

MALACAÑANG

Manila

PRESIDENTIAL DECREE No. 1174

AMENDING PRESIDENTIAL DECREE NUMBERED NINE HUNDRED SEVENTY TWO, OTHERWISE KNOWN AS THE "COAL DEVELOPMENT ACT OF 1976"

WHEREAS, the coal development program envisioned in Presidential Decree No. 972, otherwise known as the "Coal Development Act of 1976" encourage the participation of the private sector with adequate and sufficient financial, technical and managerial resources to undertake a work program to effectively explore, develop and exploit indigenous coal resources calculated yield maximum benefit to the Filipino people and revenues to the Philippine Government and assure just and fair returns to the participating private enterprises;

WHEREAS, in line with the policy of the Government to encourage and accelerate exploration and development of indigenous resources and in the light of current conditions in the coal industry, it is imperative that Presidential Decree No. 972 be amended granting additional incentives to coal operators participating in the coal development program;

WHEREAS, in order that coal operations should not be unnecessarily hampered and snagged by the difficulties and delays in securing surface rights under existing laws and regulations for the entry into, access to or occupation of private lands, it is necessary to provide a just and equitable system of rights acquisition and use by coal operators which would also be given incentives and protection to private landowners and occupants;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the authority vested in me by the Constitution of the Philippines, do hereby decree and declare as part of the law of the land the following:

Section 1. Section Seven (e) of Presidential Decree No. 972, is hereby amended to read as follows:

"Sec. 7. Existing Permittees/Leaseholders

(e) In order to give holders of valid and subsisting coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the operators thereof duly approved by the appropriate government agency, sufficient time to upgrade their financial and technical capabilities to develop a viable work program to be embodied in a coal operating contract, the deadline for entering and concluding a duly executed coal operating contract is extended from July 27, 1977 to January 27, 1978; Provided, that the extension shall apply only to those who have complied with the requirements of unitization; Provided, further that those who have unitized may be granted by the Board during the extension period special operating permits in order not to disrupt existing coal operations; Provided, finally, that no further extension shall be allowed after the extension granted in this decree, and coal permits, leases and other rights not converted to coal operating contract for any cause by January 27, 1978 shall be deemed automatically canceled and the area thereby shall be open for coal operating contract in accordance with Section 6 thereof."

Section 2. Section Nine, Third Paragraph, Sub-Paragraph of the same Decree is hereby amended to read as follows:

Sec. 9. Obligations of Operator in a Coal Operating Contract.

(a) On behalf of the Government, reimburse the operator for all operating expenses not exceeding ninety percent (90%) of the gross proceeds from production in any year; Provided, that if in any year, the operating expenses exceed ninety percent (90%) of the gross proceeds from production, then the unrecovered expenses shall be recovered from the operation of succeeding years. Operating expenses mean the total expenditures for coal operation incurred by the operator as provided in a coal operating contract;

Section 3. Section Ten of the same Decree is hereby amended to read as follows:

"Sec. 10. Additional Fee. All valid and subsisting holders of coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the duly qualified operators thereof who have organized their area into a coal unit, subject to conditions imposed by the Energy Development Board, be granted in the coal operating contract, in addition to the operator's fee provided in Section 9, a special allowance, the amount of which shall not exceed forty percent (40%) of the balance of the gross income after deducting all operating expenses.

"Coal operating contracts entered into with Philippine citizens or corporations except those already covered under the proceeding paragraph, shall be granted a special allowance the amount of which shall not exceed thirty per cent (30%) of the balance of the gross income after deducting all operating expenses; Provided, that coal operating contracts in which Philippine citizens or corporations have a minimum participating interest of forty percent (40%) in the contract area may, subject to reasonable conditions imposed by the Energy Development Board, be granted a special allowance not exceeding twenty percent (20%) of the balance of the gross income after deducting all operating expenses.

"For the purpose of this section, a Philippine corporation means a corporation organized under Philippine laws at least sixty percent (60%) of the capital of which, including the voting shares, is owned and held by citizens of the Philippines.

Section 4. Section Eleven (a) of the same Decree is hereby amended to read as follows:

"Sec. 11. Minimum Terms and Conditions. In addition to those elsewhere provided in this Decree, every coal operating contract executed in pursuance hereof shall contain the following minimum terms and conditions;

(a) Every operator shall be obliged to spend in direct prosecution of exploration work not less than the amounts provided for in the coal operating contract and these amounts shall not be less than the total obtained by multiplying the number of coal blocks covered by the contract by One Million Pesos (P1,000,000.00) per block annually; Provided, that if the area or a portion thereof is suitable for open pit mining as determined jointly by the operator and the Energy Development Board, the minimum expenditure requirement herein provided may be reduced up to Two Hundred Thousand Pesos (P200,000.00) per block annually. From the time coal reserves in commercial quantity have been determined jointly by the operator and the Energy Development Board, the operator shall undertake the development and production of the contract area within the period agreed upon in the contract and shall be obliged to spend in the development and production of the contract area an amount which shall be determined by negotiation between the operator and the Energy

Development Board taking into account factors such as measured reserves, quality of coal, mining method and location and accessibility to market; Provided, further, that with the approval of the Board, the operator may concentrate all the annual work obligations on any one or more of several contiguous or geologically related blocks if it is shown that such concentration of work will be most advantageous and beneficial in the development and operation of the coal operating contract are; Provided, further, that if during any contract year, the operator shall spend more than the amount of money required to be spent, the excess may be credited against the money required to be spent by the operator during the succeeding years; Provided, furthermore, that should the operator fail to comply with the work obligations provided for in the coal operating contract, it shall pay to the Government the amount it should have spent but did not in direct prosecution of its work obligations; Provided, finally, that except in case of open pit mining, the operator shall drill at least thirty (30) holes per block and a minimum footage of exploratory holes before the end of the exploration period as may be specified in the coal operating contract. The Board may, however, taking into account the geological and technical factors involved; allow a lesser number of drill holes and footage giving due credit to other accepted exploration methods and practices.

Section 5. The same Decree is hereby further amended by adding the following sections immediately following Section Sixteen thereof.

"Sec. 16-A. Entry and Use of Private Lands

(a) Coal exploration, development and exploitation is hereby declared of public use and benefit and for which the power of eminent domain may be invoked and exercised for the entry, acquisition and use of private lands; Provided, that any person or entity acquiring any option or right on such land after the execution of a coal operating contract covering such land not be entitled to the compensation herein provided.

(b) The coal operator shall not be prevented from entry into private lands for the purpose of exploring, developing and exploiting coal contract area, upon prior written notification sent to, and duly received by, the surface owner of the land and occupant thereof. However, if the surface owner of the land and occupant thereof refuses to allow the coal operator's entry into the land despite his receipt of the written notification, or refuses to receive said written notification, or cannot be found, then the coal operator shall notify the Energy Development Board of such fact, and shall be attached thereto a copy of the written notification.

(c) In all cases mentioned in the preceding paragraph, the coal operator shall post a bond with the Energy Development Board in the amount to be fixed by said Energy Development Board based on type of the land and the value of the trees, plants and other existing improvements thereon which shall be the basis of compensation of the surface owner of the land and/or occupant thereof in the appropriated cases mentioned in the next succeeding paragraph.

(d) In the absence of an agreement between the coal operator and the surface owner of the land and/or occupant, the surface owner of the land and occupant thereof shall be entitled to the following compensation;

(1) Titled Lands. For the conduct of exploration, development and exploitation within lands covered by Torrens Title or other government-recognized titles, the surface owner shall receive as compensation from the coal operator at least One Peso (P1.00) for every ton of coal extracted on his hand. However, in the event that the surface owner suffers damage to his plants, trees, crops and other improvements on his land as a direct result of the coal

operation conducted by the coal operator, the former shall be entitled to compensation for the value thereof that are damaged or destroyed.

(2) **Untitled Lands or land with Incomplete Titles.** For the conduct of exploration, development and exploitation of coal within untitled lands or lands with incomplete titles, the surface owner shall receive as compensation from the coal operator at least Fifty Centavos (P0.50) for every ton of coal extracted on his land. However, in the event that the surface landowner suffers damage to his plants, trees, crops and other improvements on his land as a direct result of operation conducted by the coal operator, the former shall be entitled to compensation for the value thereof that are damaged or destroyed.

Lands with incomplete titles referred to herein shall mean those possessory rights which can ripen into rights of ownership registerable under the Torrens System.

(3) **Government Reserved Lands.** Government reserved lands for purposes other than mining shall be open to a coal operating contract by filing an application therefore with the Energy Development Board, subject always to compliance with pertinent laws, rules and regulations covering such reserved lands; Provided, that the compensation due the surface owner shall accrue equally between the supervising agency and of the Energy Development Board, to be disbursed for conservation measures."

"Sec. 16-B **Timber Rights.** Any provision of law to the contrary notwithstanding, the operator may cut trees or timber within his coal contract area subject to applicable law and to the rules and regulations of the Bureau of Forest Development as may be necessary for the exploration, development and exploitation of his coal contract area; Provided, that if the lands covered in the coal contract area are already covered by existing timber concessions, the amount of timber needed and manner of cutting and removal thereof shall be subject to the same rules and agreed upon by the operator and the timber concessionaire; Provided, further, that, in case no agreement can be reached between the operator and the timber concessionaire, the matter shall be submitted to the Energy Development Board whose decision shall be final. The operator granted a timber right shall be obligated to perform reforestation works within the coal contract area in accordance with the regulations of the Bureau of Forest Development."

"Sec. 16-C **Water Rights.** A coal operator shall also enjoy water rights necessary for the exploration, development and exploitation of his coal contract area upon application filed with the Director of the Bureau of Public Works in accordance with the existing laws of water and the rules and regulations promulgated thereunder; Provided, that water rights already granted or legally existing shall not thereby be impaired; Provided, further, that the government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof."

"Sec. 16-D **Applicability of Certain Provisions of Presidential Decree No. 463** The provisions of Chapter XIV (Penal Provisions) of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" shall be applicable to the coal operations; Provided, that any reference therein to the Decree and to the Bureau Director of Mines shall mean Presidential Decree No. 972 and the Energy Development Board, respectively.

Section 6. Separability Clause. Should any provisions of this Decree be held unconstitutional, no other provision hereof shall be effected thereby.

Section 7. Repealing Clause. All laws, decrees, executive orders, administrative orders, rules and regulations, or parts thereof in conflict or inconsistent with any provision of this Decree are hereby repealed, revoked, modified or amended accordingly.

Section 8. Effectivity. This Decree shall take effect immediately.

Done in the City of Manila, this 27th day of July, in the year of Our Lord, nineteen hundred and seventy-seven.