

October 16, 1995

**IMPLEMENTING RULES AND REGULATIONS OF R.A. NO. 8041 OTHERWISE
KNOWN AS THE WATER CRISIS ACT OF 1995**

INTRODUCTION — In accordance with the provisions of R.A. No. 8041, the following Implementing Rules and Regulations (IRR) are hereby prescribed to carry out the provisions of said Act pursuant to Section 12 thereof.

RULE 1

General Provisions

SECTION 1.1 *Policy.* — It is the policy of the State to adopt urgent and effective measures to meet the nationwide water crisis which adversely affects the health and well-being of the people, food production and industrialization process. The government shall, therefore, directly address the issues relevant to the water crisis, including the supply, distribution, financing and privatization of water facilities, the protection and conservation of watersheds and the waste and pilferage of water, including graft and corruption in all water agencies.

SECTION 1.2 *Coverage.* — These Implementing Rules and Regulations shall cover the following areas:

- a. Organization and operation of the Joint Executive- Legislative Water Crisis Commission;
- b. Negotiated Contracts;
- c. Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Water Utilities Administration (LWUA);
- d. Anti-pilferage measures;
- e. Protection and Conservation of Watersheds

RULE 2

Organization and Operation of the Joint Executive-Legislative Water Crisis Commission

SECTION 2.1.0 *Organization.* — A joint Executive-Legislative Water Crisis Commission, hereinafter referred to as the Commission has been organized as of September 14, 1995. The Commission shall be chaired by the Executive Secretary with the following as members :

- a. The Secretary of the Department of Public Works and Highways (DPWH)
- b. The Secretary of the Department of Environment and Natural Resources (DENR)
- c. Chairman of appropriate Senate Committee designated by the leader of the Senate.

- d. Chairman of appropriate House Committee designated by the leader of the House of Representatives.
- e. Representative from the Minority, Senate
- f. Representative from the Minority, House of Representatives

FREQUENCY OF MEETINGS — The Commission shall meet at least once a month when called by the Chairman or any two (2) of the members, on the date and venue it may determine to ensure the timely implementation of its Strategic Action Plan for the attainment of the objectives of this Act.

QUORUM — The Commission shall have a quorum whenever it is constituted by at least three (3), Provided, that both the Executive and Congress are represented and that in the absence of the Chairman, a member from the Executive shall act as Chairman. Any member may send his representative in the Commission's meetings, provided, that he or she is not counted in determining a quorum and as such, may not vote. In this regard, the decisions, agreements and official positions of the Commission on matters pertinent to its functions shall be adopted through resolution duly approved by the majority of members in quorum or by referendum.

COMMISSION'S RULES — The Commission may adopt its rules and procedures for the conduct of its meetings and activities.

SECTION 2.1.1 *Technical Staff.* — The Commission shall have a Technical Staff composed of representatives of the National Water Resources Board (NWRB), the Metropolitan Waterworks and Sewerage System (MWSS), the Local Water Utilities Administration (LWUA), appropriate Committees of the Senate and House of Representatives and the certified workers' union in the affected institutions.

The Commission may, however, designate such additional members of the Technical Staff as it may deem necessary through resolution.

The Executive Director of the NWRB shall be the head of the Technical Staff. The Technical Staff shall provide the Commission appropriate technical assistance, researches, studies and reports, perform coordination functions and undertake other staff services to help accomplish the foregoing purposes and objectives of the Commission.

SECTION 2.1.2 *Secretariat Support.* — The NWRB shall provide the secretariat and administrative support to the Commission in the conduct of its activities. As such, it shall be directly responsible to the Commission Chairman. The Secretariat and Technical Staff shall obtain policy and operational direction from the Commission thru the Chairman.

SECTION 2.2 *Purposes and Objectives.* — The Commission shall have the following purposes and objectives:

- a. To undertake nationwide consultations on the water crisis and in-depth and detailed study and review of the entire water supply and distribution structure.
- b. To enhance and facilitate cooperation and coordination between Congress and the Executive Department in

formulating and implementing the government's water crisis management and policy strategy.

- c. To recommend measures that will ensure continuous and effective monitoring of the entire water supply and distribution system of the country.
- d. To conduct continuing studies and researches on policy options, strategies and approaches to the water crisis including experiences of other countries similarly situated and to recommend such remedial and legislative measures as may be required to address the problem.

SECTION 2.3 *Powers and Functions.* — To carry out the aforementioned purposes and objectives, the Commission is hereby authorized to exercise the following powers and functions :

- a. Secure from any department, bureau, office, agency or instrumentality of the government such assistance as may be needed, such as financial, technical information, the preparation and production of reports, and the submission of recommendations or plans as it may require.
- b. Designate by resolution the watershed areas in which developmental undertakings are to be suspended and those areas where developmental projects to address the water crisis may be implemented.
- c. Generally , exercise all powers necessary, relevant and incidental to attain the purposes and objectives for which it is organized.

SECTION 2.4 *Reports.* — The Commission shall submit quarterly reports to the President and to Congress on the implementation of R.A. No. 8041 starting on or before 15 December 1995.

The Commission shall submit its final report and recommendations to the President and to Congress on or before 14 March 1996.

SECTION 2.5 *Dissolution.* — The Commission shall cease functus officio after it submits its final report and recommendations to the President as provided for in Section 2.4 of these Implementing Rules and Regulations.

RULE 3

Negotiated Contracts

SECTION 3.1 *Policy.* — Consistent with the declared policy of the State as enunciated in R.A. No. 8041, the National Water Crisis Act of 1995 (hereinafter called "the Law") to adopt urgent and effective measures to address the nationwide water crisis, the Government shall encourage and promote greater private sector participation in the financing, construction, repair, rehabilitation, improvement and operation of water supply, treatment and distribution facilities and projects, including sewerage projects, for the benefit and use of household and industrial consumers, under the Build-Operate-and-Transfer (BOT) and related schemes, by providing appropriate

incentives, adopting minimum regulations and simplified procedures, and extending all reasonable and viable government support to the project.

SECTION 3.2 *Coverage.* — Negotiated contracts undertaken pursuant to and consistent with the terms of Section 6 of the Law shall be primarily governed by said Law and the following rules and regulations. The provisions of R.A. No. 6957, as amended by R.A. No. 7718, otherwise known as the BOT Law, shall suppletorily apply; Provided, that these shall not be understood to impose more requirements and/or greater restrictions than are imposed by R.A. No. 8041.

SECTION 3.3 *Period to Exercise Authority to Negotiate.* — The President of the Republic has a period of one (1) year from 15 July 1995 up to 15 July 1996 to enter, upon the recommendation, either jointly or separately, of the DPWH, DENR, MWSS, LWUA or other concerned government agencies (hereinafter referred to as “Implementing Agency”), into negotiated contracts to undertake private sector infrastructure or development projects related to water supply, treatment, distribution and disposal under a BOT, Build-and-Transfer (BT), Build-Lease-and-Transfer (BLT), Build-Own-and-Operate (BOO), Build-

Transfer-and-Operate (BTO), Contract-Add-and-Operate (CAO), Develop-Operate-and-Transfer (DOT), Rehabilitate-Own-and-Transfer (ROT), Rehabilitate-Own-and-Operate (ROO), or other similar contractual arrangements or schemes.

SECTION 3.4 *Eligible Projects.* — The Implementing Agency shall, either jointly or separately prepare the list of priority projects proposed to be prosecuted under a BOT or related schemes on a negotiated basis .

Studies undertaken by the Implementing Government Agency as regards the rationale and feasibility of the projects in the list, including others which may later be proposed shall be forwarded to the ICC-NEDA for its information.

SECTION 3.5 *Publication and Invitation.* — In order to inform the public and invite prospective proponents, the Implementing Agency shall, not later than fifteen (15) days from the approval of these IRR by the Commission, cause the publication of the list of eligible priority projects referred to in the preceding Section, at least once in a domestic newspaper of general circulation. Other such BOT projects which the Implementing Agency may later be proposed to be undertaken should similarly be published.

The Invitation should disclose that the projects are proposed to be prosecuted on a BOT or related scheme and shall be awarded on a negotiated basis. It should also indicate the preferred contractual arrangement to be adopted, the salient features of the projects, the qualification requirements of proponents, the deadline for the submission of the proposals, which in no case shall be later than ninety (90) days from the date of the publication, and information as to where details pertaining to specific projects may be obtained.

Apart from the publication, the Implementing Agency may invite proponents with proven competence, experience and financial capacity to undertake any of the proposed projects. (As amended pursuant to Joint Executive-Legislative Water Crisis Commission Resolution No. 06 dated November 9, 1995).

SECTION 3.6 *BOT Teams.* — The concerned Implementing Agency shall constitute BOT Teams to propose the projects, study and evaluate the various proposals that may be received, and to negotiate the terms of the contracts. The BOT Team should be headed by a senior official of the Implementing Agency, at least with the rank of Assistant Secretary or Deputy Administrator, and composed of technical, financial, management, environmental and legal officers or experts. A representative from the ICC-NEDA shall be invited to participate in the evaluation and negotiation of the projects. The BOT Team may tap the assistance of the BOT Center established under the CCPAP and other government agencies, as well as hire Filipino or foreign consultants.

SECTION 3.7 *Standard of Competence.* — Proponents need not be prequalified. It would be sufficient for the concerned Implementing Agency to establish the proponent's track record, key personnel, inventory of efficient and reliable equipment and sound financial capacity, during the evaluation of the proposal or at anytime prior to actual award of the contract.

The adequacy of the experience or track record and suitability of the key personnel of a proponent or contractor shall be evaluated in terms of the following :

(i) *Firm Experience* — The project proponent and/or its contractor(s), by itself or through its member-firms in case of a joint venture/consortium or through the contractor(s) which the project proponent may have engaged for the project, must have successfully undertaken project (s) similar or related to the subject water or water-related project. The individual firms and/or their contractor(s) may individually specialize on any or several phases of the project(s). A joint venture/consortium, proponent shall be evaluated based on the individual or collective experience of the member-firms of the joint venture/consortium and of the contractor(s) which it has engaged for the project.

For this purpose, a joint venture/consortium shall submit a business plan which shall, among others, identify its members and its contractor(s) if the experience of its contractor(s) are necessary for the determination of the capacity of the joint venture/consortium to undertake the project and the description of the respective roles said members and contractors, if necessary, shall play or undertake in the project. The business plan shall disclose which of the members of the venture/consortium shall be the lead member or corporation, the financing arm, the contractor(s) if the qualifications/experience of their contractor(s) are necessary for the determination of the capacity of the joint venture/consortium and/or the facility operator(s) to undertake the project.

(ii) *Key Personnel Experience.* — The key personnel of the proponent and/or its contractor(s) must have sufficient experience in the relevant aspect of schemes similar or related to the subject project, as specified by the implementing department or agency.

In determining the financial capacity of a proponent or contractor, the implementing department or agency concerned shall examine whether or not the said proponent or contractor has adequate capacity to sustain financing requirements for the detailed engineering design, construction and/or operation and maintenance phases of the project, as the case may be. This capability may be measured in terms of (a) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project as may be set by the implementing department or agency and (b) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources.

SECTION 3.8 *Evaluation.* — The BOT team of the concerned Implementing Agency shall immediately evaluate and assess the technical, operational, financial and economic viability, as well as the environmental impact of the proposals. The evaluation shall be completed within thirty (30) days from receipt thereof.

The following evaluation criteria shall be observed :

a. *Technical Soundness.* — The proponent shall include at least a preliminary engineering design of the project. This should conform to the minimum design and performance standards and specifications set by the Implementing Agency. The construction methods and schedules shall also be presented and shown to be feasible.

b. *Operational Feasibility.* — The proposed organization, method and procedures for operating and maintaining the completed facility must be well-defined , workable and shall conform to the prescribed performance standards. Where feasible, it should provide for the transfer of technology used in every phase of the project.

c. *Financial Viability.* — The assessment shall be based on the present value of the proposed tariff, fees and other charges or proposed schedule of amortization payments over a fixed term for the project. The proposed financing plan should demonstrate that the same can adequately meet the construction, maintenance and operating costs required by the project. The plan shall not involve any form of prohibited financing or guarantee; it may, however, include allowable government support as hereunder defined.

In evaluating the viability of the project, the proponent shall be allowed to recover its investment in the project plus a market based rate of return as determined by the implementing agency and subject to the approval of the President.

d. *Economic Acceptability.* — The assessment should show that

economic benefits of the project exceeds its economic costs, and its present value and calculated Economic Internal Rate of Return (EIRR) is at least equal to the prevailing opportunity cost of capital established by the NEDA.

e. *Environmental Standard.* — The proposed design and technology of the project to be used must be in accordance with the environmental standards set by the Implementing Agency and approved by the DENR. Any adverse effects on the environment as a consequence of the project as proposed by the project proponent must be properly identified together with the corrective measures proposed to be adopted.

SECTION 3.9 *Presidential Authority to Negotiate.* — The Head of the concerned Implementing Agency shall immediately forward the results of its evaluation to the President, through the Executive Secretary, with the request for authority to negotiate the terms of the contract with the proponent determined by the President to have submitted the most advantageous proposal. The request should indicate the recommendation of and the negotiating parameters proposed to be adopted by the Implementing Agency.

The Office of the President shall act on the submission within Ten (10) days from receipt thereof.

SECTION 3.10 *Negotiation.* — The Implementing Agency shall endeavor to complete negotiation within sixty (60) days from receipt of the Authority to Negotiate from the President. If the negotiation fails, the Implementing Agency may return to the President for authority to negotiate with another proponent.

SECTION 3.11 *Approval of the Award.* — The contract between the concerned government agency and the proponent, together with an executive summary disclosing the salient features of the same, shall be forwarded by the head of the concerned Implementing Agency to the President, through the Executive Secretary, for final approval.

SECTION 3.12 *Unsolicited Projects.* — The Implementing Agency may still accept, evaluate and negotiate proposals to undertake projects which have not been previously identified by it but are consistent with the purposes and objectives of R.A. No. 8041.

The concerned Implementing Agency shall, on a first come, first serve basis, and within sixty (60) days from receipt thereof, evaluate the unsolicited proposals according to the criteria herein provided and determine whether or not it shall recommend prosecuting the project. A copy of the proposal shall be furnished the ICC-NEDA for its information within seven (7) days from receipt thereof.

The Head of the Implementing Agency shall advise the President, through the Executive Secretary, about the result of its evaluation and request for authority to negotiate the terms of the contract if it decides to recommend undertaking the project.

If authorized to negotiate, the Implementing Agency may proceed to negotiate with the proponent and finalize the terms of the contract prior to

signing. However, the Implementing Agency shall publish, at least once in a newspaper of general circulation, an invitation for comparative and competitive proposals. If no other proposal is received within forty-five (45) days after the publication, the proposed contract may be signed and forwarded to the President for final approval. If during said forty-five (45)-day period, another proponent submits a lower priced and more advantageous proposal per evaluation of the Implementing Agency, the original proponent shall have the right to match the proposed price and terms within thirty (30) days from receipt of such information. If the original proponent matches or improves the proposed price and terms, the proposed contract, as accordingly modified, shall be signed and forwarded to the President for final approval. However, if the original proponent fails to match the new proposal, the Implementing Agency may enter into a contract with the new proponent and submit the same to the President for approval.

SECTION 3.13 *Prohibited Financing or Guarantee.* — A BOT correlated type of contract negotiated as above provided shall in no case involve government financing or financing guarantee.

Government financing shall refer to the use of government funds, either directly appropriated or internally generated and/or the use of Official Development Assistance of foreign governments or institutions, to finance the project.

Government financing guarantee shall be understood to refer to direct government guarantee as defined under the BOT Law which refers to an agreement whereby the government assumes responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of loan default.

SECTION 3.14 *Allowable Support.* — The government may provide right-of-way and grant fiscal incentives provided under existing laws, as well as extend other forms of government support to the project, including revenue sharing, and other forms of credit enhancements. The government may, through the Department of Finance, undertake performance of the obligation of the concerned government agency.

RULE 4

Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Water Utilities Administration (LWUA)

SECTION 4.1 *Proposal for Revamp and Reorganization.* — The Commission shall submit not later than 15 November 1995, to the President, for his consideration in the operationalization of Section 7 of the Water Crisis Act of 1995, proposed framework and mechanics for the reorganization of the MWSS and the LWUA. Included in the proposed framework and mechanics is the privatization of any or all segments of these agencies, operations of facilities if necessary, to make them more effective and efficient to address the looming water crisis.

In formulating the framework and mechanics of the reorganization, the Commission shall undertake appropriate consultation with the concerned

and/or affected agencies and sectors, such as the MWSS and LWUA and their certified workers' union, pertinent consumers' groups, the Department of the Budget and Management, the Civil Service Commission , among others. The proposed mechanics shall also consider the parameters provided in Section 7 of the Act.

SECTION 4.2 *Exemption from Attrition Law.* — In accordance with Section 7 of R.A. No. 8041, the prescriptions of R.A. No. 7430, otherwise known as the "Attrition Law" , shall not apply to the reorganization of the MWSS and LWUA.

SECTION 4.3 *No Diminution in Salaries/Benefits.* — The reorganization undertaken pursuant to R.A. No. 8041 shall not result in the diminution of the present salaries and benefits of the personnel of the MWSS and the LWUA.

SECTION 4.4 *Benefits from Phase-Out.* — Any official or employee of the said agencies who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by existing laws.

SECTION 4.5 *Upgrading of Compensation.* — The Commission may recommend to the President the upgrading of the compensation of the personnel of the MWSS and the LWUA at rates commensurate to the improved and efficient revenue collection of the two (2) agencies as determined by the respective Boards of Trustees and the same shall be exempted from the provisions of R.A. No. 6758, otherwise known as the "Salary Standardization Law". The upgrading shall take effect upon the reduction of the non-revenue water to forty (40%) percent and upon approval by the respective Boards of Trustees of the MWSS and the LWUA of their budgets.

RULE 5

Anti-Pilferage Measures

SECTION 5.1 *Introduction.* — Pursuant to Sections 8,9,10 and 11 of the Water Crisis Act of 1995, the following rules and regulations are hereby prescribed :

SECTION 5.2 *Definition of Terms.* —

- (a) *Unauthorized/Unregistered Water/Sewer Service Connection* — refers to a water/sewer service connection tapped to water/sewer line of the water utility without approved application/authority. This includes unauthorized/unregistered additional water/sewer service connection tapped to another water/sewer service connection.
- (b) *Unauthorized Water main/Sewer Main Extension* — refers to an extension or tapping on any secondary/tertiary distribution line to the water/sewer mainline of the water utility without approved application/authority.
- (c) *By-pass Connection* — refers to a water service connection

installed before the meter such that water drawn from it is not registered in the meter.

- (d) *Tampering/Reversion/Illegal Dismounting of Water Meter*—
 - (i) *Water Meter Tampering* — refers to the insertion of wire, stick, coconut midrib , etc. or attachment of magnet to the water meter, shortening of vane wheel and the detachment of the water meter registry dials/mechanisms and meter seals in order to suppress/slow down the rotation of the meter vane or any other intentional act which may result to under-registration or stoppage of the meter.
 - (ii) *Water Meter Reversion* — refers to reversion of the water meter position which reduces consumption registration.
 - (iii) *Illegal Dismounting of Water Meter*— refers to the unauthorized removal of the water meter.
- (e) *Tampering of Gate Valve/Service Cock/Meter Seal/Meter Protector* — refers to the removal or tampering of the gate valve/service cock/meter seal/meter protector or any part of the meter vertical assembly.
- (f) *Double/ or more than one Tapping* — refers to two or more service connections of a single dwelling/building separately tapped to water mains of the water/sewer utility concerned, one or all of which is not connected to the water meter.
- (g) *Unauthorized Advanced Use of Stub-outs* — refers to the drawing of water from stub-outs prior to the approval of the prospective customer’s application for water service.
- (h) *Unauthorized Advanced Use of Sewer Stub-outs* — refers to the unauthorized disposal of sewage through the stub-outs prior to the approval of the prospective customer’s application for sewer service.
- (i) *Illegal Re-opening of Water/Sewer* — refers to the unauthorized re-opening/reactivation of closed/abandoned water/sewer service which were closed or abandoned due to delinquency.
- (j) *Unauthorized Use of Booster Pump* — refers to the use of a booster pump in order to draw water directly from the watermain and thereby adversely affecting the withdrawal of water by other nearby registered customers.
- (k) *Selling Water* — refers to customers of the water utility who sell water without expressed authority from the water utility.
- (l) *Illegal Change of Size of Service Pipe*— refers to a change in the size of the service pipe without approved application.

- (m) *Illegal Change of Pipe* — refers to unauthorized changing or replacement of a pipe from tapping to the meter without approved application.
- (n) *Illegal Transfer of Tapping Location* — refers to the unauthorized transfer/relocation of the tapping point of a water/sewer service.
- (o) *Illegal Public Faucet* — refers to an unauthorized/unregistered water service used by a group of people/families.

SECTION 5.3 *Unlawful Acts.* — Pursuant to Section 8 of R.A. No. 8041, the following are declared unlawful acts :

- (a) To destroy, damage or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, service, reservoir, aqueduct, water mains, water distribution pipe, conduit, pipes, wire benchmark, monument, or other works, appliance, machinery buildings or property of any water utility entity, whether public or private.
- (b) To do any malicious act which shall injuriously affect the quantity or quality of the water or sewage flow of any waterworks and/or sewerage system, or the supply, conveyance, measurement or regulations thereof, including the prevention of, or interference with any unauthorized person engaged in the discharge of duties connected therewith.
- (c) To prevent, obstruct and interfere with the survey, works and construction of access road and water mains and distribution network and any related works of the utility entity.
- (d) To tap, make, or cause to be made any connection with water lines without prior authority or consent from the water utility concerned.
- (e) To tamper, install or use tampered water meters, sticks, magnets, reversing water meters, shortening of vane wheels and other devices to steal water or interfere with accurate registry or metering of water usage, or otherwise result in its diversion in a manner whereby water is stolen or wasted.
- (f) To use or receive the direct benefit of water service with knowledge that diversion, tampering or illegal connection existed at the time of the use, or that the use or receipt was otherwise without authorization of the water utility.
- (g) To steal or pilfer water meters, main lines, pipes and related ancillary facilities.
- (h) To steal water for profit or resale
- (i) To knowingly possess stolen or tampered water meters.

- (j) To knowingly or willfully allow the occurrence of any of the above.

SECTION 5.4 *Prima Facie Evidence.* — The presence of any of the following circumstances shall constitute prima facie evidence of theft, pilferage, or of any unlawful act enumerated in Section 6 of R.A. No. 8041.

- (a) Existence of illegal or unauthorized tapping to the water/sewer main or distribution pipe.
- (b) Existence of any illegal connection such as a reversed meter, shortened vane wheel, bypass or other connection which adversely affect the registration of the water meter.
- (c) Presence of a bored hole in the glass cover of the water meter, or at the back of or any part of the meter including the vertical vane.
- (d) Presence of tampered, or fake seals on the meters. Inspection of tampered water meters shall be done in the presence of the registered water consumer.
- (e) Presence of a reversed meter in the premises, insertion of rod, wire or stick in the meter, filed or shortened vane wheel, removal or altering of any part of the meter mechanism, use of magnet, any similar illegal devices which interfere with the meter registration.
- (f) Destruction of the meter protection and other metering accessories.
- (g) Abnormal imprints, traces or marks found in the meter assembly.

The prima facie shall not apply to tenants who have occupied the home or dwelling for ninety (90) days or less.

SECTION 5.5 *Special Aggravating Circumstances.* — Any of the following shall be considered as an aggravating circumstance :

- (a) When the violation is committed in conspiracy with at least another person, both of whom shall be considered as principals.
- (b) When the offense is committed by, or in connivance with, private plumber, officer or employee of the water utility concerned, who shall all be considered as principals.
- (c) When the violation is coupled with the sale from a source which is illegal or unregistered, or unauthorized or a source with a tampered meter.

SECTION 5.6 *Procedural Guidelines for Acts Covered Under Section 5.4 of These IRR.* —

SECTION 5.6.1 *Investigation of Reports on Illegal Connection and Unlawful Acts Under R.A. No. 8041.* —

(a) The water/sewer utility concerned shall investigate reports on water/sewer service illegalities and shall complete the investigation within one week from receipt of the report. The one week period shall cover assessment and payment of fines and charges and the issuance of closing orders.

(b) The water/sewer utility concerned shall notify the owner/user regarding the result of the investigation by serving the Notice of Investigation Report indicating the violation, to be signed by the household resident.

(i) If the owner/user does not respond in writing to the charges made within five (5) days from receipt of said Notice under Item (b) hereof, the water/sewer utility shall close the water/sewer service at the tapping point.

(ii) At the end of each day, the water/sewer utility concerned shall prepare a list of water/sewer services for permanent closing and shall execute the same.

(iii) The water/sewer utility concerned shall maintain a database of all reports received, action taken thereon and status of each case.

(c) The water/sewer utility concerned shall cause the assessment of undercollection and filing of appropriate charges.

SECTION 5.6.2 *Cases of Illegalities/Unlawful Acts Subject to Immediate Closing —*

(a) Unauthorized/unregistered water/sewer service which does not conform with the standards and specifications of the water/sewer utility.

(b) Illegal additional water/sewer service connection to a remote registered water/ sewer service.

(c) By-Pass connection

(d) Water service not connected to water meter, in case of double tapping.

(e) Illegally re-opened water/sewer services

(f) Water Services which were illegally separated from the mother meter, in the case of multiple dwellings.

(g) Water/sewer services whose original tapping location have been illegally transferred/relocated.

(h) Cases involving second violation of the same person or entity, whether or not in the same location/address.

SECTION 5.6.3 *Cases Where the Registered Water Service May Not Be Immediately Closed But Subject to Closing at the Tapping Point.*

(a) Water service whose owner uses a booster pump in order to draw water directly from the water main. The use of a

booster pump directly connected to the watermain is generally illegal and its use shall be discontinued, unless otherwise expressly authorized by the water/sewer utility concerned.

- (b) Water service from which water is drawn and sold. The water/ sewer utility concerned shall notify registered owner of water services wherefrom water is drawn and sold to stop from selling water within five (5) days from receipt of the notice. The water/sewer utility concerned shall close the water service at the tapping point.
- (c) Water services found with illegalities like drawing water before the meter, from service cock/improperly classified service and other manner of tampering of water meter. The water/sewer utility concerned shall notify the registered owners water services found with such illegalities within five (5) days from receipt of the notice. If the owner refuses to comply, disconnection at the tapping point shall be implemented.

SECTION 5.6.4 *Unregistered Sewer Connection.* — Reports on unregistered sewer connection shall be handled by the water/sewer utility concerned in the same way of handling the unregistered water connection as discussed in the previous sections of these IRR.

SECTION 5.6.5 *Charges.* — These charges are subject to change by the water utility concerned:

(a) All assessment of undercollection shall be certified correct by the authorized representative of the water/sewer utility.

(b) Depending on the type of illegality, the owner/user shall pay the following charges

(i) Unauthorized/Unregistered Water Service Connection

(a) *Estimated Water Consumption* — Undercollection shall start from the date of installation of the unauthorized/unregistered water service or six (6) months up to date of discovery, whichever is longer. The volume of water to be undercollected shall depend on the size of the service pipe and nature of use of the water service as shown below and shall be based on the prevailing water/sewer rate.

(a.1) *Domestic Service*

| <i>Service Pipe</i> | <i>Ave. Daily Consumption (cu.m.)</i> | <i>Ave. Monthly Consumption (cu.m.)</i> |
|---------------------|---|---|
| 25 mm | 1 | 30 |
| 32 mm | 2 | 60 |
| 38 mm | 3 | 90 |

(a.2) *Commercial Service* — the average monthly consumption shall be twice that of the domestic water/sewer service of the same size.

(a.3) *Industrial and Sea Transport* — the average monthly consumption shall be three times that of the domestic water/sewer service of the same size.

Note : For unauthorized /unregistered water service connections with sizes 50 mm and above used continuously like in building construction, fishpond, sea transport and the like, the continuous flow method which make use of the Table shown in Annex A shall be adopted.

(b) *Estimated Damage to Watermain of the Water Utility and Closing of Tapping Point* — This includes cost of repair of watermain and closing of tapping point (repair includes labor, materials, equipment and restoration of pavement) arising from unskilled and unsupervised installation of the unauthorized water service and shall be in accordance with the following rates by size of service pipe :

TYPE OF PAVEMENT

| <i>Main Size</i> | <i>Conc. Pavement</i> | <i>Cnnc. Sidewalk</i> | <i>Asphalt</i> | <i>Unpaved</i> |
|------------------|-----------------------|-----------------------|----------------|----------------|
|------------------|-----------------------|-----------------------|----------------|----------------|

For SP with sizes from 25 to 32 mm

| | | | | |
|-----|----------|---------|---------|---------|
| 50 | P 12,400 | P 6,400 | P 4,400 | P 3,400 |
| 75 | 12,480 | 6,480 | 4,480 | 3,480 |
| 100 | 12,600 | 6,600 | 4,600 | 3,600 |
| 150 | 12,700 | 6,700 | 4,700 | 3,700 |
| 200 | 13,200 | 7,200 | 5,200 | 4,200 |
| 250 | 14,000 | 8,000 | 6,000 | 5,000 |
| 300 | 14,400 | 8,400 | 6,800 | 5,400 |
| 400 | 14,800 | 8,800 | 6,800 | 5,800 |

For SP with sizes from 50 to 150 mm

| | | | | |
|-----|--------|--------|--------|--------|
| 50 | 18,000 | 12,000 | 10,000 | 9,200 |
| 75 | 20,000 | 14,000 | 12,000 | 11,200 |
| 100 | 22,000 | 16,000 | 14,000 | 13,200 |
| 150 | 26,000 | 20,000 | 18,000 | 17,200 |
| 200 | 30,000 | 24,000 | 22,000 | 21,200 |
| 250 | 36,000 | 30,000 | 28,000 | 27,200 |
| 300 | 40,000 | 34,000 | 32,000 | 31,200 |
| 400 | 66,000 | 60,000 | 58,000 | 57,200 |

(ii) Unauthorized/Unregistered Sewer Service

- (a) *Undercollection of Sewer Charges* — this is equal to sixty (60%) percent of the estimated water consumption. Please refer to Sec. 5.6.5 b.(1). of these IRR for the computation of the estimated water consumption.

In case the owner does not have a water service connection, the estimated water consumption shall be equivalent to five (5) cu. m./capita/month. However, for families with less than four (4) members, the estimated consumption shall be equivalent to fifteen (15) cu.m./connection/month.

- (b) *Estimated Damage to Sewermain* — This includes cost of repairs arising from unskilled and unsupervised installation of the unauthorized sewer service and shall be in accordance with the following rates :

| <i>Size of Sewer Service Pipe</i> | <i>Flat rate (pesos)</i> |
|-----------------------------------|------------------------------|
| 100 mm (4") | 15,000 |
| 150 mm (6") | 21,000 |
| 200 mm (8") | 27,000 |
| Sewer manhole | 30,000 |

- (iii) *Unauthorized Watermain Extension* — The respective owners/users of the water services connected to unauthorized watermain extension shall pay the charges enumerated under Sec. 5.6.5 b. (i) of these IRR.

- (iv) By-pass Connection/Double Tapping/Tampering of Water meter/Service Cock/Gate Valve/Meter Seal/Meter Protector or any part of the Vertical Meter Assembly.

- (a) *Undercollection of Water Consumption* — the undercollection shall start from the date of installation.

(a.1) In cases where the date when illegality started is known, undercollection shall be based on the highest registered consumption from that date increased by 100 percent.

(a.2) If the date of installation/commission of the illegality could not be established, undercollection shall start from the month immediately following that month with the highest registered consumption in the past three years (reckoned from the date of discovery of the illegality) to date of correction or removal of the illegality but shall not be less than six (6) months. The undercollection, which shall be based on the highest registered consumption, shall be increased by 100 percent.

(a.3) In cases where the consumption registered in the

meter reading books could not be used as basis estimated consumption for a minimum period of six (6) months.

- (a.4) The estimated consumption shall be based on the consumption of the owners/users for two (2) to six (6) months after the disconnection of the by-pass/water service not connected to the meter (in case of double tapping) removal of the tampering device/repair of the service cock/gate valve increase by 100 percent.
- (v) Unauthorized Advance Use of Stub-outs - the owner/user shall pay a monthly average consumption depending on the size of the stub-out and nature of its use as shown in Sec. 5.6.5 b.(i) of these IRR. Undercollection shall start from the date of energization of the watermain until the registration of the water service. In case of multiple dwellings, the average monthly consumption of 30 cu.m. shall be applied for assessment of undercollection. Should there be no available information as to the date of energization, basis of undercollection will be a consumption of one year or the established date of use (upon presentation of building permit, deed of sale or lease contract and/or certificate of occupancy) whichever is longer.
- (vi) Illegally Reopened Abandoned Services
- (a) *Unpaid Accounts* — The present user of the water/sewer service which is illegally re-opened shall be accountable for the unpaid accounts of the said water service.
- (b) *Unbilled Water Consumption* — If the meter is in good working condition before the water service was closed, the registered owner shall pay for the average monthly consumption based on three months normal billing increased by one hundred percent (100%). Otherwise, the water to be undercollected.
- (c) *Cost of Closing at Tapping Point/Reconnection* — The water/sewer utility concerned shall collect the re-opening fee upon settlement of undercollection charges/penalties and outstanding accounts, at the rates equivalent to the actual cost of disconnection at tapping point and reconnection which shall initially be set as follows :
- | | |
|-------------------|----------|
| Concrete Pavement | P 18,000 |
| Concrete Sidewalk | 9,000 |
| Asphalt Pavement | 6,000 |
| Unpaved/Escombro | 4,500 |
- Said fees are subject to revision as deemed necessary by the MWSS.
- (d) *Meter Charges* — the cost of meter for the re-opened service shall be shouldered by the offender-customer.

(vii) Selling of Water

(a) *Undercollected Water Consumption* — Using the commercial rate, the registered owner/user shall be charged undercollection based on the billed volume of water from the time he started selling water up to the time of disconnection of the water service but not less than six (6) months.

(a.1) In addition, a notice will be served advising the customers to stop selling water. If selling activity is still existing despite notice, disconnection of the service will be implemented unless otherwise expressly authorized by the water/sewer utility concerned.

(a.2) Reopening of the water service will be allowed upon payment of undercollection and execution of affidavit pledging to stop selling of water.

(a.3) Any existing water service connection which were originally classified under residential rate but which were reclassified to commercial rate due to selling water will be reverted back to residential rate.

(viii) Illegal Change of Pipe/Size of Service Pipe/Illegal Transfer of Tapping Location/Separation of Additional Water Service

(a.1) *Estimated Damage to Mainline* — The owner/user shall pay the estimated cost of damage to mainline based on the size of service pipe, as shown in Sec. 5.6.5 b.i of these IRR.

(a.2) Offenders on illegal change of pipe/size of service pipe/illegal separation of water service will pay the estimated cost of damage to mainline based on the size of service pipe and restoration fees based on the type of pavement.

(a.3) On these cases, disconnection of all activities will be undertaken. Restoration to its original location size/status will also be implemented. Regular application for these change in service connections will be made with the water/sewer utility concerned.

(ix) Unauthorized/Unregistered Public Faucet

(a) *Undercollection of Water Consumption* — the undercollection shall be determined by the number of the families and the water pressure within the vicinity.

(b) Users will be advised to form Barangay Water Association/Community Water Association (BWA/CWA) and elect their respective officials to manage the public faucet.

(c) The users shall pay guaranty deposit equivalent to two (2) months estimated consumption.

SECTION 5.6.6 *Payment of Charges.* — The charges shall be paid in cash as soon as they have been established. Upon receipt of payment for the undercollection of water consumption/penalties, the water/sewer utility concerned shall issue a Clearance to the owner/user which shall be the basis in processing the owner’s application for water/sewer service.

SECTION 5.6.7 *Monitoring and Control.* — The water/sewer utility concerned shall closely monitor all activities related to the implementation of the Anti-Water Pilferage provisions of this Act and shall periodically report to the respective Boards.

SECTION 5.7 *Penalties.* — In addition to the undercollection being charged to unregistered water/sewer service connections, the following penalties shall be imposed pursuant to the provisions of Section 11 of R.A. No. 8041.

- (a) The water utility concerned shall have the right and authority to disconnect the water/sewer service after receipt of five (5) days written notice to that effect, except on Sundays and holidays, without need of a Court or Administrative Order, and deny restoration of the same when a prima facie evidence of theft or pilferage shall have been established in accordance with Section 5.4 of these IRR, provided that a notice shall have been issued even upon discovery for the first time of the presence of any of the circumstances herein enumerated : Provided, further, that the water service shall not be disconnected or shall be immediately restored upon deposit, by the person concerned, of the difference in the billing made by the water utility concerned: Provided, finally, that the deposit shall be credited against future billings, with legal interest thereon where the alleged theft, pilferage or current diversion has not been committed, without prejudice to being indemnified for damages in accordance with the Civil Code and other existing laws.
- (b) Imprisonment of six (6) months to two (2) years and a fine not exceeding double the amount of the value of the water stolen or the value of the damaged facilities shall be imposed on the offender.
- (c) Any plumber, officer or employee of the water/sewer utility concerned who assists the officer in the commission of the crime shall be punished by imprisonment of two (2) years to six (6) years.
- (d) When water stolen by offender is resold or extended for profit, the offender will be punished by imprisonment from six (6) to twelve (12) years.
- (e) If the offender is a juridical person, the penalty shall be imposed on the Chairman, President, General Manager, Administrator and the officers who shall have knowingly

permitted, or are otherwise responsible for the commission of the offense.

- (f) Any person with pending cases of illegal water/sewer service connections prior to the approval of this Act shall be required to apply for legal water/sewer service connection and pay all penalties, within ten (10) days from receipt of the final demand letter which must be issued from within a 10-day period from the effectivity of R.A. No. 8041. Non-compliance shall subject the offender to the full force and effect of the Anti-Water Pilferage provisions of R.A. No. 8041.
- (g) For recidivists, a written notice of seventy-two (72) hours is necessary to effect water service disconnection upon the discovery for the second time of any of the circumstances enumerated in Section 5.3 of these IRR.

SECTION 5.8 *Assistance of Barangay Officials.* — Whenever possible and practical, the services of Barangay Officials should be tapped by the water/sewer utility concerned in the survey of household connections that are illegally connected with the water/sewer line of the water/sewer utility, as well as those without water meters.

RULE 6

Effectivity Of The Implementing Rules And Regulations

These Implementing Rules and Regulations shall take effect immediately upon approval.

Approved this 16th day of October 1995, by the Joint Executive-Legislative Water Crisis Commission.

Adopted: October 16, 1995.

(SGD.) RUBEN D. TORRES

Executive Secretary

Chairman

Joint Executive-Legislative Water Crisis Commission

(SGD.) GREGORIO R. VIGILAR

Secretary, Department of Public Works and Highways

Member

(SGD.) SERGIO OSMEÑA III

Chairman, Senate Committee on Public Services

Member

(SGD.) ERNESTO HERRERA

Representing the Minority, Senate

Member

(SGD.) VICTOR RAMOS

*Secretary , Department of Environment & Natural Resources
Member*

(SGD.) VICTOR ORTEGA

*Chairman, House Committee
Public Works and Highways
Member*

(SGD.) ARNULFO FUENTEBELLA

*Representing the Minority, House
Member*