Noli Me Tangere*. To turn these waters therefore into a dumpsite is not only a sacrilege, it is a vulgar and tasteless affront to the cultural, historic and religious sensitivities not just of the people of Obando but the entire Filipino nation as a whole.

²⁵ Ecological Solid Waste Management Act of 2000, §§ 10, 40 (a) – (e).

²⁶ See Annex S.

²⁷ See Annex B, p. 16 and Annex D.

²⁸ See Annex S.

52.1 A copy of the set of documents from the **Archivo Franciscano Ibero Oriental, Madrid, Spain** dated 16 May 1829 is attached herewith and made an integral part hereof as **Annex "U"**.

The proposed landfill will be detrimental to environmentally sensitive resources such as aquifer, groundwater reservoir or watershed area.

53. In this connection, DAO #2001-34 adds that:

1. The facility shall be a minimum 50 meters away from any perennial stream, lake or river.
2. The site shall be evaluated for presence of geologic hazards, faults, unstable soils, its foundation stability, and its hydrogeologic character. The site shall not be located in a floodplain.²⁹

54. This siting requirement is clearly not complied with. Not only is the proposed facility within 50 meters away from any body of water, it will practically be built on water.

55. Second, the fact that the dumpsite will be on reclaimed land makes the soil and its foundation unstable. As the proposed project site is technically on the waters on Manila Bay, it is prone to flooding. In fact, recent events have shown that Bgy. Salambao can never be a suitable as a landfill site. When Typhoon *Pedring* lashed Luzon during the last week of September 2011, Obando was placed under state of calamity after its 11 barangays were submerged in floodwaters.³⁰ According to public respondent Mayor Gabriel himself, "around 600 houses were destroyed by the typhoon. Eight dykes supposed to hold off water from Manila Bay were also destroyed."³¹ Fact is, *Pedring* made the nation aware of the ferociously destructive nature of storm surges. If it can reduce into rubble portions of the 2-kilometer seawall along Roxas Boulevard, how much more can the soil covering of the proposed landfill withstand?

56. From an environmental expert solicited by petitioners, Dr. Mark Chernaik³² opines that the measures to be adopted by EDC to address the problem of flooding in the project site are futile:

The documents I reviewed do not hide the problem that the proposed location of the landfill in on land that is prone to a high risk of flooding.

For example, page 7 of the EGGAR admits: "Studies show that storm surge reaches as high as 2.5 m in Bataan and Bulacan at the northern part of Manila Bay, as in the case of Typhoon Bebang in 1983." That is certainly a problem, since the area of the proposed landfill has elevations ranging from 0-2 meter above sea level.

The solution Ecoshield Development Corporation is proposing to prevent flooding of the landfill is embankment protection. See page 16 of the IEE and page 8 of the EGGAR. However, neither document makes

²⁹ Department of Environment and Natural Resources, Rules and Regulations Implementing RA 9003 (DAO 01-34), § 1 (m) (2001).

³⁰ Dennis Datu, *Pedring the Worst for Bulacan Town*, available at <http://www.abs-cbnnews.com/nation/regions/09/28/11/pedring-worst-bulacan-town> (last accessed Oct. 23, 2011).

³¹ Id.

³² Dr. Mark Chernaik earned a doctorate in biochemistry (1990, Johns Hopkins University School of Hygiene and Public Health) and a law degree (1993, University of Oregon). In June 2005, the European Court of Human Rights relied extensively on his work to reach a landmark decision (*Fadeyeva v. Russia*) regarding the rights of individuals exposed to toxic substances. His opinions on environmental matters have been cited favorably in judgments of the Supreme Court of India, the Supreme Court of Pakistan and the European Court of Human Rights.

Dr. Chernaik has extensive knowledge of the impacts of waste disposal practices, and sanitary landfills in particular. He has submitted detailed reviews of Environmental Impact Assessments for proposed landfill projects in India, Malaysia, Sri Lanka, Belize, and Slovakia.

clear the height or exact location of the embankment protection. Page 16 of the IEE does specify that the length of the embankment protection will be around 1.33 km with a width of 1 meter.

It is also unclear whether the embankment protection would surround the entire landfill site, or just surround each of the eight waste management cells and other associated facilities (leachate pond and silt pond, for example). In either case, the idea of embankment protection seems destined to fail. Because, the entire surrounding area is low-lying, the site would need to have embankment protection around its entire perimeter (if the embankment protection would surround the entire landfill site). That's not possible, since there needs to be means of ingress for trucks delivering waste to the landfill cells. If the embankment protection is only for the individual waste management cells and other associated facilities, then that would make access to these cells particularly difficult.

X X X X

The next paragraph of this the Geotechnical Investigation Report of the Proposed Sanitary Landfill, dated June 1, 2011 goes on to describe how the project proponent might "deal with" the serious concern described above. The proposed solution is to dump boulders and rock fragments along the embankment alignment. Exactly where all this boulder and rock would be sourced from is not stated.

Also not evaluated in the IEE is (sic) the impacts of embankments on flood risk of adjacent areas. If one protects an area from flooding by using embankments, then the flood waters will go someplace else. There is a densely populated area (presumably Barangay Binuangan) on the mainland just across the river that separates the proposed landfill location and the mainland. Depending on the extent of area that would be embanked on the landfill site, the risk of flooding at this populated area may increase.³³

56.1 A copy of Dr. Mark Chernaik's **Statement** dated 21 October 2011 including the attached **Google Earth satellite image** with an overlay of the project site is attached herewith and made an integral part hereof as **Annex "V"**.

57. Moreover, according to Dr. Metodio Palaypay, a commissioner of the NSWMC, landfills can never be the answer to the solid waste management in our country.³⁴ He notes that landfills depress land value because no one obviously wants to live nor even go near a dump site.³⁵ As a result of the garbage or wastes brought to the landfill for disposal, communities near and far become vulnerable to lethal diseases of the lungs, brain and skin.³⁶ The diseases are compounded by the swarming of pests such as rats, flies, mosquitoes, cockroaches, among many others.³⁷

58. This Honorable Court also cited an Asian Development Bank-commissioned study on the garbage problem in Metro Manila:

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.

³³ Annex V, "Flooding".

³⁴ Dr. Metodio Palaypay MD, Landfill:Bakit???, Diocesan Ecological and Environmental Program, Ecological Rebirth: To Our Mountains and Rivers of Life, 18-19 (2009).

³⁵ Id.

³⁶ Id.

³⁷ Id.

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.**³⁸

59. All these serve to emphasize why this environmentally critical project cannot, and must not, be undertaken in this environmentally critical area. Manila Bay's environmental decline is notoriously evident and respondents' actions do not, in any way, help.

D. THE PROPOSED LANDFILL WILL VIOLATE A NUMBER OF ENVIRONMENTAL LAWS INCLUDING THIS COURT'S CONTINUING MANDAMUS IN MMDA, ET AL.
V. CONCERNED RESIDENTS OF MANILA BAY.

60. Under R.A. 9003, LGUs are primarily responsible for the implementation and enforcement of the provisions of said law within their respective jurisdictions.³⁹

Sec. 10. Role of LGUs in Solid Waste Management—Pursuant to the relevant provisions of R.A. 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.⁴⁰

61. At first glance, respondent LGUs seemed overly dedicated in implementing this provision by moving heaven and literally high water, to address not just Bulacan's, but even the waste disposal needs of nearby provinces and Metro Manila.⁴¹ On the other hand, it is also likely that the LGUs concerned have practically conceded that the area is in such a mess that they might as well squeeze some commercial value out of it. Unfortunately for them, the law is not on their side.

62. First of all, by their own doing, the SP-Bulacan passed an ordinance prohibiting the entry of waste materials from outside sources into their province.⁴² Second, contrary to what the undertaking's name suggest, the proposed landfill is being built on water. As a consequence, several violations of a number of environmental laws protecting marine and coastal resources are inevitable. These include:

1. Fisheries Code (R.A. 8550)

a. Aquatic Pollution⁴³

³⁸ MMDA vs. Concerned Residents G.R. Nos. 171947-48 citing Asian Development Bank, THE GARBAGE BOOK 44-45.

³⁹ Ecological Solid Waste Management Act of 2000, § 10.

⁴⁰ Id. (Underscoring supplied).

⁴¹ See Annex B, p. 4

⁴² See Province of Bulacan, Ordering the Closure of All Existing Open/Semi-Controlled/Controlled Dump Sites in the Province of Bulacan and Prohibiting the Entry of Waste Materials from Sources Other than Bulacan, Executive Order No. 25 (2009).

⁴³ An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes [The Philippine Fisheries Code of 1998], Republic Act No. 8550., §§ 4 (4), 102, (1998).

SEC. 102. Aquatic Pollution. – Aquatic pollution, as defined in this Code shall be unlawful. Violation of the provision of this Sec. shall be punished by imprisonment of six years and one day to 12 years and/or a fine of Eighty Thousand Pesos (P80,000) plus an additional fine of Eight Thousand Pesos (P8,000) per day until such violation ceases and the fines paid.

"Aquatic pollution" is defined as the introduction by human or machine, directly or indirectly, of substances or energy to the aquatic environment which result or is likely to result in such deleterious effects as to harm living and non-living aquatic resources, pose potential and/or real hazard to human health, hindrance to aquatic activities such as fishing and navigation, including dumping/disposal of waste and other

63. During the construction phase, “there will be negative impacts towards the fresh water quality during the construction of the retaining walls as there will be [an] increase in turbidity, total suspended solids and other water quality values for an organism to live.”⁴⁴ Also, “the absence of wastewater treatment facilities for the workers could introduce raw sewage and fecal matter into the river and Manila Bay that could likely lead to increase the coliform level of the area and may **degrade further the already degraded river and marine ecosystem and the fresh and coastal water quality.**”⁴⁵

64. In addition, in order to drain the water impounded in the proposed landfill area, EDC proposes to pump out the water “from the landfill site to the silt pond prior to final disposal to existing drainage.”⁴⁶ The stagnant water in the fishpond, however, is likely to contain high levels of organic matter and sediments, and that any discharge of such into any body of water will have an impact.⁴⁷

65. More importantly, during the actual operation of the landfill, “there will be a decrease in the population of planktons, macrobenthic, flora and fauna, fishes due to water turbidity and filling of the area.”⁴⁸ Verily, it is stated that:

Fine material run-off is likely to originate from the landfill facility, including the waste stockpile area, road surfaces and embankments. **During heavy downpour, the fine materials are projected** to be transported down to the lower areas and could find its way into the sea. Likewise, siltation is **likely** to cause a rise in turbidity that could degrade the fresh water quality. Considering the **waste material dumped**, its **spillage and contamination** of the river and bay **may probably** cause detrimental effects to aquatic life and water quality.⁴⁹

66. To make matters worse, there will be degradation of water quality through spillage of oil, grease, and other hazardous wastes from the operation of heavy equipment.⁵⁰ When not handled properly or in times of accidental spills, such hazardous wastes will not only be transported by surface runoff into the river and bay, but will contaminate the soil and the groundwater as well, which may find its way into the river and bay because of the likely direction of the groundwater flow.⁵¹

b. Illegal conversion of mangroves⁵²

67. As planned, EDC will cut mangroves in order to give way to the construction of barge basins of the landfill. Using the Google Earth image attached to his expert opinion,⁵³ Dr. Chernaik observed that:

As one can see, there is dense vegetation that stretches across a long (and fairly wide!) strip on the western edge of the site – the side that is bounded by Manila Bay. Although impossible to determine with

marine litters, discharge of petroleum or residual products of petroleum or 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. Deforestation, unsound agricultural practices such as the use of banned chemicals and excessive use of chemicals, intensive use of artificial fish feed, and wetland conversion, which cause similar hazards and deleterious effects shall also constitute aquatic pollution.

⁴⁴ Annex B, p. 52.

⁴⁵ Id. pp. 52-53 (Emphasis supplied).

⁴⁶ Id, p. 19. See Annex V, “Discharge of Fishpond Water.”

⁴⁷ Annex V, “Discharge of Fishpond Water.”

⁴⁸ Annex B, p. 54.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² The Philippine Fisheries Code of 1998, § 94.

SEC. 94. Conversion of Mangroves. – It shall be unlawful for any person to convert mangroves into fishponds or for any other purposes. Violation of the provision of this Section shall be punished by imprisonment of six years and one day to 12 years and/or a fine of Eighty Thousand Pesos (P80,000): Provided, That if the area requires rehabilitation or restoration as determined by the court, the offender should also be required to restore or compensate for the restoration of the damage.

⁵³ Annex V, “Loss of Mangroves.”

certainty from the image alone, this vegetation, because of its canopy and location, is likely to be mangroves.

The proposed Obando Sanitary Landfill seems to envision clearing of these areas to make way for project components. See, for example, Figure 1-1 (Site Development Plan), which depicts a soil stockpile area and barge basin in the location where there is presently dense vegetation (presumably mangroves) in the Google Earth image.

Curiously, none of the documents, including the IEE, acknowledge the existence of any mangroves. There is a chapter in the IEE (Chapter 4.1) that contains information about "Baseline Environmental Conditions," but this section contains no information about the flora and fauna of the area, including the dense vegetation on the western edge of the site. Since there is no information in the IEE about what this vegetation is, there is no information in the IEE about the impact would be if this vegetation is cleared. If this vegetation is indeed mangroves, then the impacts would include the ecological and economic benefits that mangroves provide.⁵⁴

2. Revised Forestry Code (P.D. 705, as amended⁵⁵)

a. Illegal cutting of mangroves⁵⁶

68. Unfortunately, the impact on the mangroves is not merely threatened, it has already been transgressed. As acknowledged by the NSWMC, mangroves were cut during the same time when preparations for the project implementation were underway.

68.1 A copy of the NSWMC's **letter response** dated 27 June 2011 is attached herewith and made an integral part hereof as **Annex "W"**.

b. Water Code⁵⁷

69. As indicated earlier, the building and the operation of the landfill will inevitably produce dangerous or noxious substances that may result in the introduction of pollutants into Obando's water supply.

3. Marine Pollution Decree⁵⁸

⁵⁴ Id.

⁵⁵ An Act Incorporating Certain Sections of the National Internal Revenue Code of 1977, as Amended, to Presidential Decree No. 705, as Amended, Otherwise Known as "The Revised Forestry Code of the Philippines," and Providing Amendments thereto by Increasing the Forest Charges on Timber and Other Forest Products, Republic Act No. 7161, (1991).

⁵⁶ Id. § 71.

Sec. 71. Charges on Firewood, Branches and Other Recoverable Wood Wastes of Timber. — **Except for all mangrove species whose cutting shall be banned**, there shall be collected forest charges on each cubic meter of firewood cut in forestland, branches and other recoverable wood wastes of timber, such as timber ends, tops and stumps, when used as raw materials for the manufacture of finished products, Ten pesos (P10.00).

⁵⁷ A Decree Instituting a Water Code, thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [The Water Code of the Philippines], Presidential Decree No. 1067, art.75 (1976).

ART. 75. No person shall, without prior permission from the National Pollution Control Commission, build any works that may produce dangerous or noxious substances or perform any act which may result in the introduction of sewage, industrial waste, or any pollutant into any source of water supply. Water pollution is the impairment of the quality of water beyond a certain standard. This standard may vary according to the use of the water and shall be set by the National Pollution Control Commission.

⁵⁸ Providing for the Revision of Presidential Decree No. 600 Governing Marine Pollution, Presidential Decree No. 979, § 4 (a), (b), (c) (1976).

Sec. 4. Prohibited Acts. — Except in cases of emergency imperiling life or property, or unavoidable accident, collision, or stranding or in any cases which constitute danger to human life or property or a real threat to vessels, aircraft, platforms, or other man-made structure, or if dumping appears to be the only way of averting the threat and if there is probability that the damage consequent upon such dumping will be less than would otherwise occur, and except as otherwise permitted by regulations prescribed by the National Pollution Control Commission or the Philippine Coast Guard, it shall be unlawful for any person to:

70. On top of the pollution that will result from the construction and operation of the proposed landfill, it bears stressing that the transport of waste coming from Metro Manila by barges through navigable waterways⁵⁹ will cause its own set of problems.

71. As previously stated, EDC could only come up with measly solutions like covering their barges with “duly approved material” and spraying of water to stabilize dust particles to “minimize” or “eliminate” spillage. These puny measures may be attributed to either the deliberate downplaying of impacts or sheer ignorance of realities concomitant to day-after-day hauling and moving of massive amounts of garbage by barge per day.

72. No stretch of imagination is needed to perceive how human errors such as overloading of garbage, lack of foresight, lack of proper handling and deterioration of barges and other equipment could easily result in accidental spillage of waste into Manila Bay. In such a fragile ecosystem, taking these unnecessary chances is simply unacceptable.

4. Clean Water Act⁶⁰

73. As discussed, the construction, operation and transport of wastes by barge through navigable waters, will lead to disastrous results in Manila Bay. Surely, EDC cannot account for every possibility of spillage or draining of wastes to Manila Bay considering that the 45-hectare landfill, whose pits will be on the bay itself, will hold massive amounts of wastes from Bulacan, nearby provinces, and Metro Manila. On top of this, given the presence of the Navotas landfill and the water pollution emanating from the Marilao-Meycauayan-Obando river, EDC’s mitigation measures, no matter how effective, will prove sorely inadequate to give justice to Mother Earth and fundamental human rights.

5. Threatened Violation of this Court’s continuing mandamus

74. Last but not the least, in the landmark case of **MMDA, et al. vs. Concerned Residents of Manila Bay**, no less than this High Court pronounced that the restoration and protection of Manila Bay has been declared of utmost urgency and of extreme necessity by this Honorable Court:

-
- (a) discharge, dump or suffer, permit the discharge of oil, noxious gaseous and liquid substances and other 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 or cause, suffer or procure to be deposited 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.

⁵⁹ Annex B, p. 55

⁶⁰ An Act Providing for a Comprehensive Water Quality Management and for Other Purposes [Philippine Clean Water Act of 2004], Republic Act No. 9275, § 27 (a), (b), (e) (2004).

SECTION 27. Prohibited Acts. – The following acts are hereby prohibited:

- a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;
 - b) Discharging, injecting or allowing to seep into the soil or sub-soil any substance in any form that would pollute groundwater. In the case of geothermal projects, and subject to the approval of the Department, regulated discharge for short-term activities (e.g., well testing, flushing, commissioning, venting) and deep re-injection of geothermal liquids may be allowed: Provided, That safety measures are adopted to prevent the contamination of the groundwater;
- x x x x
- e) Unauthorized transport or dumping into sea waters of sewage sludge or solid waste as defined under Republic Act No. 9003;

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.⁶¹

75. In this light, the Supreme Court, for the very first time, introduced the concept of continuing mandamus directed at—as relevant to this legal controversy—public respondent DENR—and other concerned LGUs—including public respondent Provincial Government of Bulacan, to protect and restore Manila Bay, to wit:

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,” 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.⁶²

76. Against such mandate, is not the proposal to build a landfill in the waters of Bgy. Salambao, Obando, Bulacan a direct and blatant violation of this “continuing mandamus” ordered by this Highest Tribunal? Lest public respondents forget, the High Court, ruled that:

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.⁶³

76. Petitioners thus ask: Which part of this order was not clear? Obviously, setting up a landfill on the waters of Manila Bay is not in keeping with clean-up, rehabilitation and preservation of said bay.

E. THE RECLASSIFICATION OF THE PROPOSED SITE BY PUBLIC RESPONDENT LGUS FROM BULACAN IS VOID FOR FAILURE TO COMPLY WITH LAND RECLASSIFICATION LAWS AND THE LACK OF PUBLIC CONSULTATION.

77. Under Memorandum Circular No. 54 which prescribes the guidelines for the reclassification of agricultural lands into non-agricultural uses by cities and municipalities as provided in the Local Government Code, reclassification may be done only in the following instances:

(b) Agricultural lands may be reclassified in the following cases:

⁶¹ MMDA et. al., G.R. Nos. 171947-48.

⁶² Id. citing *Vineet Narain v. Union of India*, 1 SCC 226 (1998) (Emphasis supplied).

⁶³ Id.

(1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture (DA), in accordance with the standards and guidelines prescribed for the purpose; or

(2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes as determined by the sanggunian concerned, the city/municipality concerned should notify the DA, HLRB, DTI, DOT and other concerned agencies on the proposed reclassification of agricultural lands furnishing them copies of the report of the local development council including the draft ordinance on the matter for their comments, proposals and recommendations within seven (7) days upon receipt.⁶⁴

78. With respect to the first condition, it must be remembered that up to now, the primary source of livelihood of the residents of Bgy. Salambao is fishing.⁶⁵ The establishment of a 44-hectare landfill on the waters of Manila Bay will make subject lands, or more appropriately waters, cease to be economically feasible and sound for agricultural purposes.

79. Anent the second condition, petitioners simply cannot fathom how the proposed landfill will make the lands more valuable for residential, commercial, and industrial purposes. On the contrary, the landfill will force the price of land to substantially depreciate simply because no person would want to go, much less reside, near a dumpsite. Payatas and Smokey Mountain are cases in point.

80. Memorandum Circular No. 54 further requires that there must be a city or municipal development council (CDC/MDC) recommendation to the sangguniang panlungsod or sangguniang bayan, as the case may be, for the reclassification of agricultural lands within its jurisdiction based on the requirements of local development.⁶⁶

81. Verily, there was none. Instead what the MDC of Obando submitted was a mere recommendation from its Executive Committee. It bears pointing out that this Executive Committee is comprised of the same members of SB-Obando, who deemed their own acts as substantially compliant with this legal requirement.

81.1 A copy of the **letter** dated 13 June 2011 from the PPDO is attached herewith and made an integral part hereof as **Annex "X"**.

81.2 A copy of the **letter** dated 27 June 2011 Mayor Gabriel is attached herewith and made an integral part hereof as **Annex "Y"**.

82. Consequently, petitioners find it hard to believe that respondents have secured the required certifications from the various national government agencies, as directed by law, when even in the local level they have not complied with the prescribed procedure for reclassification of lands.⁶⁷ This allegation is bolstered by the fact that in securing the required certification from the Department of Agrarian Reform (DAR), it must be shown that the conversion shall not adversely affect air and water quality and the ecological stability of the area, which EDC already admitted will happen.⁶⁸ Also, it must be noted that all the reclassification ordinances that were promulgated by the

⁶⁴ Office of the President, Prescribing the Guidelines Governing Section 20 OF RA 7160 Otherwise Known as the Local Government Code of 1991 Authorizing Cities and Municipalities to Reclassify Agricultural Lands Into Non Agricultural Uses, Memorandum Circular No. 54 (MC No. 54), § 1 (b) (1993).

⁶⁵ See Annex S.

⁶⁶ MC No. 54, § 2 (a).

⁶⁷ See id.

⁶⁸ See Department of Agrarian Reform, Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-agricultural Uses, Administrative Order No.01, §§ 2 (f), 5 (e), 8 (d) (1999).

municipal and provincial legislative councils did not refer to any compliance with the requirements and procedures under Memorandum Circular No. 54.⁶⁹

83. Lastly, the required public hearing for the purpose of land reclassification was not complied with.⁷⁰ In support of this, almost all of the attendees in the so-called public consultation/hearing conducted were not from Bgy. Salambao where the landfill is planned to be built. Such failure to hear the side of the ones who will be directly affected by the project amounts to no public hearing at all.

83.1 A copy of the **Attendance Sheet** dated 14 February 2011 is attached herewith and made an integral part hereof as **Annex "Z"**.

**ALLEGATIONS IN SUPPORT OF THE APPLICATION
FOR ISSUANCE OF TEMPORARY ENVIRONMENTAL PROTECTION
ORDER (TEPO)**

84. Petitioners replead and incorporate, by way of reference, all the averments in the foregoing insofar as they are pertinent, relevant and material hereto. And in support of the instant application for the issuance of a temporary environmental protection order (TEPO), petitioners further allege that:

85. There is extreme urgency to enjoin the respondents from proceeding with the construction of the landfill as this will result in grave and irreparable damage to both the environment, particularly Manila Bay, and the residents of Bgy. Salambao. Again, private respondent EDC has already moved to the project site heavy equipment and implements necessary for the project's full execution.⁷¹

86. The determination to commence the project is further evidenced by the calling of an emergency meeting by the SB-Obando at the height of the state of calamity declared in the whole province due to the devastation wrought by Typhoon *Pedring*. In the midst of this human and natural tragedy, respondent sanggunian met to issue a resolution⁷² authorizing its chief executive, respondent Mayor Gabriel, to sign the agreement with private respondent EDC so the project can commence, in seeming indifference to the ongoing suffering of its constituents. He has since signed the said MOA.⁷³

87. In stark contrast, respondents will not suffer from any damage whatsoever in enjoining said project as there is neither any showing of urgency nor necessity in putting-up the landfill on Manila Bay as a solution to the solid waste management problems of the Municipality of Obando or the Province of Bulacan for that matter.

PRAYER

WHEREFORE, premises considered, petitioners respectfully pray that this Honorable Supreme Court:

1. ISSUE a Temporary Environmental Protection Order (TEPO) ordering respondents to refrain from taking any action pursuant to the project;
2. DIRECT respondents to permanently cease and desist from constructing/operating a sanitary landfill in Bgy. Salambao, Obando, Bulacan;
3. DECLARE null and void ECC No. RO3-1012-0592;

⁶⁹ See Annexes F, G, J.

⁷⁰ See MC No. 54, § 2.

⁷¹ Pictures of a heavy crane and pipes that were recently taken have been previously attached as Annex "R" of this petition. The sworn statement of a resident who witnessed said activities has also been attached as Annex "S".

⁷² Annex "P", Petition.

⁷³ Annex "Q", Petition.

4. DECLARE null and void all ordinances and resolutions pertaining to the reclassification of agricultural lands subject of this case into industrial/commercial lands;

5. DIRECT respondents to restore the damaged mangroves within the area of proposed sanitary landfill, and protect the same from further degradation; and

6. DIRECT the DENR through the EMB to make periodic reports on the execution of the final judgment.

Petitioners pray for such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment.

Respectfully submitted.

Quezon City for the City of Manila, 24 October 2011.

By:

RONALDO R. GUTIERREZ

Counsel for Petitioners

Upholding Life And Nature (ULAN)
Unit 201 TDS Bldg. 72 Kamias Road
Quezon City, M.M. 1102
PTR No. 4632914/1-11-11/Q.C
IBP Lifetime No. 0907908/Q.C.
MCLE III Exemption No. 000947; 4-7-2010
Roll No. 41383

LYSANDER NOROÑA CASTILLO

PTR No. 6935097/4-28-11/Pasig City
IBP No. 862848/4-27-11/Or. Mindoro
MCLE Compliance Exempt-Bar Matter No. 850
Roll No. 59741

ARVIN A. JO

PTR No. 5409054/6-23-11/QC
IBP No. 859934/4-5-11/QC
MCLE Compliance Exempt-Bar Matter No. 850
Roll No. 59437

Explanation

Due to distance and logistical constraints, service of this petition was done by registered mail.

LYSANDER N. CASTILLO

Copy furnished:

HON. RAMON J.P. PAJE

DENR Compound, Visayas Avenue
Quezon City

OFFICE OF THE SOLICITOR-GENERAL

134 Amorsolo St., Legaspi Village
Makati City 1229

LORMELYN E. CLAUDIO

EMB Region III
4th Floor Melvi Building
San Fernando, Pampanga

HON. WILHELMINO M. SY-ALVARADO

Governor's Residence
Provincial Capitol

Malolos City, Bulacan 3000

SANGGUNIANG PANLALAWIGAN OF BULACAN

Provincial Capitol Building
Malolos City, Bulacan 3000

HON. ORENCIO E. GABRIEL

Office of the Mayor
Obando, Bulacan 3021

SANGGUNIANG BAYAN OF OBANDO

Office of the Sangguniang Bayan
Obando, Bulacan 3021

SANGGUNIANG BARANGAY OF SALAMBAO

Barangay Hall, Bgy. Salambao
Obando, Bulacan

ECOSHIELD DEVELOPMENT CORPORATION

Dominga Building 2113
Chino Roces Ave. corner Dela Rosa St.
Makati City