EN BANC

[G.R. No. 202897. August 6, 2019.]

MAYNILAD WATER SERVICES, INC., *petitioner*, ***vs.*** **THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ("DENR"), THE POLLUTION ADJUDICATION BOARD ("PAB"), THE REGIONAL EXECUTIVE DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-NATIONAL CAPITAL REGION ("EMB-NCR"), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION III ("EMB-REGION III"), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION IV ("EMB-REGION IV")**, *respondents*.

[G.R. No. 206823. August 6, 2019.]

MANILA WATER COMPANY, INC., *petitioner*, ***vs.*** **THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), THE REGIONAL EXECUTIVE DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-NATIONAL CAPITAL REGION (EMB-NCR), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION III (EMB-REGION III), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION IV ("EMB-REGION IV-A), and THE POLLUTION ADJUDICATION BOARD (PAB)**, *respondents*.

[G.R. No. 207969. August 6, 2019.]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner*, ***vs.*** **THE POLLUTION ADJUDICATION BOARD and ENVIRONMENTAL MANAGEMENT BUREAU**, *respondents*.

DECISION

HERNANDO, *J.*:

Water is not a mere commodity for sale and consumption but a natural asset to be protected and conserved. Sanitation is its corollary constant, as a poor state of sewerage systems is one of the pillars of people's miseries. We have a collective responsibility to preserve water resources and improve sanitation facilities for future generations. [1]

In early Mesopotamia, Rome, and Egypt, civilizations thrived in the waters of the rivers Tigris and Euphrates, Tiber, and the Nile, respectively. Henry Cavendish, an English chemist and physicist, was first to show in 1781 that water is composed of oxygen and hydrogen [2] molecules which are elements that occur in nature. It is considered as the 'universal solvent' for its ability to dissolve most substances. [3] As humanity have always known, water is one of the most essential resources in the world and its preservation a top priority. It is an ever-active but unsung hero in human progress — a natural resource vital for conservation of life, environmental protection, and economic development. [4]

It cannot be gainsaid that the role of water spans from the nuclear to the astronomical. Yet this "giver of life" is threatened by various adversities. Local incidents of water scarcity are fast becoming normal occurrences because of extended El Niño conditions resulting from climate change. Our sewerage systems are antiquated, if not defunct or nonexistent, and far too neglected — the fact that urban informal settlers by the creeks use the same as their bathrooms and trash bins has reached the status of common knowledge. That water has become an ironically expensive resource is ever more apparent, and unstable access to potable water is afflicting more and more areas over time. While their importance is all too obvious, the state of the Philippines' water supply and water sanitation appear hopelessly grim.

The principal duty of the State and the water industry to supply drinking water and provide top-notch wastewater services through provisions of sewage and septage treatments to households and businesses needs no further emphasis. People have perpetually guarded themselves against water contamination and have evolved from conveying raw waste to natural bodies of water to devising complex sewerage systems. In more ways than one, water and water quality has been a strategic resource which can cause considerable health, sanitation, and biodiversity impacts. Its sociological effects also proliferate in the cultural and economic lives of each individual.

All told, the case before Us is monumental.

Fifteen years from the effectivity of Republic Act (R.A.) No. 9275, or the Philippine Clean Water Act of 2004 (Clean Water Act), [5] allegations that certain entities demonstrated and are continuing to demonstrate blatant apathy with their obligations thereunder now surface and clamor for resolution. As this unfortunately coincides with Metropolitan Manila's ongoing water supply crisis, the Court, in this case, must declare with dispatch and in no uncertain terms the complete, categorical, and definitive implementation of this vital piece of legislation revolving around the natural resource that is water. We have never shirked from the duty such as this and we do not begin now.

THE CASE

Challenged in these *Petitions for Review on Certiorari* [6] under Rule 45 of the Rules of Court are separate rulings of the Court of Appeals. [7] These adjudications [8] uniformly affirmed the Secretary of Environment and Natural Resources (SENR), finding petitioners Metropolitan Waterworks and Sewerage System (MWSS), Maynilad Water Services, Inc. (Maynilad) and Manila Water Company, Inc. (Manila Water), liable for violation of and non-compliance with Section 8 [9] of the Clean Water Act.

The antecedent facts follow.

THE FACTS

On April 2, 2009, the Regional Office of the Department of Environment and Natural Resources (DENR) Environmental Management Bureau-Region III (EMB-RIII) filed a complaint before the DENR's Pollution Adjudication Board (PAB) charging MWSS and its concessionaires, Maynilad and Manila Water, with failure to provide, install, operate, and maintain adequate Wastewater Treatment Facilities (WWTFs) for sewerage system resulting in the degraded quality and beneficial use of the receiving bodies of water [10] leading to Manila Bay, and which has directly forestalled the DENR's mandate to implement the operational plan for the rehabilitation and restoration of Manila Bay and its river tributaries. [11]

On April 8 and 21, 2009, the Regional Directors of the DENR EMB-National Capital Region (NCR) and Region VI-A (RVI-A) also instituted their complaints before the PAB. They similarly charged MWSS, Maynilad, and Manila Water with failure to (a) provide, install, or maintain sufficient WWTFs compliant with the standards and objectives of the Clean Water Act; (b) construct Sewage Treatment Plants and Sewerage Treatment Facilities (STPs & STFs) for treatment of household wastes; and, ultimately, (c) perform its obligations under the said law. According to the EMB-NCR and EMB-RVI-A, the test results of water samples taken from Manila Bay showed that the quality of water near the area has worsened without improvement in all parameters.

Prompted by the said complaints, the SENR issued a Notice of Violation (NOV). The NOV determined petitioners' violation of Section 8 of the Clean Water Act, in that they have not provided, installed, or maintained sufficient WWTFs and sewerage connections satisfactory enough in quantity to meet the standards and objectives of the law, notwithstanding court orders and the lapse of the five-year period provided by the Clean Water Act. [12]

After the requisite technical conference before the PAB, petitioners submitted their respective answers to the charges. MWSS led the defense and averred that they were compliant with the law. [13] Maynilad and Manila Water also asserted the supremacy of the Concession Agreements (Agreement/s) executed with MWSS containing service targets for water supply, sewerage, and sanitation within specific milestone periods spread over the twenty-five year concession period. [14] They sought refuge under Section 7 of the Clean Water Act which first requires the Department of Public Works and Highways (DPWH) to prepare and effect a national program on sewerage and septage management to guide the MWSS and/or its concessionaries in implementing the law. They also claimed other factors contributing to the continued pollution of Manila Bay and its river tributaries. They likewise put forth their respective proposals, on-going projects, and accomplishments relative to the performance of their obligations under the Agreements. [15]

In refutation, the Regional Directors of the DENR-EMB maintained that the quantity of the WWTFs is insufficient to meet the objectives of the law. Petitioners' proffered "significant improvements" on domestic wastewater management actually did not fall within acceptable parameters, where the river tributaries became heavily polluted, as evidenced by the results of the laboratory analysis and monthly monitoring of various river systems conducted by the DENR-EMBs. There remains no connection of the existing sewage lines in the Cavite Area, and no sufficient STFs established in the San Juan area. [16]

The Ruling of the SENR

In his deliberation of the complaints, the SENR ruled that the Clean Water Act, specifically, the provisions on the five-year period to connect the existing sewage lines, is mandatory, and the refusal of petitioners' customers to connect to a sewage line is irrelevant to Section 8 of the law. The SENR further stated that petitioners' failure to provide a centralized sewerage system and connect all sewage lines is a continuing unmitigated environmental pollution resulting in the release and discharge of untreated water into various water areas and Manila Bay. Citing the Supreme Court ruling in *Metropolitan Manila Development Authority (MMDA) v. Concerned Residents of Manila Bay*, [17] strict compliance with the Clean Water Act is a necessary given, and the five-year periodic review stipulated in the Agreements between petitioners should have considered and factored in the requirements of the Clean Water Act. [18]

Thus, in an Order dated October 7, 2009, upon recommendation of the PAB and in DENR-PAB Case No. NCR-00794-09, the SENR found MWSS, Maynilad, and Manila Water liable for violation of the Clean Water Act and its Implementing Rules and Regulations (IRR), imposing the following fines against them:

> **WHEREFORE**, after due deliberation and consultation, the Secretary resolves to impose the fines amounting to **TWENTY-NINE MILLION FOUR HUNDRED THOUSAND PESOS (PhP29,400,000.00)** jointly and solidarily against [petitioners] covering the period starting from 07 May 2009, the lapse of the fifth year from effectivity of the Clean Water Act as provided for under Section 8 thereof, to 30 September 2009. Thereafter, a fine of **Two Hundred Thousand Pesos (PhP200,000.00)** per day shall be fined against [petitioners] until such time that [petitioners] have already fully complied with the provisions of RA 9275.
>
> [Petitioners] are hereby directed to pay the fines within ten (10) days from receipt hereof.

[Petitioners'] payment shall be made through the EMB Central Office at Visayas Ave., Diliman, Quezon City.

The Regional Executive Director (DENR-Region NCR) or his duly authorized representative is hereby directed to serve this Order within seventy-two (72) hours from receipt hereof. A report shall likewise be submitted to the Board within forty-eight (48) hours from execution stating the proceedings taken therein. [19]

MWSS and Manila Water filed separate motions for reconsideration of the SENR's Order dated October 7, 2009, both of which were denied in another Order dated December 2, 2009, *viz.*:

WHEREFORE, after due deliberation and consultation, the Secretary hereby resolves to **DENY** the Motion for Reconsideration filed by [petitioners], MWSS and Manila Water and direct the same to comply with the previous Order dated 07 October 2009. As to Maynilad, since it had failed to submit its Motion for Reconsideration within the allowable period, the Secretary deemed their non-submission as a waiver of their right to be heard and submit evidence. Hence, the Secretary hereby directs the same to comply with the said previous Order.

The Regional Executive Director (DENR-Region NCR) or his duly authorized representative is hereby directed to serve this Order within seventy-two (72) hours from receipt hereof. A report shall likewise be submitted to the Board within forty-eight (48) hours from execution stating the proceedings taken therein. [20]

On November 19, 2009, Maynilad filed its first motion for reconsideration. On December 9, 2009, Maynilad instituted a second motion for reconsideration, [21] which the PAB denied outright for lack of merit in its Order dated March 17, 2010. [22]

Petitioners filed separate petitions for review under Rule 43 of the Rules of Court before the Court of Appeals questioning these Orders of the SENR.

The Rulings of the Court of Appeals

The court *a quo* did not consolidate the petitions and ruled the same separately.

In **CA-G.R. SP No. 113374**, the Court of Appeals dismissed **Maynilad's** petition for violation of procedural rules on motions for reconsideration. [23] It found that Maynilad (1) belatedly moved for reconsideration of the SENR's October 7, 2009 Order, which therefore became final and executory; and (2) its second motion for reconsideration was a mere scrap of paper for being a prohibited pleading and did not toll the reglementary period. The Court of Appeals desisted from ruling on Maynilad's petition for review since the ruling in DENR PAB Case No. NCR-00794-09 already attained finality. The Court of Appeals so declared in its Decision [24] dated October 26, 2011:

WHEREFORE, the petition is **DISMISSED**. Petitioner [Maynilad] is directed to comply with the Orders of the DENR-PAB dated October 7, 2009, December 2, 2009 and March 17, 2010. [25]

The Court of Appeals also denied Maynilad's motion for reconsideration in its Resolution [26] dated July 17, 2012. Disposing of the substantive merits of the case, the Court of Appeals rebuffed petitioners' invocation of the ruling of the Supreme Court in *MMDA v. Concerned Citizens of Manila Bay* [27] which, Maynilad asserts, supersedes the five-year compliance period set by the Clean Water Act for petitioners to connect all the existing sewage line found in the whole of Metro Manila and other Highly Urbanized Cities (HUCs) as defined in the Local Government Code of 1991. [28] The Court of Appeals further held that the invoked item [29] in the body of the *MMDA* case relating to petitioners' obligations in the clean-up of Manila Bay, simply sets different deadlines: one for submission by Maynilad and Manila Water of their plans and projects for the construction of WWTFs in certain areas in Metro Manila, Rizal and Cavite, and another for the actual construction and completion thereof.

In **CA-G.R. SP No. 112023**, the Court of Appeals likewise dismissed **Manila Water's** petition. It found in the main that, applying *verba legis*, Section 8 of the Clean Water Act is clear, plain and free from ambiguity, in requiring Manila Water to connect the existing sewage lines in its service area to sewerage systems ready for and already in use within five years from effectivity of the law. It held that the compliance period under the Clean Water Act is separate from the compliance periods provided in the Agreement between MWSS and Manila Water. In the same vein, it also ruled that the DPWH need not first formulate a National Sewerage and Septage Management Program (NSSMP) before Manila Water can be compelled to comply with Section 8 of the Clean Water Act. The Court of Appeals stated that "Section 8, R.A. No. 9275 categorically states that the petitioner shall connect existing sewage lines to available sewerage system in its service area '[w]ithin five (5) years following the effectivity of this Act,' and not within 5 years from the formulation of the NSSMP or within 5 years from the preparation of the compliance plan for mandatory connection by the DPWH." The dispositive portion of the Court of Appeals Decision [30] dated August 14, 2012 disposed of Manila Water's petition as follows:

WHEREFORE, the petition is hereby ***DISMISSED***. The Orders dated October 7 and December 2, 2009 issued by the DENR-PAB Case No. NCR-00794-09, are hereby ***AFFIRMED***. [31]

The Court of Appeals also denied Manila Water's motion for reconsideration in its Resolution [32] dated April 11, 2013.

In **CA-G.R. SP No. 112041**, the petition of MWSS before the Court of Appeals met the similar fate of dismissal. It preliminarily dealt with the incorrect remedy of MWSS when it resorted to Rule 43 in questioning the Orders of the SENR. The Orders were issued not by the PAB, but by the SENR pursuant to Section 28 of the Clean Water Act. As such, the remedy of MWSS therefrom is an appeal to the Office of the President and not a Rule 43 petition to the Court of Appeals. The court *a quo* also noted that the MWSS failed to exhaust administrative

remedies which renders its petition dismissible. Still and all, the Court of Appeals likewise found MWSS' petition wanting in substance, ruling that Section 8 of the Clean Water Act expressly mandates MWSS, as the government agency vested with the duty to supply water and sewerage services, to connect all existing sewage lines to the available sewage system within five years from the date of effectivity of the law or from May 6, 2004. Section 8 imposes a clear and unequivocal duty on the part of MWSS and its concessionaire, and the *provisos* thereunder only state the imposition of service fees and the requirement for all sources of sewage and septage to comply therewith, not an exemption from compliance. The Court of Appeals decreed in its Decision [33] dated September 25, 2012:

> **WHEREFORE**, the instant petition is **DISMISSED** for lack of merit. [34]

MWSS's motion for reconsideration was also denied in the Court of Appeals Resolution [35] dated June 17, 2013.

Thus, these consolidated petitions for review on *certiorari* raising grave errors in the foregoing rulings by the Court of Appeals.

The Case before this Court

MWSS' Arguments

MWSS insists it did not violate the law. It argues, in essence, that its obligation under Section 8 of the Clean Water Act has yet to accrue given the lack of required coordination and cooperation by the lead and implementing agencies under Section 7 of the law and non-compliance by the DPWH, DENR and LGUs with Section 7 of the Clean Water Act, specifically the preparation and establishment of a national program on sewerage and septage management. [36]

Maynilad's Arguments

Maynilad mainly anchors its arguments on our ruling in *MMDA v. Concerned Residents of Manila Bay* [37] which ultimately ordered MWSS to construct the necessary WWTFs in the areas of Metro Manila, Rizal and Cavite with a deadline for completion of the construction. It relied on Our following declarations in the said case:

> The MWSS shall submit to the Court on or before June 30, 2011 the list of areas in Metro Manila, Rizal and Cavite that do not have the necessary wastewater treatment facilities. Within th same period, the concessionaires of the MWSS shall submit their plans and projects for the construction of wastewater treatment facilities in all the aforesaid areas and the completion period for said facilities, which shall not go beyond 2037. [38]

Manila Water's Arguments

On the other hand, Manila Water maintains that it was deprived of due process of law when the DENR Secretary imposed a fine without a valid complaint or charge, and that the Orders dated October 7 and December 2, 2009 were issued without or in excess of jurisdiction since the SENR arrogated the full powers of the PAB, imposing a fine without the requisite recommendation from the latter. Manila Water is steadfast in its position that it did not violate Section 8 of the Clean Water Act, as Section 7, in relation to Section 8, of the Clean Water Act partakes of a condition precedent to Manila Water's fulfillment of its obligations thereunder. Even if so obliged under Section 8, Manila Water claims exemption from the "five-year timeline" for compliance. It also assails the fine imposed by the SENR for being excessive and confiscatory amounting to deprivation of property without due process. [39]

Respondents' Arguments through the Office of the Solicitor General

Through the Office of the Solicitor General (OSG), respondents refute petitioners' uniform assertion that they did not violate Section 8 of the Clean Water Act. The OSG points out petitioners' liability for violation of the Clean Water Act in failing to provide a centralized sewerage system under Section 8 thereof, which is distinct from the obligations of various government agencies under the same law. Respondents disagree with petitioners' contention that the conditions contained in Section 7 of the Clean Water Act are conditions precedent for the implementation of Section 8 thereof. They defend that the Order of the SENR finding petitioners liable for violation of Section 8 of the Clean Water Act were based on substantial evidence, and that the SENR Order imposing a fine on petitioners for violation of Section 8 of the Clean Water Act was based on a valid complaint or charge. Specific to the Court of Appeals's dismissal of Maynilad's appeal, respondents also assert that the assailed Orders of the SENR had already attained finality.

Preliminary matters to be noted

A clarification on a number of preliminary matters appears necessary.

First. On April 4, 2017, the Court issued a Resolution [40] requiring a number of stakeholders, government agencies, and petitioners Maynilad and Manila Water, to provide complete and detailed status reports of their compliance with various provisions of the Clean Water Act and its IRR.

Albeit with much difficulty, the government agencies, except for the lead agency under the Clean Water Act, the DENR, as well as herein petitioners, have complied with the April 4, 2017 Resolution of this Court. We note that one of

the government agencies we required to comply, the National Sewerage and Septage Management Program (Office NSSMPO), as per the DPWH's Compliance, has yet to be organized as an office thereunder. We shall discuss the contents of all these Compliances in the course of our disposition in this case.

Next. In these appeals, petitioners separately implead various respondents but uniformly assail the Orders of the SENR dated October 7 and December 2, 2009.

In G.R. No. 202897, Maynilad and Manila Water impleaded the DENR Secretary, the Regional Directors for NCR, Region III, and Region IV-A of the DENR-EMB, and the PAB. MWSS, on the other hand, impleads as respondents the PAB and the Regional Offices, NCR, III, and IV-A of the DENR-EMB.

We note, however, that, in their respective petitions for review under Rule 43 of the Rules of Court which they filed before the Court of Appeals, petitioners averred that the Orders dated October 7 and December 2, 2009 were issued by the PAB, and not by the Secretary of the DENR. However, all three rulings of the appellate court bear out otherwise. Only the Decision of the appellate court in CA-G.R. SP No. 112041, entitled "*MWSS v. PAB and DENR-EMB*," squarely dealt with the procedural mistake of petitioners. [41]

In resolving these cases, we will definitively settle the proper recourse that petitioners should have undertaken under the applicable laws and rules of procedure, *i.e.*, Executive Order No. 192, [42] Executive Order No. 292, and Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases.

Further. May 7, 2009 is the date following the lapse of five (5) years from the time the Clean Water Act took effect on May 6, 2004, per Rule 1.2 of the DENR Administrative Order No. 2005-10 (DAO No. 2005-10) or the Implementing Rules and Regulations of the Clean Water Act, which states:

> *Effectivity of the CWA*. The CWA was published on April 21, 2004 and subsequently took effect on May 6, 2004.

Last. The overarching framework in our disposition herein considers the following:

1. The rationale for the enactment of Clean Water Act and its provisions.

2. The obligatory force of environmental laws in general, and water quality management, in particular, with the "Public Trust Doctrine" and its application in the case at bar as overture.

3. The pertinent obligations of MWSS under its Charter, Republic Act No. 6234, and the Concession Agreements; and the concurring obligations of MWSS' concessionaires, petitioners Maynilad and Manila Water, under the Clean Water Act, the Agreements, and the subsequent extension thereof.

4. The much-invoked ruling in *MMDA v. Concerned Residents of Manila Bay*. [43]

ISSUES

For this Court's resolution are the procedural and substantive issues, to wit:

I. Procedural

1. Whether the Orders of the SENR dated October 7 and December 2, 2009 did not comply with the requirements under Section 28 of the Clean Water Act and Section 19 of Executive Order No. 192.

2. Whether petitioners were deprived of procedural due process when the Secretary of the DENR imposed a fine on them for violation of the Clean Water Act.

II. Substantive

1. Whether petitioners violated Section 8 of the Clean Water Act.

   1.1 Whether compliance by specified government agencies to their obligations under Section 7 of the Clean Water Act is a condition precedent to petitioners' fulfillment of their obligations thereunder.

   1.2 Whether petitioners' actual compliance to the Agreements regarding specific targets for completion of sewerage system projects prevail over that of their obligations under Section 8 of the Clean Water Act.

   1.3 Assuming that the five-year compliance period under Section 8 is controlling, whether petitioners are exempted from complying thereto by the provided deadline, *i.e.*, May 6, 2009.

2. Whether the ruling in *MMDA v. Concerned Residents of Manila Bay* supersedes the five-year compliance period stated in Section 8 of the Clean Water Act and extended petitioners' compliance therewith until the year 2037.

   2.1 Whether the *MMDA* case impliedly repealed Section 8 of the Clean Water Act.

   2.2 Whether the *MMDA case* effectively nullified the Orders of the SENR dated 07 October and 02 December 2009.

3. Whether petitioners ought to be fined under Section 28 of the Clean Water Act.

THE COURT'S RULING

We shall examine at length and resolve the issues separately.

I.

Procedural Issues

The SENR's Orders are appealable to the Office of the President

In arguing that the SENR violated petitioners' right to due process in imposing a fine without a valid complaint or charge and without recommendation from the PAB, petitioners inadvertently highlight the gravity of their procedural mistake, *i.e.*, the filing of a petition for review under Rule 43 to the appellate court to question the Orders of the SENR.

The PAB is a separate office under the Department proper, and is chaired by the Secretary of the Department. [44] In general, the PAB has exclusive jurisdiction over the adjudication of pollution cases, and all other matters related thereto, including the imposition of administrative sanctions. [45] The PAB also exercises specific jurisdiction over certain environmental laws, including the Clean Water Act:

> The PAB has the exclusive and original jurisdiction with respect to adjudication of pollution cases based on exceedance of the DENR Effluent Standards and other acts defined as prohibited under Section 27 of R.A. 9275. [46]

In 2009, during the pendency of DENR-PAB Case No. NCR-00794-00, proceedings in the PAB were governed by Resolution No. I-C, Series of 1997. [47] It defined the Board's sole and exclusive jurisdiction and the finality of its decisions. Its Rule III, on Jurisdiction and Authority, read:

> SECTION 1. JURISDICTION OF THE BOARD. — The Board shall have sole and exclusive jurisdiction over all cases of pollution, as defined herein, and all other matters related thereto, including the imposition of administrative sanction, except as may be provided by law.

And Rule XI, on Finality of Decisions:

> SECTION 1. FINALITY OF ORDER, RESOLUTION OR DECISION AND PERIOD TO APPEAL. — Subject to the provisions of the preceding rule, any order, resolution or decision of the Board shall become final and executory after fifteen (15) days from the date of receipt thereof, unless a motion for reconsideration is filed or an appeal is perfected within said period. The mere filing of an appeal shall not stay the decision of the Board.

However, the Orders of the SENR are different from the issuances of the PAB. While under its 1997 rules, the PAB had jurisdiction to impose the fine or administrative sanction on all cases of pollution, it is Section 28 [48] of the Clean Water Act and its IRR, Rule 28 of DAO No. 2005-10, which must be correctly applied. It was already in effect in 2009 and **specifically bestows upon the Secretary of the DENR, upon recommendation of the PAB, in cases of commission of prohibited acts under and violations of the Clean Water Act, the power to impose fines, order the closure, suspension of development or construction, or cessation of operations, or, where appropriate disconnection of water supply**.

The herein assailed Orders dated October 7 and December 2, 2009 were not issued by the PAB but by the SENR. Thus, we affirm the appellate court's holding in CA-G.R. SP No. 112041 that **the appropriate remedy from the Orders of the SENR is an appeal to the Office of the President**. [49]

Consequently, petitioners prematurely filed a petition for review before the Court of Appeals and failed to exhaust administrative remedies. These erroneous procedural steps effectively rendered petitioners' appeals dismissible, resulting in the finality of the Orders of the SENR. [50]

No Denial of Procedural Due Process

Petitioners' claim of denial of due process is just as infirm.

Due process of law has two aspects: substantive and procedural. *Substantive due process* refers to the intrinsic validity of a law that interferes with the rights of a person to his property. *Procedural due process*, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it. [51] In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof. As nowhere in the voluminous records of these cases have petitioners questioned the extrinsic and intrinsic validity of the Clean Water Act, there is no reason to dispute the said law. We thus restrict the discussion to whether there was a violation of procedural due process.

In invoking their right to due process, petitioners mainly argue that the SENR, without a valid complaint or charge, imposed a fine without the recommendation from the PAB and arrogated unto itself the powers of the latter.

We disagree.

The records disclose the fact that this case was spawned by the complaints commenced by the Regional Directors of the DENR-EMB-RIII, DENR-EMB-NCR, and DENR-EMB-RVI-A before the DENR-PAB. The SENR acted upon the said complaints in response, issuing the NOV against petitioners which explicitly stated:

> **Notice of Violation**
>
> Sir:
>
> Notice is hereby served upon you that the Manila Water Sewerage System (MWSS) has committed violations as found during the periodic monitorings conducted by this Office from January to March 2009.
>
> **Act Constituting Violation**

1. You have not provided, installed or maintained sufficient wastewater treatment facilities satisfactory enough in quantity to meet the standards and objectives of the law. Neither have you carried out the connection of the sewage line being mandated by law, notwithstanding the Order of the Court and the lapse of the five-year period provided by RA 9275.

2. Sec. 8 of RA 9275 states that "[w]ithin five (5) years following the effectivity of this Act, the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system."

In this regard, you are hereby directed to attend a technical conference to be conducted by the Board on May 5 — 9:00 am for the purpose of simplification of the issues and stipulation of facts.

Please be informed that pursuant to Section 28 of the Clean Water Act, a fine of not less than Ten Thousand Pesos (PhP10,000.00) but not more than Two Hundred Thousand Pesos (PhP200,000.00) per day of violation may be imposed to the offender who violates the provision of the Act and its IRR. [52]

In clear terms, the NOV stated the charges against petitioners, gave a directive to attend the technical conference for simplification of issues and stipulations of facts, and apprised them of the liability imposed on violators under Section 28 of the Clean Water Act. Hence, **petitioners were notified of the charges against them, were given an opportunity to be heard during a technical conference,** [53] **and were informed of the penalty for possible violations of the Clean Water Act**. These charges were the same accusations for which petitioners were eventually found liable for. In addition, petitioners wrote several letters addressed to the PAB and the Secretary of the DENR formalizing their position in response to the Complaint-Affidavits of the Regional Directors of the DENR-EMB. In turn, the Regional Directors filed their Comments thereto, which were amply refuted by the petitioners. Demonstrably, the SENR, upon recommendation of the PAB, pursuant to the Clean Water Act, validly imposed the fine after the charge, hearing, and due deliberation.

Moreover, the role of the PAB under Section 28 of the Clean Water Act is merely recommendatory. The pertinent portion of Section 28 of the said law provides:

> SECTION 28. ***Fines, Damages and Penalties***. — Unless otherwise provided herein, any person who commits **any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, shall be fined by the Secretary, upon the recommendation of the PAB** in the amount of not less than Ten thousand pesos (P10,000.00) nor more than Two hundred thousand pesos (P200,000.00) for every day of violation. The fines herein prescribed shall be increased by ten percent (10%) every two (2) years to compensate for inflation and to maintain the deterrent function of such fines: *Provided*, That the Secretary, upon recommendation of the PAB may order the closure, suspension of development or construction, or cessation of operations or, where appropriate disconnection of water supply, until such time that proper environmental safeguards are put in place and/or compliance with this Act or its rules and regulations are undertaken. This paragraph shall be without prejudice to the issuance of an *ex parte* order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case. (Emphasis supplied.)

This participation by the PAB in the imposition of fines as penalty under Section 28 of the Clean Water Act is also phrased as recommendatory by the Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases: [54]

> B. EXPANDED POWERS OF THE BOARD
>
> Pursuant to specific laws, the Board shall exercise, but not be limited to, the following powers:
>
> xxx xxx xxx
>
> **B.3 Under Section 28 of R.A. 9275, Clean Water Act of 2004, the Board shall:**
>
> **8. Recommend to the DENR Secretary the imposition of fines for acts of omission prohibited under Section 27 of the Act.** [Emphasis supplied.]

Over and beyond the risk of repetition, it must be underscored here that the role of the PAB in the imposition of fines for violation of Section 28 of the Clean Water Act is restricted to a recommendation of penalty. The execution of punitive power thereunder remains with the SENR. This, however, should not be taken to mean that the recommendatory role of the PAB is dispensable. Its technical expertise in pollution cases such as the one at hand remains crucial, and this expertise, the SENR definitely did not disregard. Despite the lack of actual or formal recommendation of liability given by the PAB against petitioners, the technical conference was conducted by the PAB, and the findings during the said conference and upon deliberation on the pleadings of the parties were produced by the PAB. The latter body, referred to as the *Board* by the SENR, had determined petitioners' liabilities on the basis of its own lengthy disquisitions, as noted by the SENR in its Order dated October 7, 2009, *viz.*:

> **During the deliberation of the case, the Board took note of the following findings**, to wit:
>
> As to the violation of Section 8 of R.A. 9275, the justification submitted by the respondent is insufficient to justify its failure to comply with the said provision. R.A. 9275 is a statutory law, compliance of which is mandatory. It is *mala prohibita* as opposed to *mala in se*. The rule is that in acts *mala in se* there must be a criminal intent, but in those *mala prohibita* it is sufficient if the prohibited act was intentionally done. x x x It has already been cited by the Supreme Court that

violation of environmental laws, are *mala prohibita* x x x. It is sufficient that the acts complained of were proven (and in this instance admitted), and no amount of justification will clear it of any violation.

It should be noted that the excuse offered by respondents that several customers refuse to connect is irrelevant. Section 8 of R.A. 9275 itself makes it mandatory for any sewage and septage to comply with the said rule to wit[:] *"Provided, further, that all sources of sewage and septage shall comply with the requirements herein."* Persons in violation of such mandatory provision may be held accountable in accordance with Section 28 of the said law.

xxx xxx xxx

Thus, the refusal of any person under the said law is already addressed by the same law.

Moreover, assuming that such excuse would justify non-compliance of a mandatory provision of the law, such excuse partakes the nature of an affirmative defense. It is incumbent upon the respondent to prove his affirmative defense by clear and convincing evidence. x x x Aside from the mere statements given by the respondent, no proof or evidence was shown to justify its stance.

It should further be noted that the five (5)-year period was made to provide sufficient time to comply with the interconnection of all water supply and sewerage facilities. The continued failure of providing a centralized sewerage system in compliance with the said law means that several sewage line continues to dump and release untreated sewerage within their vicinities — resulting in unmitigated environmental pollution. The fact of the matter is that, because of the failure to completely centralized *[sic]* the sewerage system and comply with Section 8 of the law, untreated water are *[sic]* continuously being dumped within existing water areas and the Manila Bay, resulting in the continued pollution of the said water areas.

Moreover, strict compliance of the law is necessary in light of the said 18 December 2008 Order issued by the Supreme Court, quoting portions of the said decision:

> "*In 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 . . .*"

In its decision on the case at bar, the High Court directed the DENR to fully implement its Operational Plan for the Manila Bay Coastal Strategy for the rehabilitation, restoration of the Manila Bay at the earliest possible time and to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules. In same vein, it ordered the MWSS to provide, install, operate and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

This pronouncement of the Court finds basis in Section 8 of R.A. 9275 which was already stated earlier.

As regards the argument of the respondents that the MWSS entered into a Concessionaire Agreement with Manila Water and Maynilad prior to the CWA and therefore they believed that subsequent law should not impair existing agreements, the Board took note that the parties review the provisions of the CA every five (5) years. If this is the case and if there is indeed intention on the part of the parties to comply with the law, the parties should have made the schedule in the CA consistent with the requirement of the said law.

Based on the foregoing discussion, it is clear that the respondents have committed a violation under the provision of the Clean Water Act or R.A. 9275, particularly Section 8 thereof which a penalty of fines ranging from PhP10,000.00 to PhP200,000.00 per day of violation may be imposed against them.

Inasmuch as there is a strong basis as shown by records that the respondents indeed have not complied with the requirements of the law to the letter and that tremendous amount of pollution exists at the above-cited receiving bodies of water, the maximum amount of penalty should be meted out against respondents. [55]
(Emphasis supplied, citations omitted.)

These findings by the PAB, albeit not specifically labelled as a "recommendation," laying out petitioners' accountability and calling for the imposition of fine, were all cited, adopted, and relied upon by the SENR in penalizing them under Section 28 of the Clean Water Act. It also bears noting that petitioners attended this technical conference before the PAB, in which all of the parties thereto were allowed to air their respective sides.

Service of justice, not technical subservience, is the end pursued by the rules of procedure. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[56] Once this purpose has been fulfilled, despite trivial deviations from the rules, and for as long as a party has been meaningfully heard or at the very least afforded the chance to be heard, any finding fairly arrived upon by the administrative body will hold and shall

not be disregarded. Suffice it to state here that the voluminous records on hand disclose that petitioners have been heard more than sufficiently throughout the entire proceedings of this case.

In any case, whatever procedural lapse that may have transpired during the proceedings before the PAB and the SENR had already been cured when MWSS, Maynilad, and Manila Water all moved for reconsideration of the SENR's Orders. [57] Procedural due process, as applied to administrative proceedings, means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. [58]

All said, the petitions on hand already merit their outright dismissals on technical score alone.

Nonetheless, the transcendental nature of the issues raised herein, involving as they do matters of extreme public interest, compels this Court to resolve the substantive issues raised by petitioners. The resolution of all the substantive issues in these cases is of utmost urgency and necessity in order to solidify the importance of the policy and rationale for the law. An adjudication on only the procedural issues would only result in ambiguities on the obligations set by the Clean Water Act on the various stakeholders and actors — government agencies, private individuals and companies, and industry organizations. If left unresolved, these issues will necessarily open further rounds of protracted litigation, to the detriment of the Filipino consumer as the primary stakeholder.

II.

Substantive issues

Violation of the Clean Water Act by petitioners

An initial academic discussion on the historical and legal basics is in order.

Water Management as a Public Trust

Protruding from the basic tenet that water is a vital part of human existence, this Court introduces the *Public Trust Doctrine*. It aims to put an additional strain upon the duty of the water industry to comply with the laws and regulations of the land.

A number of doctrines already protect and sanctify public welfare and highlight the State's various roles relative thereto. Article XII, Section 2, of the 1987 Philippine Constitution elaborates on the ownership of the State over the nation's natural resources and its right and duty to regulate the same:

> All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and **other natural resources are owned by the State**. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The above constitutional provision is the embodiment of *jura regalia*, or the Regalian doctrine, which reserves to the State ownership of all natural resources. [59] The Regalian doctrine is an exercise of the State's sovereign power as owner of lands of the public domain and of the patrimony of the nation. [60] Sources of water form part of this patrimony.

The vastness of this patrimony precludes the State from managing the same entirely by itself. In the interest of quality and efficiency, it thus outsources assistance from private entities, but this must be delimited and controlled for the protection of the general welfare. Then comes into relevance police power, one of the inherent powers of the State. Police power is described in *Gerochi v. Department of Energy*: [61]

> [P]olice power is the power of the state **to promote public welfare by restraining and regulating the use of liberty and property**. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxim *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held **that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons**.

Hand-in-hand with police power in the promotion of general welfare is the doctrine of *parens patriae*. It focuses on the role of the state as a "sovereign" and expresses the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*. [62] Under the doctrine, the state has the sovereign power of guardianship over persons of disability, and in the execution of the doctrine the legislature is possessed of inherent power to provide protection to persons *non sui juris* and to make and enforce rules and regulations as it deems proper for the management of their property. [63] *Parens patriae* means "father of his country," and refers to the State as a last-ditch provider of protection to those unable to care and fend for themselves. It can

be said that Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits.

While the Regalian doctrine is state ownership over natural resources, police power is state regulation through legislation, and *parens patriae* is the default state responsibility to look after the defenseless, there remains a limbo on a flexible state policy bringing these doctrines into a cohesive whole, enshrining the objects of public interest, and backing the security of the people, rights, and resources from general neglect, private greed, and even from the own excesses of the State. We fill this void through the Public Trust Doctrine.

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. [64] Thus, "[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust." [65] In *National Audubon Society v. Superior Court of Alpine County*, [66] a California Supreme Court decision, it worded the doctrine as that which —

> [T]he state had the power to reconsider past allocation decisions even though an agency had made those decisions after due consideration of their effect on the public trust. This conclusion reflected the view that water users could not acquire a vested property right in the water itself; they merely obtained a usufructuary right to the water.

Academic literature further imparts that "[p]art of this consciousness involves restoring the view of public and state ownership of certain natural resources that benefit all. [. . .]" The "doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole. A clear declaration of public ownership, the doctrine reaffirms the superiority of public rights over private rights for critical resources. It impresses upon states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability." [67]

In this framework, a relationship is formed — "the *[s]tate* is the trustee, which manages specific natural resources — the *trust principal* — for the trust principal — for the benefit of the current and future generations — the *beneficiaries*." [68] "[T]he [S]tate has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." [69] But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.

These exigencies forced the public trust doctrine to evolve from a mere principle to a resource management term and tool flexible enough to adapt to changing social priorities and address the correlative and consequent dangers thereof. **The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself.** [70]

It is in this same manner that the right to distribute water was granted by the State *via* utility franchises to Maynilad and Manila Water, under express statutory regulation through its delegated representative, the MWSS. The State conferred the franchise to these concessionaires, working under the firm belief that they shall serve as protectors of the public interest and the citizenry. In this regard, water rights must be secured to achieve optimal use of water resources, [71] its conservation, and its preservation for allocative efficiency.

For this purpose, water users who are subject to regulation by the State or by its own franchise must obtain permits [72] and comply with the sanctions imposed on them. The enjoyment of these permits is not perpetual and require a continued demonstration of quality and good service. Water allocation decisions must coincide with a comprehensive water supply plan which reflects not only economic efficiency but also environmental and health values. [73] Henceforth, whenever there are changing needs and circumstances, there must also be proper re-allocation techniques. [74] "[T]he state can re-evaluate prior allocations and must act to preserve the right of present and future generations." [75] "The idea that the state must manage water resources for the benefit of present and future generations captures the idea of sustainability and reflects our extended connection to those who succeed us." [76]

Via legislative act of police power, the enactment of the Clean Water Act thrusts the obligation onto the water concessionaires to provide for a proper sewerage and septage system that complies with environmental and health standards to protect present and future generations. The magnitude of this law is highlighted by the trust relationship among the State, concessionaires, and water users, which must reflect a universal intangible agreement that water is an ecological resource that needs to be protected for the welfare of the citizens. In essence, "[t]he public trust doctrine is based on the notion that private individuals cannot fully own trust resources but can only hold them subject to a servitude on behalf of the public." [77] "States can accomplish this goal more efficiently through statutory regulation" [78] which was essentially done through the legislation of the Clean Water Act, and the urgency and significance of which is now fortified by the courts under the Public Trust Doctrine as clamored for by the circumstances of this case.

The Clean Water Act

The Clean Water Act, or "An Act Providing for a Comprehensive Water Quality Management and For Other Purposes," is a sweeping piece of legislation consolidating into a coherent whole the fragmented aspects of quality

water management. This purpose is reflected in Section 2 (c) thereof, which formalizes the need to "formulate a holistic national program of water quality management that recognizes that water quality management issues cannot be separated from concerns about water sources and ecological protection, water supply, public health and quality of life."

The essential framework of the Clean Water Act is summed up in Section 2, the Declaration of Policy. [79] The *ratio* for the enactment of Clean Water Act was best explained by Senator Robert Jaworski in his sponsorship speech of Senate Bill No. 2115, the precursor of R.A. No. 9275:

> Water pollution is a particularly costly problem in densely populated urban areas such as Metro Manila. Ninety percent of our drinking water comes from underground sources. But these sources are threatened by depletion and contamination, particularly from non-existence of sewerage systems or faulty sewerage systems that seep into underground water sources. Fresh water sources near many cities have become so severely contaminated that more distant sources have to be explored at high costs. Although sophisticated purification methods to clean polluted rivers exist, such methods are expensive and complicated. Meanwhile, the cost of unsafe water is also high. We must remember and realize that in developing countries like the Philippines, an estimated 80% of all illnesses are waterborne.
>
> Inefficient water resource management also plays a role in water scarcity. Water resources are developed and managed, more or less, independently at different levels of jurisdiction — national, regional, and local — and by separate sectors, including our industries, agriculture, municipal water supply, recreation and so on. Such fragmentation leads to poor planning of water use and leads people to use water carelessly and without regard to its economic value.
>
> xxx xxx xxx
>
> The lack of usable, clean water resources is a problem that confronts us today. This is the reason, Mr. President, this committee thought of submitting this measure as our humble contribution in finding alternative solutions. This bill will rationalize the various government institutions and agencies whose functions have long been fragmented, resulting in uncoordinated and circuitous bureaucratic policies and wasted funds. We put to task the Department of Environment and Natural Resources (DENR) to come up with Water Reports and Water Quality Management Systems to be accomplished within a reasonable time frame, bearing in mind the urgency of this problem. We also provided the mechanism for the participation of our local executives and planners, non-government organizations and the civil society.
>
> xxx xxx xxx
>
> This bill is not lacking in incentives and rewards and it has muscle to penalize acts that further pollute all our water sources as well. We increased the fines so that with strict implementation, we can curb the damage we continue to inflict, ironically, to our life source.
>
> xxx xxx xxx
>
> x x x The Manila Bay has been derisively described as the widest septic tank ever made by Filipinos. The residuals discharged into the watercourses consist of biodegradable, nonbiodegradable and persistent pollutants of which, regardless of the scientific classifications given, result in water pollution. Domestic sewage is the most commonly known organic waste, although industrial wastes are far greater in volume. We have a scenario where we do not have a concrete sewage treatment program. Cited earlier, these wastes seep to the ground, significantly altering our aquifers and surface water. Without treatment, they are ingested by us. The misery is worse for those who cannot afford treated water, the very reason we have a disease-prone population. [80]

The ensuing legislative deliberations on Senate Bill No. 2115 exposed some of the causes of poor water management, which included fragmentation of the numerous government arms involved in water supply and regulation. [81] It was hoped that the passage of the Clean Water Act would serve as the remedial tool in the integration and proper definition of the State's policies on water management and conservation. In the same vein, the Clean Water Act assigned specific obligations for stakeholders and actors. This includes concessionaires, among others. The Clean Water Act further connects water regulation with septage management programs, including the Code on Sanitation of the Philippines, [82] Water District Law, [83] the Local Government Code, [84] the National Building Code, [85] and the Revised National Plumbing Code.

The necessity for sewers and sewage, septage, and sewerage facilities is a matter not up for debate. *Sewer*, as generally understood in law, has reference to the underground canal or passage by means of which cities are drained and the filth or refuse liquids are carried to the sea, river, or other places or reception, but it has also been applied to an underground structure for conducting the water of a natural stream. [86] Either way, sewers are constructed as sanitary measures for the public good. [87] *Septage* are waste found in septic tanks, [88] or the sludge produced on individual onsite wastewater-disposal systems, principally septic tanks and cesspools. [89] Although *sewage* and *sewerage* are terms used often interchangeably, there is a distinction between the two, the word *sewerage* being usually applied to a system of sewers, and *sewage* to the matter carried off. [90] A more graphic description of *sewage* under DAO No. 2005-10 triggers the extreme necessity to contain it — it means water-borne human or animal wastes, excluding oil or oil wastes, removed from residences, buildings, institutions, industrial and commercial establishments together with such groundwater, surface water and storm water as maybe present including such waste from vessels, offshore structures, other receptacles intended to receive or retain wastes, or other places or the combination thereof. [91] Sewerage systems and the disposal of sewage are matters of particular importance to municipalities [92] and local government units, what with the general health and environmental

significance and hazards they impose.

Bearing in mind that sanitation services are limited and costly "to construct and operate, septage management is a practical first step for most utilities and [local government units]. [93] We also consider that there must be proper design, operation, and maintenance of septic tanks. "In all cases, municipalities, regulatory officials and service providers shall apply the most restrictive language in any law, rule, or regulation when interpreting the legal requirements for sludge and septage management." [94] Subsequently, a sewerage system must be built to provide for a proper infrastructure that enables sewage of water using sewers. This infrastructure consists of receiving drains, manholes, pumps, storm overflows, and screening chambers, which allows the water to flow out of the environment.

Based on the aforecited legal baselines, the Clean Water Act requires water utility companies to provide for sewerage and septage management services within five years of the law's passage. [95] This sewerage or septage management services requirement is the bone of contention in these cases.

Section 8 of the Clean Water Act

Section 8, as provided under Chapter 2 of the Clean Water Act on Water Quality Management System, reads:

> ***Domestic Sewage Collection, Treatment and Disposal.*** — Within five (5) years following the effectivity of this Act, the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system: *Provided*, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless the sources had already utilized their own sewerage system: *Provided, further*, That all sources of sewage and septage shall comply with the requirements herein. In areas not considered as HUCs, the DPWH in coordination with the Department, DOH and other concerned agencies, shall employ septage or combined sewerage-septage management system.
>
> For the purpose of this section, the DOH, in coordination with other government agencies, shall formulate guidelines and standards for the collection, treatment and disposal of sewage including guidelines for the establishment and operation of centralized sewage treatment system.

Section 8 thus imposes the following obligations, dissected as follows:

1. The setting of the obligation is prefaced by stating a day certain for its complete performance — **period of within five years from effectivity of the Clean Water Act**. [96]

2. The actors here are "**the agenc[ies] vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs)**."

3. The prestation set by law is the "**[connection of] the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system**."

In the performance of its obligation, petitioners must coordinate with the Local Government Units (LGUs). This is so given the requirement on LGUs to provide basic services and facilities, including the delivery of clean water, [97] and the policy endowing LGUs with local autonomy. [98]

In addition, the law's *provisos* allow for a sewerage service charge by petitioners except for sources utilizing their own sewerage system which in all cases must comply with the requirements set forth in Section 8. The law likewise stipulates that the sewerage-septage management system, the guidelines and standards for collection, disposal and treatment of sewage, and the establishment and operation of a centralized sewage treatment system, are to be undertaken by the concerned government agencies such as the DPWH and DOH. Nothing in Section 8, however, hinges petitioners' performance of its obligation on a future and uncertain event, specifically, the performance of the obligation under Section 7. [99] What is clear is that the obligation in Section 8 is demandable at once, upon effectivity of the law, to be performed within a given period. [100]

Despite the clear wording of the law, petitioners remain insistent that they did not violate Section 8 of the Clean Water Act and thus should not have been fined by the SENR. Their arguments are triptych: (1) Section 7 of the Clean Water Act is a condition precedent to petitioners' full compliance to Section 8 thereof; (2) the Agreements executed by MWSS with the concessionaires, Maynilad and Manila Water, are controlling in the latter's performance of their obligations; and (3) petitioners are exempted from complying with the five-year period in Section 8 because of the ruling in *MMDA v. Concerned Residents of Manila Bay*. [101]

We disagree with petitioners.

Section 7 is not a condition precedent to compliance with Section 8

Section 7 of the Clean Water Act provides for the National Sewerage and Septage Management Program —

> The Department of Public Works and Highways (DPWH), through its relevant attached agencies, in

coordination with the Department, LGUs and other concerned agencies, shall, as soon as possible, but in no case exceeding a period of twelve (12) months from the effectivity of this Act, prepare a national program on sewerage and septage management in connection with Section 8 hereof. Such program shall include a priority listing of sewerage, septage and combined sewerage-septage projects for LGUs based on population density and growth, degradation of water resources, topography, geology, vegetation, programs/projects for the rehabilitation of existing facilities and such other factors that the Secretary may deem relevant to the protection of water quality. On the basis of such national listing, the national government may allot, on an annual basis, funds for the construction and rehabilitation of required facilities.

Each LGU shall appropriate the necessary land, including the required rights-of-way/road access to the land for the construction of the sewage and/or septage treatment facilities.

Each LGU may raise funds to subsidize necessary expenses for the operation and maintenance of sewerage treatment or septage facility servicing their area of jurisdiction through local property taxes and enforcement of a service fee system.

Contrasted with Section 8, We identify the legal duties under Section 7:

1. The **main actor in Section 7 is the DPWH**, through its relevant attached agencies, in coordination with the DENR, LGUs, and other concerned agencies. The repeated requirement set by law, of coordination by the main obligor with other government agencies, is a recognition of the jurisdiction and authority of other government agencies under different laws for the multi-faceted aspect of environmental management. [102]

2. The **period of performance for the DPWH is immediate but shall not exceed twelve (12) months from effectivity** of the Clean Water Act.

3. The **prestation is the preparation of a national program on sewerage and septage management** in connection with Section 8.

4. The remaining paragraphs cover the required contents of the program and the manner by which the obligation shall be performed.

Clearly, Section 7 is not worded as a condition precedent of Section 8 of the Clean Water Act. What jumps out of the two provisions is that both provide for different and disconnected compliance periods reckoned from the effectivity of the Clean Water Act. If Section 7 is indeed a condition precedent of the obligation in Section 8, the law should have reckoned the enforcement of the obligation in Section 8 from the time the obligation in Section 7 has been fulfilled.

Even so, petitioners tenaciously cling to their argument that Section 7 is a condition precedent for compliance. This impels us to trace the origins of Sections 7 and 8 of the Clean Water Act.

Sections 7 and 8 of the Clean Water Act were preliminarily listed as Sections 15 and 16 of Senate Bill No. 2115 and read thus:

SEC. 15. *National Sewerage and Septage Management Program*. — The Department, in coordination with the DOH, Local Water Utilities Administration (LWUA), NWRB, Metropolitan Waterworks and Sewerage System (MWSS) and other concerned agencies, shall, as soon as possible, but in no case exceeding a period of twelve (12) months from the effectivity of this Act, prepare a national program on sewerage and septage management in connection with Section 16.

Such program shall include a priority listing of sewerage, septage and combined sewerage-septage projects for LGUs based on population density and growth, degradation of water resources, topography, geology, vegetation, programs/projects for the rehabilitation of existing facilities and such other factors that the Secretary may deem relevant to the protection of water quality. On the basis of such national listing, the national government may allot, on an annual basis, funds for the construction and rehabilitation of required facilities. LGUs may also enter into Build-Operate-and-Transfer (BOT) or joint venture agreement with private sector for the construction, rehabilitation and/or operation of sewerage treatment or septage facilities in accordance with existing laws, rules and regulations.

Each LGU may raise funds to subsidize necessary expenses for the operation and maintenance of sewerage treatment or septage facility servicing their area of jurisdiction through local property taxes and enforcement of a service fee system.

SEC. 16. *Domestic Sewage Collection, Treatment and Disposal*. — **Within seven (7) years following the effectivity of this Act**, all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households situated in Metro Manila and other Highly Urbanized Cities (HUCs) as defined in Republic Act No. 7160 **shall be required to connect their sewage line to available sewerage system either through an agency vested to provide water supply and sewerage facilities or through the concessionaire/s** subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless such sources had already utilized their own sewerage system.

In areas not considered as HUCs, the DPWH in coordination with the Department, DOH and other concerned agencies, shall employ septage or combined sewerage-septage management system.

For the purpose of this Section, the DOH, in coordination with other government agencies, shall formulate guidelines and standards for the collection, treatment and disposal of sewage including guidelines for the establishment and operation of centralized sewage treatment system. [103]

The differences are minimal. While the prestation in Section 16 above is still the connection of the different kinds of establishment in Metro Manila and HUCs of their sewage line to the available sewerage system, the compliance period provided was seven (7) years from effectivity of the law, the main actors were the actual establishments with a sewage line, and the connection to be undertaken through "the agency vested to provide water supply and sewerage facilities or through the concessionaires."

Significantly, the Amendments of then Senator Manuel Villar, as proposed on his behalf by Senator Jaworski, reduced the compliance period for connection of the existing sewage lines from seven (7) to five (5) years:

> **Senator Jaworski.** On page 13, line 7, delete the entire paragraph and replace the same to read as follows:
>
> "SEC. 16. *DOMESTIC SEWAGE COLLECTION, TREATMENT AND DISPOSAL*. — **WITHIN FIVE (5) YEARS FOLLOWING THE EFFECTIVITY OF THIS ACT, THE LOCAL GOVERNMENT UNITS AND/OR THE AGENCY VESTED TO PROVIDE WATER SUPPLY AND SEWERAGE FACILITIES AND/OR CONCESSIONAIRES IN METRO MANILA AND OTHER HIGHLY URBANIZED CITIES AS DEFINED IN REPUBLIC ACT 7160** SHALL BE REQUIRED TO CONNECT THE EXISTING SEWAGE LINE FOUND IN ALL SUBDIVISIONS, CONDOMINIUMS, COMMERCIAL CENTERS, HOTELS, SPORTS AND RECREATIONAL FACILITIES, HOSPITALS, MARKET PLACES, PUBLIC BUILDINGS, INDUSTRIAL COMPLEX AND OTHER SIMILAR ESTABLISHMENTS INCLUDING HOUSEHOLDS TO AVAILABLE SEWERAGE SYSTEM PROVIDED THAT THE SAID CONNECTION SHALL BE SUBJECT TO SEWERAGE SERVICES CHARGE/FEES IN ACCORDANCE WITH EXISTING LAWS, RULES OR REGULATIONS UNLESS THE SOURCES HAD ALREADY UTILIZED THEIR OWN SEWERAGE SYSTEM. [104]

While the reason for the amendment was not explicitly reflected in the Senate deliberations, it can be assumed that our lawmakers intended immediate enforcement and implementation of the law in reducing the compliance period from seven (7) years to five (5) years. Also with the amendment, the actors are now the LGUs and the water agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other HUCs. The Conference Committee Report on SB No. 2115 and HB No. 5398, thereafter, recommended for approval the current Section 8 of the Clean Water Act with the obligation thereunder now resting alone on MWSS and its concessionaires. [105]

It is also noteworthy that the repeated use of the imperative word *shall* in the provision has the invariable significance to impose the enforcement of an obligation, especially where public interest is involved. [106] As worded in all the amendments, the obligation in Section 8 is commanding in nature, and it was not conditioned on the performance of the act under Section 7 or any other act. Read with the shortened compliance period, the phraseology here plainly indicates the legislative intent to make the statutory obligation absolutely mandatory for the party to assume and undertake. We likewise note that the compliance period is still reckoned from the date of effectivity of the Act, not from performance of the purported condition precedent in Section 7.

As further reference, the semantics of Rule 8 of DAO No. 2005-10 mirroring and implementing Section 8 [107] of the Clean Water Act on domestic sewage management proves useful, as follows: sewerage and sanitation systems must comply with DOH, DENR, and DA standards; [108] the DPWH and DENR shall inform LGU building officials of the requirements in the Clean Water Act pertinent to issuing building permits, sewerage regulations, municipal and city planning; [109] the DPWH shall coordinate with the water service providers and concessionaires in preparing a compliance plan for mandatory connection of the identified establishments and households to the existing sewerage system; [110] sewerage facilities and sewage lines shall be provided by water concessionaires in coordination with the LGUs in accordance with their concession agreements; [111] the DENR shall withhold permits or refuse issuance of ECC and the DOH the Environmental Sanitation Clearance, for establishments that fail to connect their sewage lines to available sewerage system as required; [112] the water supply utility provider shall be responsible for the sewerage facilities and the main lines pursuant to pertinent laws; [113] and that in the absence of constituted and operational water districts and water corporations, the concerned LGU shall employ the septage management system and other sanitation programs. [114]

In all, nothing in Sections 7 and 8 of the Clean Water Act or its IRR [115] states or, at the very least, implies that the former is a condition precedent of the latter. From the foregoing, it is apparent that **the obligation imposed on petitioners by Section 8, as implemented by Rule 8 of DAO No. 05-10, to connect the existing sewerage lines is mandatory and unconditional. After the expiration of the five-year compliance period, the obligatory force of Section 8 becomes immediate and can be enforced against petitioners without subordination to the happening of a future and uncertain event**.

Thus, the terms of Section 8 are absolute. Ripe for this Court's determination is the fact of compliance or lack thereof by the concessionaires with Section 8 of the Clean Water Act and its correlative implications.

Maynilad and Manila Water did not comply with Section 8

Maynilad and Manila Water filed their respective Compliances to our Resolution dated 17 April 2017, which contained the following:

(a) An updated list of the respective service areas under their concession agreements with the [MWSS]; [116]

(b) An updated report on the status of compliance with Section 8 of the [Clean Water Act]; and

(c) List of subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments with existing sewerage lines. [117]

With the interest of the public in mind, We concentrate on item (b) above. The concessionaires were required to give the status of its compliance to Section 8 of the law. We quote their respective reports in pertinent part:

A. **Maynilad's Compliance**

a) Compliance with Section 8.1 — Sewerage and Sanitation Projects which comply with the standards set forth by the DOH, DENR and DA

7. With respect to Section 8.1, as of 30 April 2017, Maynilad is operating twenty (20) wastewater treatment facilities ("facilities"), which are comprised of seventeen (17) sewage treatment plants (STP), two (2) sewage and septage treatment plants ("SSpTP") and one (1) septage treatment plant (SpTP).

xxx xxx xxx

b) Compliance with Section 8.3 — Mandatory connection of identified establishments and households to the existing sewerage systems

xxx xxx xxx

20. With regard to compliance with Section 8.3 of the IRR, the DPWH has not yet issued a compliance plan for the mandatory connection of identified establishments and households to the existing sewerage systems.

xxx xxx xxx

c) Section 8.4 Role of MWSS and Water Concessionaires in Metro Manila

xxx xxx xxx

24. As of 30 April 2017, fifteen (15) STPs, one (1) SSpTP and one (1) SpTP with a combined sewage treatment capacity of 72,917 cubic meters per day ("CMD") and combined septage treatment of 740 CMD have been completed by Maynilad.

xxx xxx xxx

25. With the completion of the 15 additional STPs, **Maynilad has attained 13% sewerage coverage for its water-served population as of 30 April 2017**. This is four-percentage points higher than its 9% sewerage coverage in 2009. As a matter of information, the *sewerage coverage* is expressed as a *percentage of the total water-served population* in the service area of Maynilad at the time the target was set. In 2009, Maynilad had 814,645 billed water service connections. Water being a basic necessity, Maynilad prioritized the delivery of water to its customers in its service area. Resultantly, the provision of water has outpaced the provisions of SSCs. Nevertheless, **with the completion of 15 additional STPs, Maynilad's sewerage coverage has increased to 13%** despite the fact that its total billed services reached up to 1,312,223 as of the end of 2016 (from the original 814,645). [118]

B. **Manila Water's Compliance**

xxx xxx xxx

Manila Water respectfully submits that by all indications, it is faithfully complying with the spirit and intent of the Clean Water Act and its IRR. From a minimal sewerage system in 1997, Manila Water has successfully built from the ground-up thirty-eight (38) STPs and one (1) SSpTP with sewer pipeline networks connecting to households as well as industrial and commercial establishments that avail of its to *(sic)* sewage collection, treatment and disposal services in the East Zone. These sewage treatment facilities, which include the Marikina North STP (the largest facility of its kind in the Philippines) and the LKK STP (the second largest sewerage facility in the Philippines), have combined capacity of 309,544 cubic meters of wastewater per day with a capacity to take on more load, if necessary. In addition, Manila Water also complements its sewage collection, treatment and disposal services by providing sanitation services to regularly clean-up septic tanks throughout the East Zone thereby, making good on its commitment to protect the environment.

Indeed, Manila Water has taken to heart its frontline role in prevention, control, and abatement of pollution of water resources by providing a continuously expanding and improving scope of sewage collection, treatment and disposal services amidst its pursuit of economic growth.

c. Sewer Service Accomplishments and Obligation Targets

With the foregoing operational STPs with future expansion well-underway, Manila Water has significantly expanded its sewage collection, treatment and disposable capability. As stated earlier, from a mere 40,000 m3/day of wastewater treated in 1997, Manila Water now treats 101,049 m3/day of wastewater — a 153% increase in total treated wastewater from 1997. This is equivalent to a total of 36,988,418 cubic meters of treated wastewater per annum which is 50.7% higher than the annual volume of wastewater treated as of 2011

which was then at 24,540,616 cubic meters.

As of 31 December 2016, Manila Water is providing sewage collection, treatment and disposal services to 932,118 persons both in Metro Manila and Rizal.

xxx xxx xxx

Thus, **Manila Water is on-track to comply with its obligation to ensure complete sewerage network coverage by end of the Concession Agreement in 2037 as required by Section 8.4 of the Clean Water Act IRR**. A summary of [Manila Water's] sewer service obligation targets as approved by the MWSS and the MWSS-Regulatory Office is shown in Figure 4.0 below:

	Area	2016	2021	2026	2031	2037
Service Obligation	Metro Manila	19%	49%	77%	96%	100%
Sewer Coverage	Rizal	3%	15%	28%	37%	98%

[Emphasis and underscoring supplied.]

Basing on Maynilad and Manila Water's own assertions, petitioners' **compliance with Section 8 of the law is dismal at best. Given that a decade has already passed following the effectivity of the Clean Water Act, both concessionaires' compliance to Section 8 at this current year do not even reach 20% sewerage coverage**.

We likewise cannot agree with petitioners' insistence that the Agreements and its specified targets for completion prevail over that of specific provisions of the law.

First. Even without delving into the obligatory force of Section 8 of the Clean Water Act, the Agreements already clearly enjoin full compliance with Philippine laws, to wit:

6.8 Compliance with Laws

The Concessionaire shall comply with all Philippine laws, statutes, rules Regulations, orders and directives of any governmental authority that may affect the Concession from time to time.

16.3 Governing Law

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE REPUBLIC OF THE PHILIPPINES.

16.11 **Conduct of the Concessionaire Pending the Expiration Date**. The Concessionaire hereby covenants that, from the date three months prior to and including the Expiration Date, unless MWSS shall otherwise consent in writing (which consent shall not unreasonably be withheld), the Concessionaire shall conduct the business and operations of the Concession in the ordinary and usual course in a manner consistent with past best practice and, without limiting the generality of the foregoing, the concessionaire shall:

xxx xxx xxx

(iii) **at all times comply with all material laws, statutes, rules, regulations, orders and directives of any governmental authority having jurisdiction over the Concessionaire or its businesses**, except in cases where the application thereof is being contested in good faith or is the subject of an appeal or other legal challenge. [119]

Second. Even before the inception of the Clean Water Act, the Court, in *Province of Rizal v. Executive Secretary*, [120] already had occasion to declare the self-proving fact that "**sources of water should always be protected**."

In *Province of Rizal*, the Court was confronted with the Order of then President Joseph Estrada to reopen the San Mateo dumpsite on January 11, 2001 despite the MOA executed between the petitioner therein Province of Rizal with the MMDA for the permanent closure of the dumpsite by December 31, 2000. The Court considered various laws cited by respondents therein and upheld the then newly enacted Solid Waste Management Act of 2000 and the power of the LGUs to promote the general welfare. This Court declared in that decision that waste disposal is regulated by the Ecological Solid Waste Management Act of 2000. The said law was enacted pursuant to the declared policy of the state "to adopt a systematic, comprehensive and ecological solid waste management system which shall ensure the protection of public health and environment, and utilize environmentally sound methods that maximize the utilization of valuable resources and encourage resource conservation and recovery." [121]

Province of Rizal also declared that "[l]aws pertaining to the protection of the environment were not drafted in a vacuum. Congress passed these laws fully aware of the perilous state of both our economic and natural wealth. It was precisely to minimize the adverse impact humanity's actions on all aspects of the natural world, at the same time maintaining and ensuring an environment under which man and nature can thrive in productive and enjoyable harmony with each other, that these legal safeguards were put in place." [122] It is also highlighted in that case that the **freedom of contract is not absolute** and is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, moral, safety, and welfare. [123] We find these disquisitions applicable and disadvantageous to petitioners' argument.

Third. Petitioners' theory justifying their non-compliance with Section 8 reeks of unfairness and greed for profit, given that Maynilad and Manila Water had already been levying a "Sewerage Charge" upon the consuming public: [124]

> The Water Bill or Statement of Account includes the following charges:
>
> 1. Basic Charge is your consumption in cubic meter multiplied to the water rate corresponding on your customer classification (*i.e.*, residential, semi-business).
>
> 2. CERA is P1.00 per cubic meter of actual water consumed.
>
> 3. FCDA (Foreign Currency Differential Adjustment) is computed as a percentage of the basic charge depending on the calculated factor for the quarter.
>
> 4. EC (Environmental Charge) is charged to all water service connections to cover desludging and other environmental-related costs. It was then computed as 10% of items a, b, & c. But due to its rationalization with the Sewerage Charge as a result of the second Rate Rebasing, it gradually increased to where it is now 20% of the same items and universally applied to all water connections regardless of classification.
>
> **5. SC (Sewerage Charge) used to be 50% of items a, b, & c and charged only to those connected to the sewer lines. As rationalized with the Environmental Charge, Sewerage Charge are now only applicable to sewered connections other than residential and semi-business classifications and has been lowered to 30% for [Manila Water] and 20% for [Maynilad].**
>
> 6. MSC (Maintenance Service Charge) depending on the size of your meter.
>
> 7. VAT (Value Added Tax) is 12% of items 1, 2, 3, 4, 5, & 6 (a, b, c, d, e, & f).
>
> 8. Total Current Charges/Total Amount Due for Residential/Semi-Business Connections:
>
> = sum of items 1, 2, 3, 4, 6 & 7 (a, b, c, d, f, & g)
>
> For Business Groups 1 & 2 Connections:
>
> = sum of items 1, 2, 3, 4, 5, 6 & 7 (a, b, c, d, e, f & g) [125]

Indeed, petitioners have fully and faithfully complied with the *proviso* in Section 8, only in the aspect that they are authorized under the Service Obligations under the Agreements to impose sewerage services charges and fees for the connection of the existing sewage line to the available sewerage system. [126] They seem to forget, however, that receipt of these fees entailed the legal duty of *actually and completely installing* the already long-delayed sewerage connections.

Finally. In April 22, 2010, petitioners further executed their respective Memoranda of Agreement and Confirmation (MOA), in which they bound themselves to move the original expiry of the Agreements from May 6, 2022 to fifteen more years or to May 6, 2037. The concessionaires specifically stipulated therein:

> (f) In the rate rebasing exercise of 2008, the Parties discussed the prospect of **extending the Original Term by fifteen (15) years as the most viable means of enabling [Maynilad] to undertake the following**:
>
> (i) The **development of new long-term water sources, as indicated in the [Maynilad] Final Business Plan, and the implementation of large scale water and wastewater projects that could benefit [Maynilad]'s customers for more than 50 years**; and
>
> (ii) **The acceleration of sewerage and sanitation projects** to comply with the Clean Water Act and the decision of the Supreme Court in the case of *MMDA, et al. v. Concerned Residents of Manila Bay* directing MWSS to "provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time." [127] [Emphasis supplied.]

A contradiction is extant: while there was an acknowledgment of the urgency of their duties under the *MMDA v. Concerned Residents of Manila Bay*, Maynilad and Manila Water still found space in their private contract to prolong compliance thereto for fifteen more years. This Court cannot accept their highlighted justifications therefor. As earlier pointed out, the completion of the septage and sewerage connections have already been lagging for fifteen years past the effectivity of the Clean Water Act. Had petitioners submitted to the word of the law, this extension would not have been required, since the sewerage and septage connection projects for which the extension is sought could have been completed by now. There is no one else to blame but petitioners' neglect. The public has already suffered because of this delay, and no further extensions could possibly be accommodated without inflicting additional disadvantage to the already aggrieved.

More importantly, the Congress has already imposed the deadline for the compliance by petitioners for the construction of these sewerage connections under the Clean Water Act. If petitioners intended an extension, they should have sought the enactment of an amending law to the Clean Water Act. Petitioners simply cannot alter the law and court instruction by mere stipulation in their private contract. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom, or practice to the contrary. [128]

Thus being stated, this Court, also laboring under the Public Trust Doctrine, construes the MOA between MWSS and Maynilad and the MOA between MWSS and Manila Water as a complicit acknowledgment of their obstinate defiance of their mandate under the Clean Water Act. Agreeing among themselves for a 15-year extension

will not cancel their long-running liability under Section 8 of the Clean Water Act, in relation to Section 28 under the same law. A private contract cannot promote business convenience to the unwarranted disadvantage of public welfare and trust.

With all said, petitioners' assertion that the Agreements take primacy over a special law such as the Clean Water Act is decimated. It is thus established that Section 8 of the Clean Water Act demands unconditional compliance, and petitioners were utterly remiss in that duty.

MMDA v. Concerned Residents of Manila Bay did not repeal Section 8 of the Clean Water Act

Petitioners are unrelenting and now contend that this very same Court effectively extended the five-year compliance period for connection of the sewage line to the available sewerage system because of our ruling in *MMDA v. Concerned Residents of Manila Bay*. [129]

Petitioners' contention misleads.

MMDA v. Concerned Residents of Manila Bay [130] declared the role and responsibility of the MWSS, among other government agencies, in the long-standing and increasingly dire sanitary conditions of Manila Bay. In the said case, the Court ruled, *inter alia*, that "[a]s mandated by Sec. 8 of RA 9275, the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time," and that it shall "submit to the Court a quarterly progressive report of the activities undertaken x x x."

An attempt to view this disposition in *MMDA v. Concerned Residents of Manila Bay* as an extension of the period of performance by petitioners of their obligations under Section 8 of the Clean Water Act is a long shot. For one, Section 8 requires petitioners or "the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system x x x" within five (5) years from effectivity of the Clean Water Act or from May 6, 2004. The meat of this case is the **fact of delay** by petitioners in complying with the mandate under Section 8, whereas the matter involved in *MMDA v. Concerned Residents of Manila Bay* is the **urgency of rehabilitation of Manila Bay**. Moreover, We find that citing this case militates against petitioners. This piece of jurisprudence only scoffs and highlights at the fact of petitioners' abject negligence in their role in local sanitation and exposes its nefarious consequences — adequate wastewater treatment facilities in Metro Manila, Rizal, and Cavite was found to be practically nonexistent which ended in the decrepit conditions of Manila Bay, meriting the command to construct the same "at the earliest possible time."

The Court in *MMDA* was simply exercising its constitutional power and duty to interpret the law and resolve an actual case or controversy. [131] While judicial decisions applying or interpreting the law or the Constitution form part of the legal system of the Philippines, [132] the Court does not dabble in judicial legislation [133] and is without power to amend or repeal Section 8 of the Clean Water Act.

The Liability of Petitioners

Petitioners insist that the appellate courts erred in affirming the Orders of the SENR as these were not based on substantial evidence. We, however, do not find reason to deviate from the findings of the administrative agencies, as affirmed by the appellate courts:

> x x x [T]he EMB Regional Directors for NCR, CALABARZON and Region III took exception to the claim of compliance by MWSS and cited the following findings in support of their conclusion: (1) the lack of storage treatment facilities in San Juan and Valenzuela and the unacceptable results of the laboratory analysis of river systems; (2) the fact that there are no wastewater treatment facilities and appropriate sewage system in the Cavite area, particularly in Imus, Bacoor, Noveleta and Kawit; and (3) the absence of wastewater/sewerage program in the Meycauayan Service Area of MWSS. MWSS failed to introduce evidence to refute these findings.

These were also given full credence by the PAB and the SENR. We quote with approval apportion of the SENR's pronouncement in its Order dated October 7, 2009:

> It should further be noted that the five (5)-year period was made to provide sufficient time to comply with the interconnection of all water supply and sewerage facilities. The continued failure of providing a centralized sewerage system in compliance with the said law means that several sewage [lines continue] to dump and release untreated sewerage within their vicinities — resulting in unmitigated environmental pollution x x x. [134]
>
> Manila Water failed to present any evidence to substantiate its claim that it had offered to connect the existing sewage lines but the customers refused the same. It should be pointed out that in cases where the customers refused to connect sewage lines to the available sewerage system Manila Water is not precluded from enlisting the help of the DENR which, in turn, may request LGUs or other appropriate agencies to sanction these persons pursuant to Section 8.5 of the IRR. x x x Manila Water failed to present any proof that there are indeed sewage lines which were already rendered useless. In sum, Manila Water justifications have no

probative value because it miserably failed to present concrete and credible proof to substantiate the same. Verily, bare allegations which are not supported by any evidence, documentary or otherwise, are not equivalent to proof under our rules. Ergo, the DENR-PAB correctly declared that Manila Water's justifications are insufficient considering that no proof or evidence was presented to support the same. [135]

This Court, on more than one occasion, has ruled that by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like respondents PAB and the Regional Offices of the EMB, whose judgment the SENR based its Orders on, are in a better position to pass judgment, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings ought to be respected as long as they are supported by substantial evidence. It is not the task of the appellate court nor of this Court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of the evidence. [136]

We, however, find the computations on the fine imposed by the court and quasi-tribunals *a quo* lacking. Section 28 of the Clean Water Act bears another recital of its relevant parts:

> SECTION 28. ***Fines, Damages and Penalties***. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, **shall be fined** by the Secretary, upon the recommendation of the PAB **in the amount of not less than Ten thousand pesos (P10,000.00) nor more than Two hundred thousand pesos (P200,000.00) for every day of violation. The fines herein prescribed shall be increased by ten percent (10%) every two (2) years to compensate for inflation and to maintain the deterrent function of such fines** : Provided, That the Secretary, upon recommendation of the PAB may order the closure, suspension of development or construction, or cessation of operations or, where appropriate disconnection of water supply, until such time that proper environmental safeguards are put in place and/or compliance with this Act or its rules and regulations are undertaken. This paragraph shall be without prejudice to the issuance of an *ex parte* order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case. (Emphasis supplied.)

The SENR, as affirmed by the Court of Appeals, aptly fined petitioners with PhP200,000.00 a day under Section 28, but left out the additional ten percent (10%) increase that is to be applied every two (2) years for inflation adjustment and deterrent purposes.

Based from the foregoing, a reassessment of petitioners' liabilities is in order. Maynilad and Manila Water are distinctly accountable under their respective Concession Agreements for the fines imposed by the SENR at the initial rate of PhP200,000.00 a day from May 7, 2009 until date of promulgation of this Decision, in the total amount of PhP921,464,184.00 per concessionaire. [137] MWSS shall be solidarily liable for these liabilities for fines of its concessionaires, having bound itself to have jurisdiction, supervision, and control over all waterworks and sewerage systems within Metro Manila, the entire province of Rizal, a portion of Cavite, and a portion of Bulacan and for granting Maynilad and Manila Water the right to operate the waterworks and sewerage areas in these Service Areas. Thereafter, they shall be fined in the amount of PhP322,102.00 a day, subject to the biennial 10% adjustment provided under Section 28 until petitioners shall have fully complied with Section 8 of the Clean Water Act. The fines shall likewise earn legal interest of six percent (6%) *per annum* from finality of this Decision until full satisfaction thereof. [138]

WHEREFORE, the petitions are **DENIED**. The Decisions of the Court of Appeals in CA-G.R. SP Nos. 113374, 112023, and 112041 respectively dated October 26, 2011, August 14, 2012, and September 25, 2012, are **AFFIRMED** with the following **MODIFICATIONS** —

Petitioners are liable for fines for violation of Section 8, in relation to Section 28, of the Philippine Clean Water Act in the following manner:

1. Maynilad Water Services, Inc. shall be jointly and severally liable with Metropolitan Waterworks and Sewerage System for the total amount of PhP921,464,184.00 covering the period starting from May 7, 2009 to the date of promulgation of this Decision;

2. Manila Water Company, Inc. shall be jointly and severally liable with Metropolitan Waterworks and Sewerage System for the total amount of PhP921,464,184.00 covering the period starting from May 7, 2009 to the date of promulgation of this Decision;

3. Petitioners shall pay the fines within fifteen (15) days from finality of this Decision;

4. Thereafter, from finality of this Decision until petitioners shall have fully paid the amounts stated in paragraphs 1 and 2, petitioners shall be fined in the initial amount of PhP322,102.00 a day, subject to a further 10% increase every two years as provided under Section 28 of the Philippine Clean Water Act, until full compliance with Section 8 of the same law; and

5. The total amount of the fines imposed herein shall likewise earn legal interest of six percent (6%) *per annum* from finality and until full satisfaction thereof.

This instruction further enjoins not only petitioners herein, but all water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities as defined in Republic Act No. 7160 or the Local Government Code, in the strict compliance with Section 8 of Republic Act No. 9275 or the Philippine Clean Water Act.

SO ORDERED.

Bersamin, C.J., Carpio, Perlas-Bernabe, Caguioa, Gesmundo, Carandang, Lazaro-Javier and *Inting, JJ.*, concur.

*Peralta, * Jardeleza ** and *A.B. Reyes, Jr., * JJ.*, took no part.

Leonen, J., see separate concurring opinion.

*J.C. Reyes, Jr., ** J.*, is on leave.

Separate Opinions

LEONEN, *J., concurring*:

"Where is the ground that knows only the love of water? Where are the passageways to your heart?"

Chingbot Cruz @conchitinabot Twitter, August 29, 2019

"How ashamed water is to be what you have made it."

Chingbot Cruz @conchitinabot Twitter, August 28, 2019

I concur in the result in the first major *En Banc ponencia* of my esteemed colleague, Associate Justice Ramon Paul L. Hernando. Petitioners should be held liable for violating Section 8 of Republic Act No. 9275, or the Philippine Clean Water Act.

I qualify my concurrence with my views on substantive due process, and the public trust doctrine vis-à-vis the *parens patriae* doctrine, police power, and the regalian doctrine.

I

Petitioners claim that they were denied due process when the Secretary of the Department of Environment and Natural Resources found them liable and imposed a penalty on them without the recommendation of the Pollution Adjudication Board, as required under Section 28 of Republic Act No. 9275. [1]

Petitioners were sufficiently accorded due process. I, however, differ from how the *ponencia* defined substantive due process as "the intrinsic validity of a law that interferes with the rights of a person to his property." [2] Intrinsic validity of the law goes into the wisdom of the legality of the substance of its provisions. I maintain that substantive due process refers more to the law's freedom from arbitrariness and unfairness. [3]

The due process clause, as enshrined in Article III, Section 1 of the 1987 Constitution, states:

> SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

In determining whether a person was accorded due process of law, the standard is to check if the restriction on the person's life, liberty, or property was consistent with fairness, reason, and justice, and free from caprice and arbitrariness. This standard applies to both procedural and substantive due process. [4] In *Legaspi v. Cebu City*: [5]

> The guaranty of due process of law is a constitutional *safeguard against any arbitrariness* on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. It is a protection essential to every inhabitant of the country, for, as a commentator on Constitutional Law has vividly written:
>
> > . . . If the law itself unreasonably deprives a person of his life, liberty, or property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an *unreasonable* requirement, due process is likewise violated. Whatsoever be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the *ordinary norms of justice or fair play* is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself. [6] (Emphasis supplied, citations omitted)

The difference between substantive due process and procedural due process was discussed in *White Light Corporation v. City of Manila*. [7] Procedural due process refers to the manner in which the deprivation of life, liberty, or property was executed. The question to be asked is whether the person was given sufficient notice and an opportunity to be heard. Substantive due process, on the other hand, pertains to the reason and justification for the denial or restriction on life, liberty, or property. It raises the question of whether such was necessary and fair to all parties involved. In *White Light Corporation*:

> The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a *protection against arbitrary regulation or seizure*. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.
>
> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.
>
> If due process were confined solely to its procedural aspects, there would arise absurd situation of

arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has *sufficient justification* for depriving a person of life, liberty, or property. [8] (Emphasis supplied, citations omitted)

In *Associated Communications & Wireless Services, Ltd. v. Dumlao*: [9]

> In order to fall within the protection of this provision, two conditions must concur, namely, that there is a deprivation and that such deprivation is done without proper observance of due process. When one speaks of due process of law, a distinction must be made between matters of procedure and matters of substance. In essence, procedural due process "refers to the method or manner by which the law is enforced," while substantive due process "requires that the law itself, not merely the procedures by which the law would be enforced, is *fair, reasonable, and just*." [10] (Emphasis supplied, citations omitted)

Thus, substantive due process looks into the justness or fairness of the law. Jurisprudence has developed several tests to determine whether a law is fair or just, depending on the government act, the rights impeded by the act, and the means used by the government to perform the act. The tests are: (1) the rational basis test; (2) the heightened or immediate scrutiny test; and (3) the strict scrutiny test.

Under the rational basis test, laws or ordinances affecting the life, liberty, or property of persons are generally considered valid so long as it rationally advances a legitimate government interest. Under the heightened scrutiny test, the law or ordinance will be deemed valid only after the government interest has been extensively examined, and the available less restrictive means of furthering it have been considered. Under the strict scrutiny test, there must be a compelling government interest, and there must be no other less restrictive means to achieve it. Each test depends on the right that is affected by the government act affecting the person's life, liberty, or property. The origins of these tests were discussed in *White Light Corporation*:

> The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right." Consequently, two standards of judicial review were established: *strict scrutiny* for laws dealing with freedom of the mind or restricting the political process, and the *rational basis standard* of review for economic legislation.
>
> A third standard, denominated as *heightened or immediate scrutiny*, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.
>
> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the *rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.*
>
> In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel. [11] (Emphasis supplied, citations omitted)

Thus, more than the law's intrinsic validity, substantive due process looks into the fairness and freedom from arbitrariness in its deprivation of life, liberty, or property. It should not refer to any other source of legitimacy or validity; otherwise, this Court intrudes into the realm of the political, which is beyond our constitutional competence.

II

I agree with this Court's adoption of the public trust doctrine. I add some of my views and observations on the principle.

The concept of trust in a limited government is already real and implicit in the most fundamental concept articulated in Article II, Section 1 of the Constitution:

> SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

In light of this principle, our Constitution expressly articulates in Article X, Section 1 of the Constitution that:

> *Public office is a public trust*. Public officers and employees must at all times be *accountable* to the people, serve them with utmost *responsibility*, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

This provision echoes the fiduciary relation between the government and the sovereign. Public officials, as trustees, are expected to act with responsibility and accountability in favor of the beneficiary. As in this case, the beneficiary of this public trust are the people. The trustees are held to higher standards and are liable for violations

of public trust. Their betrayal of public trust is even considered an impeachable offense, as provided in Article XI, Section 2 of the Constitution:

> SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or *betrayal of public trust*. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

While the State's relationship with its natural resources is not as expressly stated to be a public trust, it also flows from the fundamental nature of a constitutional republican state.

The constitutional provisions on national economy and patrimony, as found in Article XII of the 1987 Constitution, emphasizes that the State's power is always subject to the common good, public welfare, and public interest or benefit. Many of its provisions put primacy in favor of the State's citizens:

> SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation *for the benefit of the people*; and an expanding productivity as the key to *raising the quality of life for all, especially the underprivileged*.
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> xxx xxx xxx
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> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. *The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State*. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of *water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use* may be the measure and limit of the grant.
>
> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its *use and enjoyment exclusively to Filipino citizens*.
>
> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.
>
> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and *general welfare of the country*. In such agreements, the State shall promote the development and use of local scientific and technical resources.
>
> xxx xxx xxx
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> SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.
>
> Taking into account the *requirements of conservation, ecology, and development*, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.
>
> SECTION 4. The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.
>
> SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the *rights of indigenous cultural communities* to their ancestral lands to *ensure their economic, social, and cultural well-bein*g.
>
> The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.
>
> SECTION 6. The use of property bears a *social function*, and all economic agents shall contribute to the *common good*. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote *distributive justice* and to intervene when the *common good* so demands.

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SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the *common good* so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

SECTION 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

SECTION 13. The State shall pursue a trade policy that serves *the general welfare* and utilizes all forms and arrangements of exchange on the basis of *equality and reciprocity*.

SECTION 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the *national benefit*.

The practice of all professions in the Philippines shall be limited to *Filipino citizens*, save in cases prescribed by law.

SECTION 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for *social justice and economic development*.

SECTION 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the *common good* and subject to the test of economic viability.

SECTION 17. In times of national emergency, when the *public interest* so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

SECTION 18. The State may, in the interest of *national welfare or defense*, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

SECTION 19. The State shall regulate or prohibit monopolies when the *public interest* so requires. No combinations in restraint of trade or unfair competition shall be allowed.

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SECTION 22. Acts which circumvent or negate any of the provisions of this Article shall be considered *inimical to the national interest* and subject to criminal and civil sanctions, as may be provided by law. (Emphasis supplied)

These constitutional provisions on the State's national patrimony and economy, on which the public trust doctrine is anchored, highlight that the common good, public interest, public welfare — the people — are of primary consideration.

In addition, the public trust doctrine is founded on both social justice and equity.

The people, as a community, depend and rely on their ecology. They will not exist without it. This ecology cannot have unlimited resources, especially in the face of climate and environmental changes, as well as unrestrained policies in connection with the exploitation of resources. The public trust doctrine recognizes these limitations and expands the concept of property, giving it a more equitable, just, and reasonable interpretation. Land and water are not simply owned and disposed of at will by the State. They are part of a community and an ecosystem, interdependent with each other. [12]

III

I note the *ponencia's* discussion on how the public trust doctrine is an integration of three (3) doctrines, in which the public interest is highlighted and the security of people, rights, and resources is protected: [13] (1) the regalian doctrine; (2) police power; and (3) the doctrine of *parens patriae*. [14]

In my view, the public trust doctrine is firmly anchored on the text of the Constitution. There may be no need to situate it in the implicit concepts of the regalian doctrine and the doctrine of *parens patriae*.

III (A)

The *ponencia* discusses that *parens patriae* "expresses the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*." [15] It refers to the State "as the last-ditch provider of protection to those unable to care and fend for themselves." [16] The *ponencia* opines that the persons *non sui juris* in this case are the Filipino consumers whose welfare needs the State's protection from overpowering business pursuits. [17]

I, however, maintain my view in *Samahan ng mga Progresibong Kabataan v. Quezon City* [18] that there must first be "harm *and* the subsequent inability of the person to protect himself or herself" [19] before the doctrine of *parens patriae* may be applied. It is not a utility concept that replaces or motivates the concept of police power.

In my separate opinion [20] in *Samahan ng mga Progresibong Kabataan*, I discussed the origins of the *parens patriae doctrine*, and how it has significantly developed from its common law origins:

> The doctrine of *parens patriae* is of Anglo-American, common law origin. It was understood to have "emanate[d] from the right of the Crown to protect those of its subjects who were unable to protect themselves." It was the King's "royal prerogative" to "take responsibility for those without capacity to look after themselves." At its outset, *parens patriae* contemplated situations where vulnerable persons had no means to support or protect themselves. Given this, it was the duty of the State, as the ultimate guardian of the people, to safeguard its citizens' welfare.
>
> The doctrine became entrenched in the United States, even as it gained independence and developed its own legal tradition. In *Late Corporation of Church of Jesus Christ v. United States*, the United States Supreme Court explained *parens patriae* as a beneficent state power and not an arbitrary royal prerogative:
>
> > This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarch to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and **for the prevention of injury to those who cannot protect themselves**. . . .
>
> In the same case, the United States Supreme Court emphasized that the exercise of *parens patriae* applies "to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority." It is from this reliance and expectation of the people that a state stands as "parent of the nation."
>
> American colonial rule and the adoption of American legal traditions that it entailed facilitated our own jurisdiction's adoption of the doctrine of *parens patriae*. Originally, the doctrine was understood as "the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*." [21] (Emphasis in the original, citations omitted)

As to the protection of minors, I noted that under Article II, Section 12 of the 1987 Constitution, parents have the natural and *primary* right and duty to rear the youth. In this instance, thus, the *parens patriae* doctrine must take a step back in favor of the child's parents. The State acts as *parens patriae* in protection of minors only when there is a clear showing that they are neglected, abused, or exploited:

> The addition of the qualifier "primary" [in the provision] unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have failed or have become incapable of performing their duties.
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> . . . *Imbong v. Ochoa*, a cased decided by this Court in 2014, unequivocally characterized parents' rights as being "superior" to the state:
>
> > Section 12, Article II of the 1987 Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive the support of the Government. Like the 1973 Constitution and the 1935 Constitution, the 1987 Constitution affirms the State recognition of the invaluable role of parents in preparing the youth to become productive members of society. *Notably, it places more importance on the role of parents in the development of their children by recognizing that said role shall be "primary," that is, that the right of parents in upbringing the youth is superior to that of the State. . . .*
>
> Thus, the State acts as *parens patriae* only when parents cannot fulfill their role, as in cases of neglect, abuse, or exploitation:
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>
> As it stands, the doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children. It operates only when parental authority is established to be absent or grossly deficient. The wisdom underlying this doctrine considers the existence of harm *and* the subsequent inability of the person to

protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.

To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily exercise its *parens patriae* power might as well render the superior Constitutional right of parents inutile.

More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was *without* subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children. [22] (Emphasis in the original, citations omitted)

I, thus, maintain my opinion that before the *parens patriae* doctrine may be properly applied, there must first be harm inflicted upon a person, *and* the subsequent inability of that person to protect him or herself. It may also only be applied if the matter is outside the scope of the powers, right, and duty of the person charged with protection, or if the latter is incapacitated or grossly deficient in fulfilling his or her duty. To apply it without these conditions is to grant an almost absolute power to the State, allowing it to arbitrarily exercise such power that might render the bestowed constitutional rights on another inutile. With due respect, the reference to the civil concept of *parens patriae* may not have been accurate.

III (B)

The *ponencia* also cites Article XII, Section 2 of the 1987 Constitution and states that it is the embodiment of *jura regalia*, or the regalian doctrine. [23]

I reiterate my opinion that the regalian doctrine is not provided in our Constitution. [24] The regalian doctrine provides that all lands not of private ownership belong to the State. However, Article XII, Section 2 of the 1987 Constitution states:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State . . .

Since the 1987 Constitution limited the State's ownership to lands *of public domain*, not *all* lands are presumed public. [25] They must be part of the public domain for the State to be deemed its owner.

Furthermore, contrary to the regalian doctrine, the due process clause in the Constitution protects all types of property, including those not covered by a paper title. This protection extends to those whose ownership resulted from possession and prescription, and to those who hold their properties in the concept of owner since time immemorial. [26]

In my separate opinion *Heirs of Malabanan v. Republic*, [27] I further emphasized that the State's power over land and resources has been tempered to recognize the rights of the people:

We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land." This is an interpretation in *Cariño v. Insular Government* of the earlier version of Article III, Section 1 in the McKinley's Instructions. The case clarified that the *Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines*.

Thus, in *Cariño*:

It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown. . . It is true also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*

Whatever may have been the technical position of Spain, it does not follow that, in view of the United States, [plaintiff who held the land as owner] had lost all rights and was a mere trespasser when the present government seized the land. The argument to that effect seems to amount to a denial of native titles throughout an important past of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.

No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to *do justice* to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, Â§ 12, 32 Stat. 691, *all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof." . . .*

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Cariño is often misinterpreted to cover only lands for those considered today as part of indigenous cultural communities. However, nothing in its provisions limits it to that kind of application. We could also easily see that the progression of various provisions on *completion of imperfect titles* in earlier laws were

efforts to assist in the recognition of these rights. In my view, these statutory attempts should never be interpreted as efforts to limit what has already been substantially recognized through constitutional interpretation.

There are also other provisions in our Constitution which protect the unique rights of indigenous peoples. This is in addition to our pronouncements interpreting "property" in the due process clause through *Cariño*.

It is time that we put our invocations of the "regalian doctrine" in its proper perspective. This will later on, in the proper case, translate into practical consequences that do justice to our people and our history. [28] (Emphasis supplied, citations omitted)

The regalian doctrine emphasizes the State's ownership of all lands, irrespective of their ecology and the people who occupy them. The State acts as owner, exercising all rights of ownership over it, including the *jus possidendi* (right to possess), *jus utendi* (right to use), *jus fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose). *Cariño* clarified, however, that after the Spanish occupation, all properties and rights of the State are now "to be administered for the benefit of the inhabitants[.]" [29]

This shift in perspective — from unquestionable State ownership to the consideration of the inhabitants' rights — is affirmed by the application of the public trust doctrine. Under the regalian doctrine, the natural resources simply belong to the State, no qualifications. Under the public trust doctrine, the State's resources exist and are tempered for the benefit of the community.

III (C)

Finally, as in police power, the public trust doctrine acknowledges that the people, as a community, hold an independent right that may be superior to private individual rights. [30] Its objective may be to prevent widespread public harm and injury. [31] Thus, while it may be used to regulate private rights, all still benefit from its application:

The public trust doctrine, viewed in this light, is a communitarian doctrine, protecting the broader and longer-term community interests against private exploitation that eventually can destroy *both* the community *and* the exploiters. . . . [U]nder the public trust doctrine . . . individual members of a community may have to endure shorter-term pain in order to ensure that both they and, more importantly, the community as a whole avoid long-term diminishment or disaster. [32]

Nothing in the public trust doctrine sets the government apart from communities or individuals to be the sole repository of that trust. Indeed, as a democracy, and in recognition of the reality that we are all beings that depend on each other and on the web of life in this pale blue dot in a vast universe, we are all both trustees and beneficiaries of all natural resources, especially its waters — without which we will cease to exist.

ACCORDINGLY, with these qualifications, I vote to **DENY** the Petition.

Footnotes

* No part.

** On leave.

1. Klass, Alexandra and Ling-Yee Huang, *Restoring the Trust: Water Resources and the Public Trust Doctrine*, A Manual for Advocates, Center for Progressive Reform (September 2009), 2.

2. Greenwood, Norman N.; Earnshaw, Alan, *Chemistry of the Elements*, Butterworth-Heinemann (2nd edition, 1997), p. 601.

3. *Id.* at 620.

4. Klass, Alexandra, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, Notre Dame Law Review 82:2, 706.

5. Republic Act No. 9275, entitled "AN ACT PROVIDING FOR A COMPREHENSIVE WATER QUALITY MANAGEMENT AND FOR OTHER PURPOSES," approved on March 22, 2004.

6. Docketed as G.R. Nos. 202897, 206823, and 207969, respectively filed by Maynilad Water Services, Inc., Manila Water Company, Inc. and Metropolitan Waterworks and Sewerage System.

7. CA-G.R. SP No. 113374, penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Edwin D. Sorongon concurring (*Rollo* [G.R. No. 202897], pp. 72-84); CA-G.R. SP No. 112023, penned by Associate Justice Ramon M. Bato, Jr. with Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Rodil V. Zalameda (now a member of this Court) concurring (*rollo* [G.R. No. 206823], pp. 110-121); and in CA-G.R. SP No. 112041, penned by Associate Justice Magdangal M. de Leon with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring (*rollo* [G.R. No. 207969], pp. 33-53).

8. Issued on October 7, 2009 and December 2, 2009; *Rollo* (G.R. No. 202897), pp. 143-152 and pp. 154-157.

9. *Domestic Sewage Collection, Treatment and Disposal*. — Within five (5) years following the effectivity of this Act, the Agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational

facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system: *Provided*, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless the sources had already utilized their own sewerage system: *Provided, further*, That all sources of sewage and septage shall comply with the requirements herein.

In areas not considered as HUCs, the DPWH in coordination with the Department, DOH and other concerned agencies, shall employ septage or combined sewerage-septage management system.

For the purpose of this section, the DOH, in coordination with other government agencies, shall formulate guidelines and standards for the collection, treatment and disposal of sewage including guidelines for the establishment and operation of centralized sewage treatment system.

10. Meycauayan and Marilao draining into Obando River.

11. The complaint alleged, *inter alia*, the following circumstances:

(1) [T]he DENR is mandated to implement the operational plan and strategy for the rehabilitation, restoration, and conservation of the Manila Bay and its river tributaries, including Meycauayan, Marilao and Obando (MMO) Rivers;

(2) [T]he results of Physico-chemical analyses of water samples collected by the EMB-RIII from Meycauayan, Marilao and Obando Rivers showed that they exceeded the DENR Standard for Dissolved Oxygen (DO) in mg/L and Biochemical Oxygen Demand (BOD) in mg/L; and

(3) [I]n the absence of Wastewater and Sewerage Treatment Facilities, wastewater both from industry and household sectors will directly be discharged into the nearby river system. As a result of which a high concentration of BOD and DO in Rivers of Meycauayan will occur from untreated domestic waste resulting in the degradation of the river channel. (*Rollo* (G.R. No. 202897), p. 143).

12. *Id.* at 144.

13. The relevant averments in their answers were:

1. Contrary to the alleged violation provided in item 1 of the Notice, it is their submission that MWSS, through the Concessionaires, operate and maintain satisfactory/sufficient wastewater treatment facilities within their coverage areas to meet the standards and objectives of the law;

2. x x x;

3. Given the available sewerage system, MWSS, through the Concessionaires, has offered and connected the existing sewage line found therein;

4. While the [Clean Water Act] is clear with regard to the mandatory connection to existing sewerage lines, there are cases where some customers refuse to connect to the existing sewerage system due to additional tariff for the sewerage service. The MWSS and the Concessionaires are well aware of this issue and have rationalized its tariff structure in order to make sewerage services more affordable;

5. With respect to the above, the MWSS and the Concessionaires, in their respective capacities, cannot impose sanctions [on] those who refuse to be connected to their sewage lines;

6. As suggested by the Board during the Technical Conference, [MWSS] will explore assistance from the DENR regarding the meting out of sanction against those who refuse connection to the sewerage system in accordance with the RA 9275 and other existing laws;

7. [Petitioners] MWSS, mentioned that all the capital and operational costs for wastewater management are ultimately reflected in the water tariff paid by the customers. As such, the sewerage/sanitation coverage and Business Plan of the Concessionaires are reviewed to balance coverage expansion with water tariff affordability and willingness to pay. (*Id.* at 145.)

14. See https://ro.mwss.gov.ph (last visited April 2, 2019).

15. *Rollo* (G.R. No. 202897), pp. 146-147.

16. *Id.* at 149-150.

17. 595 Phil. 305 (2008); 658 Phil. 223 (2011).

18. *Rollo* (G.R. No. 202897), p. 144.

19. *Id.* at 151-152.

20. *Id.* at 156.

21. *Id.* at 173-182.

22. *Id.* at 221-222.

23. The Revised Rules of the PAB on Pleading, Practice and Procedure in Pollution Cases as amended by PAB Resolution No. I-C, Series of 1997.

24. *Rollo* (G.R. No. 202897), pp. 72-84; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Edwin D. Sorongon concurring.

25. *Id.* at 84.

26. *Id.* at 107-117.

27. *Supra* note 17.

28. Republic Act No. 7160.

29. (3) The MWSS shall submit to the Court on or before June 30, 2011 the list of areas in Metro Manila, Rizal and Cavite that do not have the necessary wastewater treatment facilities. Within the same period, the concessionaires of the MWSS shall submit their plans and projects for the construction of wastewater treatment facilities in all the aforesaid areas and the completion period for said facilities, which shall not go beyond 2037. (*MMDA v. Concerned Citizens of Manila Bay*, *supra* note 17.)

30. *Rollo* (G.R. No. 206823), pp. 110-121; penned by Associate Justice Ramon M. Bato, Jr. with Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Rodil V. Zalameda (now a member of this Court) concurring.

31. *Id.* at 120-121.

32. *Id.* at 123-125.

33. *Rollo* (G.R. No. 207969), pp. 33-53; penned by Associate Justice Magdangal M. de Leon with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

34. *Id.* at 52.

35. *Id.* at 55-57.

36. *Id.* at 14-17.

37. 658 Phil. 223 (2011).

38. *Id.* at 240.

39. *Rollo* (G.R. No. 206823), pp. 44-47.

40. It appear[s] that these consolidated petitions hinge on the central issue of whether or not petitioners [Maynilad] and [Manila Water] complied with the provisions of Section 8, Republic Act No. 9275, x x x and considering that the said law also imposes specific obligations on certain government agencies, in order for the Court to comprehensively address the merits of the case[.] (*Rollo* [G.R. No. 207969], pp. 242-245.)

41. *Id.*

42. Series of 1987, entitled PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES, RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND FOR OTHER PURPOSES.

43. *Supra* note 17.

44. *See* Section 19 of Executive Order No. 192.

> Section 19. Pollution Adjudication Board. — There is hereby created a Pollution Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Director of Environmental Management, and three (3) others to be designated by the Secretary as members. The Board shall assume the powers and functions of the Commission/Commissioners of the National Pollution Control Commission with respect to the adjudication of pollution cases under Republic Act 3931 and Presidential Decree 984, particularly with respect to Section 6 letters e, f, g, j, k and p of P.D. 984. The Environmental Management Bureau shall serve as the Secretariat of the Board. These powers and functions may be delegated to the regional officers of the Department in accordance with rules and regulations to be promulgated by the Board.

45. Section 1 (A), Rule III of PAB Resolution No. 001-10.

46. Rule III of PAB Resolution No. 001-10

> SECTION 1. *Jurisdiction of the Board*. —
>
> xxx xxx xxx
>
> B. Specific Jurisdiction — Notwithstanding the general jurisdiction of the Board over adjudication of pollution cases, and all matters related thereto, the Board has specific jurisdiction, over the following cases:
>
> xxx xxx xxx
>
> 2. Clean Water Act (R.A. 9275).

47. Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases and subsequently superseded by PAB Resolution No. 01-10 promulgated on June 29, 2010.

48. SECTION 28. *Fines, Damages and Penalties*. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provisions of this Act or its implementing rules and regulations, shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (P10,000.00) nor more than Two hundred thousand pesos (P200,000.00) for every day of violation. The fines herein prescribed shall be increased by ten percent (10%) every two (2) years to compensate for inflation and to maintain the deterrent function of such fines: *Provided*, That the Secretary, upon recommendation of the PAB may order the closure, suspension of development or construction, or cessation of operations or, where appropriate disconnection of water supply, until such time that proper environmental safeguards are put in place and/or compliance with this Act or its rules and regulations are undertaken. This paragraph shall be without prejudice to the issuance of an *ex parte* order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case.

xxx xxx xxx

Provided, finally, That water pollution cases involving acts or omissions committed within the Laguna Lake Region shall be dealt with in accordance with the procedure under Republic Act No. 4850 as amended.

49. Administrative Order No. 18, Series of 1987, repealed by Administrative Order No. 22, Series of 2011 (*Rollo* [G.R. No. 207969], p. 14.)

50. *Ejera v. Merto*, 725 Phil. 180 (2014); *Universal Robina Corp. (Corn Div.) v. Laguna Lake Dev't Authority*, 664 Phil. 754 (2011).

51. *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, G.R. Nos. 217872 and 221866, April 26, 2017, 825 SCRA 191, 212-213.

52. *Rollo* (G.R. No. 207969), p. 66.

53. *See* Rule VI of DENR Resolution No. I-C, Series of 1997 and Section 1 (ff), Rule II of PAB Resolution No. 001-10.

54. PAB Resolution No. 01-2010.

55. *Rollo* (G.R. No. 206823, pp. 141-143).

56. *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, 721 Phil. 34, 39 (2013), citing *Ledesma v. Court of Appeals*, 565 Phil. 731, 740 (2007).

57. *Republic v. Dela Merced & Sons, Inc.*, G.R. Nos. 201501 & 201658, January 22, 2018.

58. *Id.*

59. *Republic v. Rosemoor Mining and Development Corporation*, 470 Phil. 363, 383 (2004).

60. *Id.*

61. 554 Phil. 563, 579-580 (2007).

62. "Not his own master." A term applied to an individual who lacks the legal capacity to act on his or her behalf, such as an infant or an insane person. West's Encyclopedia of American Law, edition 2. (2008). Retrieved July 31, 2019 from https://legal-dictionary.thefreedictionary.com/Non+Sui+Juris

63. 67A C.J.S. Parent and Child § 11, p. 159.

64. *National Audubon Society v. Superior Court of Alpine County*, 33 Cal. 3d 419, 658 P.2d 709, 189 Cal.Rptr. 346, as cited in Ausness, Richard, Water Rights, the Public Trust Doctrine, and the Protection of Instream Uses, 1986 U. Ill. L. Rev. 407.

65. *Id.*

66. *Id.*

67. Klass, Alexandra and Ling-Yee Huang, *Restoring the Trust: Water Resources and the Public Trust Doctrine*, A Manual for Advocates, Center for Progressive Reform (September 2009), 1.

68. *Id.* at 3.

69. *Id.* at 4. Citing Mono Lake.

70. *Id.* at 435.

71. *Id.* at 428.

72. *Id.*

73. *Id.* at 429.

74. *Id.*

75. *See* 58, at 12.

76. *Id.* at 16.

77. Ausness, Richard, Water Rights, the Public Trust Doctrine, and the Protection of Instream Uses, 1986 U. Ill. L. Rev. 407, at 437.

78. *Id.*

79. The State shall pursue a policy of economic growth in a manner consistent with the protection, preservation and revival of the quality of our fresh, brackish and marine waters. To achieve this end, the framework for sustainable development shall be pursued. As such, it shall be the policy of the State:

    a) To streamline processes and procedures in the prevention, control and abatement of pollution of the country's water resources;

    b) To promote environmental strategies, use of appropriate economic instruments and of control mechanisms for the protection of water resources;

    c) To formulate a holistic national program of water quality management that recognizes that water quality management issues cannot be separated from concerns about water sources and ecological protection, water supply, public health and quality of life;

    d) To formulate an integrated water quality management framework through proper delegation and effective coordination of functions and activities;

    e) To promote commercial and industrial processes and products that are environment friendly and energy efficient;

    f) To encourage cooperation and self-regulation among citizens and industries through the application of incentives and market-based instruments and to promote the role of private industrial enterprises in shaping its regulatory profile within the acceptable boundaries of public health and environment;

    g) To provide for a comprehensive management program for water pollution focusing on pollution prevention;

    h) To promote public information and education and to encourage the participation of an informed and active public in water quality management and monitoring;

    i) To formulate and enforce a system of accountability for short and long-term adverse environmental impact of a project, program or activity; and

    j) To encourage civil society and other sectors, particularly labor, the academe and business undertaking environment-related activities in their efforts to organize, educate and motivate the people in addressing pertinent environmental issues and problems at the local and national levels.

80. Record of the Senate, Vol. 1, No. 5, August 5, 2002, pp. 116-118.

81. *Id.*, No. 6, Interpellations re: Senate Bill No. 2115, September 1, 2003, pp. 571-572.

82. Presidential Decree 856.

83. Presidential Decree 198.

84. Republic Act No. 7160 — Environmental Services Section.

85. Republic Act No. 6541.

86. 80 C.J.S. Shipping § 80, p. 132.

87. *Id.*

88. Septage. (n.d.) *American Heritage ® Dictionary of the English Language, Fifth Edition*, (2011). Retrieved July 31, 2019 from https://www.thefreedictionary.com/septage.

89. Sec. 4 (ff), DAO No. 2005-10 or the Implementing Rules and Regulations of the Philippine Clean Water Act.

90. 80 C.J.S. Shipping § 80, p. 129.

91. Sec. 4 (gg), DAO No. 2005-10 or the Implementing Rules and Regulations of the Philippine Clean Water Act.

92. 80 C.J.S. Shipping § 80, p. 130.

93. DOH: Operations Manual on the Rules and Regulations Governing Domestic Sludge and Septage.

94. *Id.*

95. *Id.*

96. Article 1193 of the Civil Code.

    Art. 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day

comes.

97. *See* Section 17 on Basic Services and Facilities of Republic Act No. 7160 or the Local Government Code of 1991.

98. *See* Section 2 on Declaration of Policy of Republic Act No. 7160.

99. *See* Section 1179 of the Civil Code.

100. *Id.*

101. *Supra* note 17.

102. *See* Executive Order No. 292 (The Administrative Code of 1987), Executive Order No. 192, Republic Act No. 7160.

103. Record of the Senate, Vol. 1, No. 5, August 5, 2002, pp. 105-106.

104. Senate Record, Vol. I, No. 6, August 6, 2003, pp. 211-212.

105. Record of the Senate, Vol. III, No. 61, Full Text of Conference Case Report on SB No. 2115 and HB No. 5398, p. 945.

106. *Pentagon International Shipping Services, Inc. v. Madrio*, G.R. No. 169158, July 1, 2015.

107. 8.1 ***Sewerage and Sanitation Projects***. All projects/activities involving the collection, transport, treatment and disposal of sewage shall be in accordance with the guidelines on sanitation set by DOH. In case sewage, septage, or sludge is collected, transported, treated and disposed by a third party, the final dispose of the treated sewage, septage or sludge shall comply with the relevant standards issued by DOH. Provided, that reuse of treated sludge for agricultural purposes shall comply with the standards set by DENR and DA.

    8.2 ***Pre-treatment Standards***. For effluents that go through sewerage treatment systems, the Department may impose either Pre-treatment Standards for Existing Sources (PSES) and/or Pre-treatment Standards for New Sources (PSNS), upon the recommendation of the operators of sewerage system/wastewater treatment facilities. Separate standards for combination of different systems effluent should be set by the Department. Provided, that all sources of domestic wastewater including industries, except households, shall abide by the standards set pursuant to this Rule. The DPWH and DENR shall inform LGU building officials of the requirements in the [CLEAN WATER ACT] pertinent to issuing building permits, sewerage regulations, municipal and city planning. In the absence of pre-treatment standards, the operators of sewerage system/wastewater treatment facilities may require, by contract, effluent sources to meet standards for wastewater discharged into or treated by their facilities.

    8.3 ***Mandatory Connection to Existing Sewerage Lines***. The DPWH shall coordinate with the water service providers and concessionaires in Metro Manila and other HUCs in preparing a compliance plan for mandatory connection of the identified establishments and households to the existing sewerage system. Mandatory connection under this Rule shall take into consideration the capacity of the sewerage system to accommodate the total wastewater load. Provided, that in areas where sewerage lines are not yet available upon the effectivity of this IRR, all sources of pollution shall connect to sewerage lines once said lines are made available by the agency concerned. Water concessionaires shall ensure compliance with effluent standards formulated pursuant to the Act. Provided finally, that for industries with domestic wastewater, a one-year phase-in period is given to restructure the drainage system to connect to existing wastewater treatment facility.

    8.4 ***Role of MWSS and Water Concessionaires in Metro Manila***. In case of Metro Manila and other MWSS franchise areas being serviced by the water concessionaires, sewerage facilities and sewage lines shall be provided by water concessionaires in coordination with the LGUs in accordance with their concession agreements. Prior to connection to the main sewage line, secondary lines should already be in-place coming from pre-treatment facilities or directly from sources.

    8.5 ***Actions against Non-connection to Available Sewerage System***. The Department shall withhold permits or refuse issuance of ECC for establishments that fail to connect their sewage lines to available sewerage system as required herein. Also, the Department shall request the LGUs, water districts and other appropriate agencies, in writing, to sanction persons who refuse connection of sewage lines to available sewerage systems, including non-issuance of Environmental Sanitation Clearance by DOH, in accordance with the Clean Water Act and other existing laws. Provided, further, that the water district shall deprive the property owner of any and all services provided by the water district should the property owner persist in refusing to connect with the water district's sewerage system pursuant to Sec. 29 of P.D. No. 198.

    8.6 ***Role of Water Supply Utilities***. In the case of HUCs, non-HUCs and LGUs where water districts, water utilities and LGU water works have already been constituted and operational, the water supply utility provider shall be responsible for the sewerage facilities and the main lines pursuant to P.D. No. 198 and other relevant laws. In areas where there are no existing facilities, the LGUs, water districts or water utilities may adopt septage management program or other sanitation alternatives.

    8.7 ***Areas without concessionaires or water districts***. In the case of HUCs, non-HUCs and LGUs where water districts and water corporations have not yet been constituted and operational, the concerned LGU shall employ septage management system or other sanitation programs.

108. Sec. 8.1, DAO No. 2005-10, *n* Implementing Rules and Regulations of the Clean Water Act.

109. *Id.* Sec. 8.2.

110. *Id.* Sec. 8.3.

111. *Id.* Sec. 8.4.

112. *Id.* Sec. 8.5.

113. *Id.* Sec. 8.6.

114. *Id.* Sec. 8.7.

115. RULE 7. *National Sewerage and Septage Management Program (NSSMP).* — The DPWH shall, within twelve (12) months from the effectivity of the [CLEAN WATER ACT], prepare a National Sewerage and Septage Management Program. The NSSMP shall be a framework plan which will be formulated to address various national issues on sanitation and treatment and disposal of wastewater, focusing on, among others, objectives, strategies, targets, institutional mechanism, financing mechanism, technology implementation, programming, monitoring and evaluation and other key national concerns. The program shall also include guidelines on sludge management for companies engaged in desludging operations.

7.1 *Involvement of other Agencies*.

7.1.1 ***Role of the DENR***. The Department shall coordinate with DPWH and LGUs in complying with Sec. 7 of the [CLEAN WATER ACT], contributing specific environmental criteria and data for the prioritization of sanitation, sewerage, septage management and combination of different systems and projects. It shall likewise present to LGUs, water concessionaires, water districts and other water utilities sustainable options such as community-based natural treatment systems, ecological sanitation concepts, water recycling and conservation systems and other low-cost innovative means to manage sewage and septage as a complement to other sewerage and sanitation programs.

7.1.2 ***Roles and responsibilities of other agencies***. The DOH shall provide specific health criteria and data; the MWSS and LWUA shall contribute inputs relative to the responsibilities of concessionaires and water districts in sewerage, septage and sanitation management; the IEC program shall be developed through the assistance of the Dep. Ed, CHED and PIA. The League of Municipalities/Cities/Provinces shall contribute specific inputs reflecting the interests of LGUs. The LWUA and water districts may also submit to DPWH a listing of sewerage, septage and combined sewerage-septage projects for LGUs.

7.2 ***Role of LGUs***. Each LGU, through the enactment of an ordinance, shall appropriate the necessary land including the required rights-of-way/road access to the land for the construction of the sewage and/or septage treatment facilities in accordance with the Local Government Code. It may enact ordinances adjusting local property taxes or imposing a service fee system to meet necessary expenses for the operation and maintenance of sewerage treatment or septage management facility servicing their area of jurisdiction. The LGUs shall submit to DPWH a priority listing of their projects based on realistic assessment of resources, including proposals for counterpart contributions. Such counterpart proposals shall be considered by the DPWH in prioritizing projects for implementation.

7.3 ***Exemptions from wastewater charges and liabilities***. LGUs undertaking or about to undertake pilot ecological sanitation (ECOSAN) technologies and other sanitation technologies shall be exempt from wastewater charges or other liabilities for seven years from effectivity of the Act and shall be assisted by DENR in securing any necessary permits. *Provided*, that effluents from such pilot-testing activities shall meet effluent standards.

7.4 ***Provision of Lands and of Rights-of-Way by LGUs***. Each LGU, through the enactment of an ordinance, shall appropriate the necessary land including the required rights-of-way/road access to the land for the construction of the sewage and/or septage treatment facilities in accordance with the Local Government Code.

7.5 ***Funding for the Operation and Maintenance of Sewerage Treatment and Septage Facilities***. Each LGU may enact ordinances adjusting local property taxes or imposing a service fee system to meet necessary expenses for the operation and maintenance of sewerage treatment or septage management facility servicing their area of jurisdiction.

116. The updated list of the respective service areas under their Concession Agreements with the MWSS are segregated into the West Zone for Maynilad and the East Zone for Manila Water, further listed as follows:

Maynilad (West Zone Concession Area)	**Manila Water (East Zone Concession Area)**	
Caloocan	**NCR**	**RIZAL**
Valenzuela	Makati	Angono
Navotas	Mandaluyong	Antipolo
Malabon	Manila (part)	Baras
Quezon City (part)	Marikina	Binangonan
Manila (part)	Parañaque (part)	Cainta
Makati (part)	Pasig	Cardona
Pasay	Pateros	Jalajala

Muntinlupa	Quezon City (part)	Morong
Parañaque	San Juan	Pililla
Las Piñas	Taguig	Rodriguez
Bacoor, Cavite		San Mateo
Imus, Cavite		Tanay
Kawit, Cavite		Taytay
Rosario, Cavite		Teresa
Noveleta, Cavite		
Cavite City		

Rollo (G.R. No. 206823), pp. 1357 and 1555.

117. Compliance of Manila Water, *Id.* at 1415.

118. *Rollo* (G.R. No. 207969), pp. 296, 300, 302, 303, 308.

119. Concession Agreement with Manila Water. http:ro.mwss.gov.ph/wp-content/uploads/2013/02/CA-mwcl.pdf (last visited April 2, 2019.)

120. 513 Phil. 557 (2005).

121. *Id.* at 593.

122. *Id.* at 594.

123. *Id.* at 581, citing *Oposa v. Factoran, Jr.*, 296 Phil. 694 (1993).

124. Provided in Section 5 on Service Obligations of the Concession Agreements; *supra* note 119.

125. *See* http://ro.mwss.gov.ph/?qa_faqs=what-are-the-rates-and-charges-included-in-my-water-bill-statement-of-account last visited 29 March 2019; See https://www.manilawater.com/customer/bill-information (last visited March 29, 2019.).

126. *Supra* note 119.

127. *See* https://www.dropbox.com/s/7sqxsf27bjqih63/Maynilad%20Term%20Extension%20Agreement%20with%20Annexes.pdf (last visited April 1, 2019.)

128. Article 7, Civil Code of the Philippines.

129. *Supra* note 17.

130. *Id.*

131. *See* Section 1, Article VIII of the 1987 Philippine Constitution.

132. Section 8 of the Civil Code of the Philippines.

133. *See* Section 1, Article VI of the 1987 Philippine Constitution.

> SECTION 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

134. *Rollo* (G.R. No. 207969), pp. 50-51.

135. *Rollo* (G.R. No. 206823), pp. 118-119.

136. *Summit One Condominium Corporation v. PAB*, G.R. No. 215029, July 5, 2017.

137. The computation for fines under Section 28 of the Clean Water Act is broken down as follows:

Period	Fine Per Day (In Pesos)	Fine Per Year (In Pesos)
May 7, 2009 to May 6, 2010	200,000.00	73,000,000.00
May 7, 2010 to May 6, 2011	200,000.00	73,000,000.00
May 7, 2011 to May 6, 2012	220,000.00	80,520,000.00
May 7, 2012 to May 6, 2013	220,000.00	80,300,000.00
May 7, 2013 to May 6, 2014	242,000.00	88,330,000.00

May 7, 2014 to May 6, 2015	242,000.00	88,330,000.00
May 7, 2015 to May 6, 2016	266,200.00	97,429,200.00
May 7, 2016 to May 6, 2017	266,200.00	97,163,000.00
May 7, 2017 to May 6, 2018	292,820.00	106,879,300.00
May 7, 2018 to May 6, 2019	292,820.00	106,879,300.00
May 7, 2019 to August 6, 2019	322,102.00	29,633,384.00
TOTAL FINES from MAY 7, 2009 to AUGUST 6, 2019		**921,464,184.00**

138. *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

LEONEN, J., concurring:

1. *Ponencia*, pp. 10-11.
2. *Id.* at 16.
3. *See Torres v. Borja*, 155 Phil. 51 (1974) [Per J. Fernando, Second Division] and *Maglasang v. Ople*, 159-A Phil. 126 (1975) [Per J. Fernando, Second Division].
4. *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*, 161 Phil. 179, 188 (1976) [Per J. Fernando, Second Division].
5. *Legaspi v. Cebu City*, 723 Phil. 90 (2013) [Per J. Bersamin, En Banc].
6. *Id.* at 106-107.
7. 596 Phil. 444 (2009) [Per J. Tinga, En Banc].
8. *Id.* at 461.
9. 440 Phil. 787 (2002) [Per J. Carpio, First Division].
10. *Id.* at 804.
11. 596 Phil. 444, 462-463 (2009) [Per J. Tinga, En Banc].
12. Craig, Robin Kundis, *What the Public Trust Doctrine Can Teach Us About the Police Power, Penn Central, and the Public Interest in Natural Resource Regulation*, 45 ENVIRONMENTAL LAW 519-559, 522, <*JSTOR*, www.jstor.org/stable/43432857> (last visited on August 5, 2019).
13. *Ponencia*, p. 23.
14. *Id.* at 22-23.
15. *Id.* at 23.
16. *Id.*
17. *Id.*
18. 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].
19. *Id.* at 1172.
20. J. Leonen, Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].
21. *Id.* at 1168-1170.
22. *Id.* at 1170-1173.
23. *Ponencia*, pp. 22-23.
24. *See* J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203-209 (2013) [Per J. Bersamin, En Banc].
25. *Id.* at 206.
26. *Id.* at 206-207.
27. 717 Phil. 141 (2013) [Per J. Bersamin, En Banc].
28. *Id.* at 207-209.

29. Craig, Robin Kundis, *What the Public Trust Doctrine Can Teach Us About the Police Power, Penn Central, and the Public Interest in Natural Resource Regulation*, 45 ENVIRONMENTAL LAW 519-559, 535, <*JSTOR*, www.jstor.org/stable/43432857> (last visited on August 5, 2019).

30. Craig, Robin Kundis, *What the Public Trust Doctrine Can Teach Us About the Police Power, Penn Central, and the Public Interest in Natural Resource Regulation*, 45 ENVIRONMENTAL LAW 519-559, 535, <*JSTOR*, www.jstor.org/stable/43432857> (last visited on August 5, 2019).

31. *Id.* at 541 and 546.

32. *Id.* at 557.

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