



LEGAL RESEARCH

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Subject: Liabilities of companies and public officers of the government for the non-observance and non-enforcement of buffer zones in specific banana plantation and its remedies

I. Introduction

A buffer zone has been broadly understood in many literature as the undisturbed green belt surrounding a development or land activity. The practice of establishing a buffer zone applies to all land disturbance activities, especially those adjacent to a perennial stream or permanent body of water. In the US, a buffer zone that is close to a permanent body of water is called riparian buffer strips (RBS) or riparian forest buffer (RFB) depending on the dominant vegetation it is planted with. The former is basically planted with grasses while the latter contains trees and shrubs. However both types of buffers are designed to reduce runoff of sediment, fertilizer and pesticide from croplands. RFBs are designed for additional benefits, stream bank stability and improve wildlife habitat.¹

Additional benefits of vegetated buffer zone is the shade it provides to watercourses which help maintain temperature norms of the water thereby protecting or providing habitat for aquatic life. Vegetations within the buffer zone, particularly trees improve infiltration rate of water to the ground thereby beneficial also in recharging our aquifers – our groundwater supply.

Another important function of buffer zone in a chemically-dependent agricultural areas is to safeguard the people and all life forms from toxic effects of chemical intervention on an agricultural activity.

Knowing the important function of buffer zone, it is therefore important to know what regulatory laws we have on it and see if these laws are indeed being

¹ Clear Creek Buffer Project. <http://bse.unl.edu/clearcreek>; *Buffer Strips For Riparian Zones*. Forestry Extension Department of Natural Resource Ecology and Management. Iowa State University, Iowa, USA.

implemented on the ground. What would be the liabilities of companies and public officers for non-observance and non-enforcement of buffer zone in specific banana plantation? What would be the legal remedies too? These are just some of the questions that this research will answer.

II. Related laws and concept of Buffer Zone in the Philippine Setting

In the Philippines, the concept of buffer zone has been applied in many regulatory laws affecting disturbance activity on lands. These laws include:

- **Republic Act 7586 or National Integrated Protected Areas Act of 1992**

(c) "Buffer zones" are identified areas outside the boundaries of and immediately adjacent to designated protected areas pursuant to Section 8 that need special development control in order to avoid or minimize harm to the protected area;

SECTION 8. Buffer Zones. — *For each protected area, there shall be established peripheral buffer zones which necessary, in the same manner as Congress establishes the protected area, to protect the same from activities that will directly and indirectly harm it. Such buffer zones shall be included in the individual protected area management plan that shall be prepared for each protected area. That DENR shall exercise its authority over protected areas as provided in this Act on such area designated as buffer zones.*

- **PD 1067 or Water Code of the Philippines**

Article 51. *The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of **three (3) meters** in urban areas, **twenty (20) meters** in agricultural areas and **forty (40) meters** in forest areas, along their margins are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.*

Article 67. *Any watershed or any area of land adjacent to any surface water or overlying any groundwater may be declared by the Department of Natural Resources as a protected area. Rules and regulations may be promulgated by such Department to*

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prohibit or control such activities by the owners or occupants thereof within the protected area which may damage or cause the deterioration of the surface area or groundwater or interfere with the investigation, use, control, protection, management or administration of such waters.

- **Commonwealth Act No. 141 (as amended by Republic Act 1273, An Act to Amend Section Ninety of Commonwealth Act Numbered One Hundred and Forty-One)**

*Section 1 (i) That the applicant agrees that a strip of **forty meters** wide starting from the bank each side of any river or stream that may be found on the land applied for shall be demarcated and preserved as permanent timberland to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes even after patent shall have been issued to him or a contact lease shall have been executed in his favor.*

- **P.D. No. 705 otherwise known as "Forestry Code"**

"Section 16. Areas needed for forest purposes . . .

(7) Twenty-meter strips of land along the edge of the normal high waterline of rivers and streams with channels of at least five (5) meters wide; (8) Strips of mangrove or swamplands at least twenty (20) meters wide, along shorelines facing oceans, lakes and other bodies of water and strips of land at least twenty (20) meters facing lakes; . . ."

- **Article 51 of P.D. No. 1067 otherwise known as "Water Code of the Philippines:**

*"Article 51. The banks of rivers and streams and the shores of the seas, and throughout their entire length and within a zone of **three (3) meters** in urban areas, **twenty (20) meters** in agricultural areas and **forty (40) meters** in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage . . ."*

- **Department of Environment and Natural Resources Administrative Order 99-21 (superseding DENR Administrative Order No. 97-05)**

Section 1. To insure the preservation of ecological balance and protection of the environment, all concerned shall observe in the

processing, verification and approval of isolated and cadastral surveys, the requirements of Section 1 of R.A. No. 1273 which amended Section 90 of C.A. 141 otherwise known as the "Public Land Act", Section 16 of P.D. No. 705 otherwise known as the "Forestry Code" and Article 51 of P.D. No. 1067 otherwise known as "Water Code of the Philippines, are quoted as follows:

- a. "Section 1 (I) That the applicant agrees that a strip of **forty meters** wide starting from the bank on each side of any river or stream that may be found on the land applied for shall be demarcated and preserved as permanent timberland to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes even after patent shall have been issued to him or a contract lease shall have been executive in his favor." (R.A. No. 1273)
- b. "Section 16. Areas needed for forest purposes x x x

(7) **Twenty-meter** strips of land along the edge of the normal high waterline of rivers and streams with channels of at least five (5) meters wide; (8) Strips of mangrove or swamplands at least twenty (20) meters wide, along shorelines facing oceans, lakes and other bodies of water and strips of land at least twenty (20) meters facing lakes; x x x ." (P.D. No. 705)
- c. "Article 51. The banks of rivers and streams and the shores of the seas, and throughout their entire length and within a zone of **three (3) meters** in urban areas, **twenty (20) meters** in agricultural areas and **forty (40) meters** in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage x x x " (P.d. NO. 1067).

- **DENR Memorandum Circular No. 2009-14**

*In order to protect the environment as well as the health of the people and pursuant to the recent aerial spraying guidelines issued by the fertilizer and Pesticides Authority, a buffer zone of **fifty meters (50)** shall be strictly required from residential areas/river or body of water to the banana plantations.*

The EMB and the DENR Regional Offices shall ensure that aerial spraying is confined only to plantations and take measures to avoid drifting of fungicides to nearby residential areas and/or water bodies.

- **DENR Memorandum Circular No. 16, May 13, 1993, Guidelines on the Establishment of Buffer Zone for Protected Areas**

6.1 A buffer zone maybe established in terrestrial or aquatic areas or combinations of both.

6.2 Buffer Zone shall be established in accordance with the provisions of Section 6, of DAO No. 25, series of 1992.

6.2.1 If the proposed Buffer Zone is classified as alienable and disposable land, and if there are no legal claimants on the said area, it shall be administered by the DENR.

6.2.2 If the proposed Buffer Zone is a public land under the jurisdiction of other government agencies, it shall be established after a Memorandum of Agreement has been forged between the DENR and the concerned government agency.

6.2.3 If the proposed buffer zone is within a legitimate private property, shall be established by any of the following procedures:

For the DENR to explore the possibility of buying the property without prejudice to land exchange agreement and other mutually acceptable mechanism. Land owners occupying the proposed Buffer Zone shall be encouraged to engage in conservation – friendly activities.

*6.3 Size of Buffer Zone- When necessary and practical, Buffer Zone shall cover the **entire periphery of the protected area**. Its size shall depend on the following considerations:*

6.3.1 The need of threatened wildlife species for an extended habitat.

6.3.2 The size of the local community that is dependent on the resources of the protected area and the degree of their dependence on these resources

6.3.3 The presence of potential threats due to possible encroachment, pollution, etc. from adjacent communities

6.3.4 The presence of ecological and geo-physical features that could enhance the conservation of the protected area.

• ***PD 1586 or the Philippine Environmental Impact Statement System***

One cannot find specific provision on buffer zone under this law but as a standard provision in the Environmental Compliance Certificate (ECC) which is a requirement under PD 1586. The very essence of the EIS system is to require projects that have potential adverse impacts on the environment and people to get an Environmental compliance Certificate (ECC) before they operate. After reviewing some ECCs issued to agribusiness plantations, it was observed that the 20 meter buffer zone between rivers and becomes a common condition which is in accordance with other national laws as presented already in the above discussions. Other ECCs specifically require also a 30 meter-buffer zone

between plantations and springs, schools, houses, and road network.² This is to mitigate pesticide drifts to surrounding communities. Violation of this condition may be a ground for administrative fine, cease and desist order or cancellation and suspension of ECC. PD 1586 provides.

- **DENR Memorandum Circular No. 2009-14**

In order to protect the environment as well as the health of the people and pursuant to the recent aerial spraying guidelines issued by the Fertilizer and Pesticides Authority, a buffer zone of fifty meters (50) shall be strictly required from residential areas/river or body of water to the banana plantations.

The EMB and the DENR Regional Offices shall ensure that aerial spraying is confined only to plantations and take measures to avoid drifting of fungicides to nearby residential areas and/or water bodies.

- **Watershed Code of Davao**

ARTICLE 10. PRIME AGRICULTURAL AREAS- *The Davao City Government recognizes the vast potentials of its prime agricultural areas for economic development subject to rules and regulations on environmental protection to sustain the health and sustainability of the watershed areas and the city sources of water.*

All agricultural activities in Prime Agricultural Areas aiming to ensure food security shall be pursued through sustainable and environment-friendly agriculture in a harmonious balance between economic development and environmental protection and subject to government rules and regulations, provided that:

(b) MONOCROP AGRICULTURE *shall be designated specific areas of the Prime Agricultural Areas by the Crop Zoning Plan in consonance with the City Land Use and Zoning Plan and the Barangay Land Use Plan, subject to the regulations of the Department of Environment and Natural Resources (DENR) and pertinent laws, provided that:*

(i) A **40-meter buffer zone** shall be established between the plantations and critical areas such as recharge zones, critical slopes, riverbanks, rivers, springs, wells and other sources of water;

(ii) Monocrop agriculture including, but not limited to, banana and pineapple plantations shall

² Appendix B are sample ECCs with specific condition on buffer zone.

maintain a **buffer zone of 30 meters** between the plantation and residential houses, schools, chapels, clinics and other institutions; provided further that existing plantations, upon the effectivity of this Code, shall provide for the relocation of those inside the plantation and within the buffer zone to a suitable site at its own expense.

- **Davao City Ordinance 0309-07, March 23, 2008**

Ordinance 0309-07 titled “Banning Aerial Spraying as an Agricultural Practice in all Agricultural Activities by all Agricultural Entities in Davao City” bans the use of aerial spraying as a mode of applying chemicals, mainly pesticides, in the banana and other plantations. This ordinance is currently under litigation before the Supreme Court. The law gave plantation owners and banana growers three months to shift to any mode of application and required them to set aside 30 meters in the perimeters of their plantations as buffer zone that should be planted with diversified trees that grow taller than what are usually planted and grown in the plantation to protect those within adjacent fields, neighboring farms, residential areas, schools and workplaces. (Section 3 [e])

Based on the above review of Philippine laws pertaining to buffer zone, the land area requirement varies from three (3) meters to fifty (50) meters while the concept usually refers to either of the following: within public lands - an area that should be planted with permanent trees and be treated as part of timberland; considered part of the protected area; in agricultural land – buffer zone is an area that should be planted with diversified trees that grow taller than what are planted in the plantation.

In view of the scope of this legal research, we are more concerned on the buffer zone as affecting banana plantations and its surrounding local communities as mandated by **Department of Environment Natural Resources (DENR) Memorandum Circular No. 2009-14, Nov.06, 2009**, as quoted above.

II. Present Conditions of Buffer Zones in Specific areas

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Specific to the areas of certain banana plantations in Davao, i.e. Tawan-Tawan and Sirib areas, based on the result of focused group discussions and ocular inspection, it appears that the buffer zone of 50 meters as mandated by the regulatory agency (DENR) has not been observed and in fact grossly violated.

In both Tawan-Tawan and Sirib areas, residents have complained against banana plantations for the lack of strict observance of buffer zones between the plantation area vis-à-vis residences and their farmlands. Actual ocular inspection shows that banana plantations have virtually failed to comply the mandated 50-meter distance between banana plantations to residential areas or bodies of water. As if to show compliance by banana companies, *Flemingia*³ plants are currently planted between plantations and public pathways or nearby residences but with distance of only 5 to 7 meters. Further, these *Flemingia* shrubs are poorly maintained, not densely planted, and its height of barely three (3) meters are not enough to protect the residents from exposure and drifts of pesticides applied by banana companies. The non-observance of buffer zone has drastically affected the livelihood, health and comfort of local farmers and their livestock based on the information gathered from focus group discussions⁴ conducted specifically in Tawan-tawan, Calinan and Sirib areas, Davao City. During the focused group discussions, residents in these areas complained of health hazards, discomforts and adverse effects on their breathing, developed skin problems, observed animal sickness on livestock, and degradation of plant life within their vicinities.

III. Treatment of violations

³ *Flemingia* is a woody, leguminous, deep rooting, shrub, up to 2.5 m in height.

⁴ Focus Group Discussion Results attached as ANNEX "A"

Violations of the non-observance of buffer zones in these aforementioned areas constitute civil and administrative wrongdoing and, to a certain extent, criminal offense under the law.

Specifically, the non-observance of the buffer zone may constitute a public nuisance⁵ under our civil law. A public nuisance is:

an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property, or comfort of the public, or by which the public is obstructed in the exercise or enjoyment of any right common to all. It is sufficient if it materially effects the reasonable comfort and convenience of a class of persons who come within the sphere or neighborhood of its operation; it may affect some to a greater extent than others, it is not necessary to prove that every member of the class has been injuriously affected, and the question whether the number of the persons affected is sufficient to constitute a class is one of fact.

A public nuisance has been defined as the doing of or the failure to do something that injuriously affects safety, health, or morals of the public, or works some substantial annoyance, inconvenience, or injury to the public, and as a nuisance which causes hurt, inconvenience. Or damage to the public generally, or such as a part of the public as necessarily comes in contact with it in the exercise of a public or common right. It is a condition of things which is prejudicial to the health, comfort, safety property, sense of decency, or morals of the citizens at large, resulting either from an act not warranted by law, or neglect of a duty imposed by law.⁶

The public nuisance can be a basis for torts or action for injury upon corporations. Civil damages can be taken against these corporations for the continued violations. If corporate officers are proven to act with malice in perpetuating these tortuous acts, these officers may be held civilly and criminally accountable on account of the nuisance committed.

Under Art. 699 of the Civil Code, the remedies against public nuisance are:

- (a) A prosecution under the Penal Code or any local ordinance; or

⁵ Art. 695 of the Civil Code classifies nuisance into public and private.

⁶ Sangco, Torts and Damages, page 891, Vol. II, 1994 Edition

- (b) A civil action; or
- (c) Abatement, without judicial proceeding.

The above remedies may be availed of by public officers (such as the local government unit), and the last two, by private persons such as the local communities who are affected by the non-observance of buffer zones. However, abatement without judicial proceedings as a remedy is not much of application with respect to banana plantations since the act of corporations in failing to observe buffer zone is a negative act. To better illustrate this situation, supposing you have a neighbor who dangerously neglects a building about to fall due to its being old, such is a nuisance which is active in nature. The danger of being hurt by the building about to fall is a continuing scenario. Applying the law in nuisance, such neglected building can be abated or destroyed by the local government even without judicial proceedings because it is continuing act. On the other hand, in the case of non-observance of buffer zone, abatement is by means of forcing the plantation owner or a corporation to strictly comply the requirements of the law, that is, establishing the 50 meter buffer zone and the conditionalities of their Environmental Compliance Certificate pursuant to Presidential Decree 1856. This needs judicial proceedings since this involves deprivation of the use private property for the general welfare and should undergo due process.

A private person affected or a duly registered grass root organization in the affected areas may file an action on account of a public nuisance (i.e. non observance of buffer zone). But before they may so file a civil action for the observance of a buffer zone, it is necessary:

- (1) That demand be first made upon corporation perpetuating the non-observance of buffer zone to make the proper observance.
- (2) That such demand has been rejected.

In general, the public authorities, such the local government of Davao City may take such steps as are reasonably necessary to enforce the observance of buffer zone in affected areas. It is to be noted that the Watershed Code of Davao, a local ordinance passed in 2007, provided for the creation of Watershed Multipartite Monitoring Team (WMMT) under a administrative body called the Watershed Management Council (WMC) to monitor implementation of the ordinance. For such purpose, the Watershed Council has the following powers:

- (iii) Order the stoppage upon recommendation by the WMMT and BWMC of any activity in the watershed areas violating the provisions of this Code and other environmental laws;
- (iv) Prohibit or regulate activities that may damage the environment or cause environmental degradation or threaten the health and sustainability of the watershed areas;
- (v) Promote good farming practices and regulate use of inorganic fertilizers and other farm production inputs;
- (vii) Exercise police and visitorial powers in the implementation of the provisions of this Code necessary for the discharge of its functions;

The constitutionality of local ordinances passed in the exercise of police power has been upheld by the Supreme Court in a number of cases. The power of local government units has been broadened by Local Government Code of 1991 and by jurisprudence, as would sustain the city government of Davao if it passes such an ordinance. Furthermore, the WMMT has the

(d) DUTIES AND POWERS- The WMMT shall:

- (i) Recommend stoppage of agri-business and other industries or persons violating the provisions of this Code and other environmental laws;
- (ii) Exercise police and visitorial powers necessary for the discharge of its functions;
- (iii) Perform such other duties and powers as mandated by PD 1568, DAO 21 of 1992 and DAO 30 of 2003;

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However, it is noted that despite the sound provisions of the Watershed Code of Davao City and the existence of an implementing rules, the said ordinance has yet to be truly implemented because the Watershed Management Council (WMC) is yet to be formally composed. To this day, it is still a question whether the bodies created in the said ordinance had already been constituted.

IV. Liability of Public officers

On the administrative aspect, the failure to enforce the observance of a buffer zone, either willfully or negligently, may constitute an administrative offense on the part of the public officers of the government charged with the implementation of the regulation. Violations of this nature may constitute violations under Code of Conduct of Ethical Behavior (RA 6713) and under administrative code for misfeasance or gross misconduct in office on the part of DENR public officers for their failure to do a mandated act. Criminal offenses for dereliction of duty of a public officer is an option when warranted by circumstances.

On the part of the company or corporate officers concerned, their deliberate intentional non-observance or fraud may constitute specific violations of the revised penal code, although this one may be harder to establish. If certain documents are falsified, falsification of public documents may also be source of indictment. Further, criminal penalties on certain laws affecting environmental compliance may be a source of indictment.⁷

⁷ Clean Air and Water Act of 1995 and PD 1586 provide penalties on certain violations

Under existing rules, specifically the Rules on Procedure for Environmental Cases⁸, an environmental protection order (TEPO) or a Writ of Continuing Mandatory Injunction may be obtained from the courts where warranted by the circumstances.

SECTION 1. Petition for continuing mandamus.- *When an agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule of regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulation. The petition shall also contain a sworn certification of non-forum shopping.*⁹

Further, any legal action initiated by any person to stifle, harass, vex or exert undue pressure any legal recourse that a person has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights may be treated as a strategic lawsuit or SLAPP.¹⁰

IV. Remedies

As partly discussed in the earlier sections, the remedies can be summarized as divided into two:

- 1) Administrative action; and

⁸ A.M. No. 09-6-8-SC

⁹ Rule 8, Section 1, AM No. 09-6-8-SC, Rules of Procedure for Environmental Cases

¹⁰ Ibid.

2) Judicial action

In administrative actions, the direct actions or remedies can be obtained from specific public authorities or government bodies such as the DENR and City of Davao. A simultaneous documented complaint may be lodged with the specific DENR office (CENRO) and City of Davao, specifically with the Watershed Council. In the latter, the aim will be either the enforcement of the mandated buffer zone as provided in the local ordinance (Watershed Code) complementing the national regulation. The Environmental Compliance certificates of the companies involved in the non-observance of the buffer zones may also be asked to be revoked, especially if the conditionalities found therein have not been followed.

In judicial actions, the same may be instituted by any affected individual or grass root organization, although the institution by a group, either as one or jointly commenced, is more favored considering the public interest involved in the issue. It is recommended that demands be first sent to the specific companies or corporations and appropriate government agency as an initial step to commence any legal action. Specifically, the action is civil one, one aimed to end a public nuisance of non-observance of buffer zone and the exaction of damages or a tort action but with application of environmental protection orders.

Other judicial remedies include the prosecution of public officers, criminally and administratively, who will be found to have neglected their mandatory duties to implement the regulation.

On the level of corporate responsibility, local corporations can also be made answerable for various laws on the local jurisdiction. If such local corporation is a subsidiary of a bigger corporation principally organized and based in a foreign country, specific remedies may be obtained in such country.

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An example of this is the Alien Torts Act of the United States where a tort action can be maintained in the US for a violation committed in another country a US corporation. Other countries, like Japan, may have their own version of this law. An extra legal campaign or an environmental expose may be had in a country where the bigger corporation is a nationality.

V. Policy Recommendations

It is to be noted that the laws and regulations on buffer zones involving banana and other agricultural plantations vis-à-vis residential communities have not been quite inadequate. The most recent DENR administrative order¹¹ requires a buffer zone of fifty meters (50) from residential areas/river or body of water to the banana plantations. However, this administrative order does not establish a clear guidelines on how it is to be implemented and how it is to be monitored by whom. The guidelines on this matter should also cover the type of vegetation involved as would constitute a buffer zone and the regulation of activities therein. In order to ensure enforcement, legislation should be passed by congress on this aspect. Further, on the local government level, the Watershed Management Council should be activated to monitor and receive complaints on the violations of the ordinance on Watershed Code of Davao.

In the meantime, the conditionalities of Environmental Compliance Certificates of banana plantations should be reviewed and modified to complement and fulfill the recent administrative order of the DENR and the Watershed Code of Davao.

¹¹ DENR Memorandum Circular No. 2009-14

LEGAL RESEARCH

Re: Liabilities for non-observance of buffer zone in specific areas in Davao City by banana plantations

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