EN BANC

G.R. No. 194239 — WEST TOWER CONDOMINIUM CORPORATION, on behalf of the Residents of West Tower Condominium, and in representation of Barangay Bangkal et al., Petitioner, **v. FIRST PHILIPPINE INDUSTRIAL CORPORATION, FIRST GEN CORPORATION and their Directors and Officers, John Does and Richard Does,** Respondents.

Promulgated:

June 16, 2015

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

The Writ of Kalikasan has served its functions and, therefore, is *functus officio*. The leaks have been found and remedied. The various administrative agencies have identified the next steps that should ensure a viable level of risk that is sufficiently precautionary. In other words, they have shown that they know what to do to prevent future leaks. The rest should be left for them to execute.

The ponencia, by asking the Department of Energy and respondent First Philippine Industrial Corporation to repeat their previous procedures,[1] implies that our function is to doubt that the executive agencies will do what they have committed to undertake and are legally required to do. It implies that the Certification[2] issued on October 25, 2013 is improper based on the irrational fear that disasters that have recently happened in other parts of the world may also happen to us. We are asked to assume that executive agencies do not care as much as we do for the community and their ecologies.

This is not what we should do in cases involving writs of kalikasan. Nowhere in the Constitution or in the Rules are we authorized to breach the separation of powers. We do not endow ourselves with sufficient expertise and resources to check on administrative agencies' technical conclusions without basis.

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1 Ponencia, pp. 26-28.

2 *Rollo*, p. 3135.

Furthermore, civil and criminal cases have been filed and are pending.

I

The principle of separation of powers is implied in the division of powers in the Constitution among the three (3) government branches: the executive, the legislative, and the judiciary.[3] "The principle presupposes mutual respect by and between the executive, legislative[,] and judicial departments of the government and calls for them to be left alone to discharge their duties as they see fit."[4]

"The executive power [is] vested in the President of the Philippines."[5] The President has the duty to ensure the faithful execution of the laws.[6] The President has the power of control over "all the executive departments, bureaus, and offices"[7] including, among others, the Department of Energy, the Department of Environment and Natural Resources, the Department of Science and Technology, and the Department of Public Works and Highways.

The Constitution vests legislative power in the Congress.[8] The Congress enacts laws.

Meanwhile, judicial power is vested in the Supreme Court and other courts.[9] Judicial power refers to the "duty of the courts of justice to settle actual controversies involving rights [that] are legally demandable and enforceable, and to determine whether . . . there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[10] Essentially, the judiciary's power is to interpret the law with finality.

The powers specifically vested by the Constitution in each branch may not be legally taken nor exercised by the other branches. Each government branch has exclusive authority to exercise the powers granted to it. Any encroachment of powers is *ultra vires*; it is void.

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3 *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936) [Per J. Laurel, En Banc].
4 *Anak Mindanao Party-List Group v. Executive Secretary Ermita*, 558 Phil. 338, 353 (2007) [Per J. Carpio Morales, En Banc], *citing Atitiw v. Zamora*, 508 Phil. 321, 342 (2005) [Per J. Tinga, En Banc].
5 CONST., art. VII, sec. 1.
6 CONST., art. VII, sec. 17.
7 CONST., art. VII, sec. 17.
8 CONST., art. VI, sec. 1.
9 CONST., art. VIII, sec. 1.
10 CONST., art. VIII, sec. 1.

Thus, the legislative branch is not authorized to execute laws or participate in the execution of these laws. It also cannot make interpretations of the law with finality.[11]

The executive department cannot make legislative enactments. Like the legislative department, it cannot make final interpretations of the law.[12]

The judiciary has no power to execute laws[13] or take an active part in the execution of laws. It has no supervisory power over executive agencies.[14] The judiciary has no power to create laws[15] or revise legislative actions.[16] Even this court cannot assume superiority on matters that require technical expertise. It may only act as a court, settle actual cases and controversies, and, in proper cases and when challenged, declare acts as void for being unconstitutional.

II

Administrative agencies determine facts as a necessary incident to their exercise of quasi-judicial powers or to assist them in discharging their executive functions. Quasi-judicial powers refer to the authority of administrative agencies to determine the rights of parties under its jurisdiction through adjudication.

Registration, issuance of franchises, permits and licenses, and determination of administrative liabilities are instances that require an agency's exercise of quasi-judicial power.[17] These acts require administrative determination of facts, based on which the parties' rights shall be ascertained and official action shall be made.[18]

An administrative agency that exercises its quasi-judicial powers must adhere to the due process requirements as enumerated in *Ang Tibay v. Court*

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11 *See Belgica v. Executive Secretary Ochoa Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 107 [Per J. Perlas-Bernabe, En Banc], *citing Government of the Philippine Islands v. Springer*, 277 US 189, 203 (1928).

12 Id.

13 Id.

14 CONST., art. VII, sec. 17.

15 *See Belgica v. Executive Secretary Ochoa Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 107 [Per J. Perlas-Bernabe, En Banc], *citing Government of the Philippine Islands v. Springer*, 277 US 189, 203 (1928).

16 *See Vera v. Avelino*, 77 Phil. 192, 201 (1946) [Per J. Bengzon, En Banc], *citing Alejandrino v. Quezon*, 46 Phil. 83, 93 (1924) [Per J. Malcolm, En Banc].

17 *See Sañado v. Court of Appeals*, 408 Phil. 669, 681 (2001) [Per J. Melo, Third Division].

18 Id. *See Abella, Jr. v. Civil Service Commission*, 485 Phil. 182, 207 (2004) [Per J. Panganiban, En Banc].

of Industrial Relations.[19] One of these requirements is that issuances must be based on substantial evidence:[20]

> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. . . .
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> (2) . . . the tribunal must consider the evidence presented. . . .
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> (3) . . . something to support its decision. . . .
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> (4) . . . *the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . . .*
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> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. . . .
>
> (6) The [hearing officer] must act on its or his own independent consideration of the law and facts of the controversy. . . .
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> (7) The [administrative agency] should . . . render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. [21] (Emphasis supplied, citations omitted)

The grant of adjudicative (and legislative) functions to administrative agencies results from "the growing complexity of modern society[.]"[22] This court has recognized the competence, experience, and specialization of administrative agencies in their fields.[23] It has also recognized that these agencies' expertise in their fields is essential in resolving issues that are technical in nature.[24] In *Philippine International Trading Corporation v. Presiding Judge Angeles*,[25] this court said of quasi-legislative and quasi-judicial powers:

> Similarly, the grant of quasi-legislative powers in administrative bodies is not unconstitutional. Thus, as a result of the growing complexity of modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities.

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19 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

20 Id. at 642–643.

21 Id. at 642–644.

22 *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division].

23 *See Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division]. *See also Antipolo Realty Corporation v. National Housing Authority*, 237 Phil. 389, 395–396 (1987) [Per J. Feliciano, En Banc].

24 *See Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division]. *See also Antipolo Realty Corporation v. National Housing Authority*, 237 Phil. 389, 395–396 (1987) [Per J. Feliciano, En Banc].

25 *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723 (1996) [Per J. Torres, Jr., Second Division].

> *Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice*. This is the reason for the increasing vesture of quasi-legislative and quasi-judicial powers in what is now not unreasonably called the fourth department of the government. . . . One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer uniquely judicial function, exercisable only by our regular courts.[26] (Emphasis supplied, citations omitted)

Because of the administrative agencies' specialized knowledge in their fields, we often defer to their findings of fact. Thus, in principle, findings of fact by administrative agencies are not disturbed by this court when supported by substantial evidence,[27] "even if not overwhelming or preponderant."[28] This Rule, however, admits a few exceptions:

First, when an administrative proceeding is attended by fraud, collusion, arbitrary action, mistake of law, or a denial of due process;

Second, when there are irregularities in the procedure that has led to factual findings;

Third, when there are palpable errors committed; and

Lastly, when there is manifest grave abuse of discretion, arbitrariness, or capriciousness.[29]

If the actions of an administrative agency are made under these circumstances, judicial review is justified even if the actions are supported by substantial evidence.[30]

This court summarized the principles of judicial review of administrative decisions in *Atlas Consolidated Mining and Development Corporation v. Hon. Factoran, Jr.*:[31]

> [F]indings of fact in such decision should not be disturbed if supported by substantial evidence, but review is justified when there has been a denial of due process, or mistake of law or fraud, collusion or arbitrary action in the administrative proceeding, where the procedure which led to factual findings is irregular;

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26 Id. at 478.
27 *Atlas Consolidated Mining and Development Corporation v. Hon. Factoran, Jr.*, 238 Phil. 48, 54 (1987) [Per J. Paras, First Division].
28 Id. at 57.
29 Id.
30 Id.
31 238 Phil. 48 (1987) [Per J. Paras, First Division].

> when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.
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> . . . "[I]n reviewing administrative decisions, the reviewing Court cannot reexamine the sufficiency of the evidence as if originally instituted therein, and receive additional evidence, that was not submitted to the administrative agency concerned[.]"[32] (Citations omitted)

The above principles of judicial review have been applied in cases brought to the appropriate courts on appeal or by certiorari. Cases brought to the courts on appeal or by certiorari presuppose that there were cases or issues: (1) over which an administrative agency assumed jurisdiction; and for which (2) an administrative agency collected evidence, determined facts, and made an action. In these cases, the court either reviews the administrative action for errors in the application of law or determines whether there has been grave abuse of discretion in the exercise of quasi-judicial functions.

III

The courts' relation with administrative agencies is not limited to reviewing their acts in the exercise of their quasi-judicial functions. Whenever technical issues are brought to the court for determination, courts may ask for their conclusions on the status of private sector activities within their jurisdiction and on matters within their specialized knowledge. This is especially true for cases filed under A.M. No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases (Rules).

The Rules provide for remedies to enforce rights to a "balanced and healthful ecology[.]"[33] A party may file: (1) a complaint alleging violation of environmental laws;[34] (2) a petition for the issuance of a writ of kalikasan alleging violation of the right to healthful ecology;[35] or (3) a petition for the issuance of continuing mandamus alleging neglect in the performance of duty to enforce environmental laws.[36]

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32 Id. at 57.

33 CONST., art. II, sec. 16; ENVTL. PROC. RULE, Rule 1, sec. 3(a).

34 ENVTL. PROC. RULE, Rule 2, sec. 3.

35 ENVTL. PROC. RULE, Rule 7, sec. 1.

> SEC. 1. *Nature of the writ.*—The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.
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> . . . .

36 ENVTL. PROC. RULE, Rule 8, sec. 1.

Filing a complaint or a petition may result in the issuance of a temporary environmental protection order upon the finding that the complainant will suffer grave injustice or irreparable injury if no protection order is issued.[37] This temporary environmental protection order may be converted to a permanent environmental protection order after judgment, thus:[38]

> **RULE 2**
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> **PLEADINGS AND PARTIES**
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> . . . .
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> SEC. 8. *Issuance of Temporary Environmental Protection Order (TEPO).*—If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.
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> The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.
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> . . . .
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> **RULE 5**
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> **JUDGMENT AND EXECUTION**
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> . . . .
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> SEC. 3. *Permanent EPO; writ of continuing mandamus.*—In the judgment, the court may convert the TEPO to a permanent EPO or issue a

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

37 ENVTL. PROC. RULE, Rule 2, sec. 8.

38 ENVTL. PROC. RULE, Rule 5, sec. 3.

> writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied.
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> The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.
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> . . . .

To determine whether the reliefs prayed for in a complaint or petition under the Rules should be granted or denied, courts must necessarily determine facts.

The Rules recognize the role of scientific determination of facts in environmental protection. They require, for example, that a petition for the issuance of a writ of kalikasan and the respondent's verified return contain not only the usual affidavits, documentary, and object evidence, but also scientific and expert studies to support the petition and the verified return.[39] Applying the precautionary principle in resolving the case is also dependent on the existence of a level of scientific certainty that there is a causal link between human activity and environmental effect.[40]

For these reasons, courts must often avail themselves of the assistance of experts.

However, courts cannot take all expert findings as truth. Even expert findings may be wrong or contradictory. The courts have little competence on technical matters to determine which expert finding should be given weight. In environmental cases, courts defer to administrative agencies' technical knowledge. Given their specialization on matters within their jurisdiction, administrative agencies have the competence to sift through the findings, determine which variables and scientific principles are relevant, make germane observations, and arrive at intelligent assessments and conclusions. Their conclusions and opinions on these matters deserve respect. As in their actions on administrative matters, the courts shall respect the findings of administrative agencies as long as these are supported by substantial evidence.

Parties that wish to avail themselves of the remedies under the Rules, however, go directly to the court. Unlike in quasi-judicial proceedings, determination of facts is not solely the province of the administrative

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[39] ENVTL. PROC. RULE, Rule 7, secs. 2 and 8.
[40] ENVTL. PROC. RULE, Rule 20, sec. 1.

agencies. Administrative agencies may not yet have the relevant facts at the time environmental remedies are availed. Courts get access to the facts only when the case is brought to them on appeal. Courts and administrative agencies may get access to the facts at the same time.

For these reasons, the courts' leeway to examine the substantiality of evidence in environmental cases is greater. The court may take a closer look at experts' manifestations and reports and determine whether the findings of administrative agencies are consistent with the experts' conclusions.

Respondent First Philippine Industrial Corporation commissioned Robert A. Teale, a welding consultant specializing in pipeline welding, to review the repairs done to the White Oil Pipeline.[41] Based on his information review, visual inspection, examinations, and ultrasonic inspection, he concluded that the pipe repairs conducted were sound and in accordance with the standards.[42] The pipeline, according to him, was "fit for service[.]"[43]

Robert A. Teale's conclusions were consistent with the conclusions of Dr. Carlo A. Arcilla (Dr. Arcilla) of the University of the Philippines National Institute of Geological Sciences (UP NIGS)[44] and of Societe Generale de Surveillance,[45] the independent observer of the Department of Energy. Dr. Arcilla and Societe Generale de Surveillance, together with the Department of Energy's representatives, participated in the conduct of the tests for White Oil Pipeline's integrity. The UP NIGS conducted a parallel independent monitoring of the White Oil Pipeline.

Based on the conducted leak tests, Dr. Arcilla concluded in his March 12, 2012 Report that the White Oil Pipeline is free from leaks.[46] According to Dr. Arcilla, UP NIGS data showed values consistent with "no leak"[47] along the White Oil Pipeline. There were no significant changes in the pressure values along the pipeline. The monitoring wells also did not indicate the presence of leaks. To ensure the accuracy of the results, the observation time for the pressure test was extended. Even during the extended period, the pressure values remained constant. Thus, Dr. Arcilla concluded that the White Oil Pipeline was free from leaks.[48] His results and conclusions are reproduced below:

IV. Results

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41 *Rollo*, pp. 2422–2441.
42 Id. at 2432–2433.
43 Id. at 2433.
44 Id. at 2442–2446.
45 Id. at 2391–2396.
46 Id. at 2446.
47 Id. at 2445.
48 Id. at 2446.

> Monitoring values independently collected by UP NIGS consistently show an absence of values both for VOCs and LEL. This indicates that the concluded pressure test of the FPIC pipes last December 2012 expectedly showed no leak along its length.
>
> Monitoring values that were recorded in the DOE Command Center displayed no significant changes in the [illegible in *rollo*] pressure along the pipeline. Pressure has been stable and ocular inspection of monitoring wells did not indicate any leaks.
>
> The FPIC has also provided a copy of their monitoring results to UP NIGS. Their results showed no leak along the pipeline. However, monitoring data has also shown a 10% discrepancy in the Chevron line. As the relationship of pressure and temperature are directly proportional, the absence of a Temperature Monitoring Recorder, an instrument to provide more accurate data and reliable monitoring chart due to the effect of temperature on pressure was duly noted.
>
> After several days of data review and analysis and interviews with FPIC technical personnel, UPNIGS [sic] pipeline consultant Pedro Carascon pointed out that some temperature gauges of FPIC were not actually synchronized and connected to the pipeline, leading to the erratic temperature readings. However, further review of the data showed that the pressure did not change significantly to suggest the presence [of] a leak in the pipeline. Also, the time allotted for the pipeline pressure test, was exceeded by at least two days, and the pressure in the pipeline remained constant, suggesting further that there were no more leaks in the pipeline.
>
> **V. Conclusion**
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> In as much as there wasno [sic] significant changes of pressure drops observed throughout the holding time of pressure testing, it can therefore be concluded that the pressure testing of FPIC White Oil Pipeline is sensible and that it is free of leak at the time of pressure testing.[49]

Meanwhile, Societe Generale de Surveillance noted in its March 30, 2012 Report that the tests were conducted under the approved and standard procedures, methods, and tolerances. There was no evidence of leaks in the pipelines:[50]

> The letter from FPIC to DOE, dated 2 January 2012 reflects accurately the test conditions and results as was verified on site by SGS. . . . The test was carried out as per the approved procedure; the results are well within the tolerances of the method and the applicable standards with no evidence of leakage of the pipelines.[51]

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49 Id. at 2445–2446.
50 Id. at 2395.
51 Id.

Respondent First Philippine Industrial Corporation appears to have committed itself to ensure that the White Oil Pipeline's integrity is maintained through the following procedures: (1) monitoring wells and borehole testing; (2) in-line inspections; (3) anti-corrosion methods; (4) regular cleaning pig runs; (5) continuous consultations with experts; (6) segment tests; (7) leak tests; (8) inspection of patches; (9) reinforcement of patches; and (10) coordination meetings with LGUs and utility companies.[52]

The Department of Energy Certification dated October 25, 2013 that the White Oil Pipeline is already "safe to resume commercial operations"[53] is, therefore, consistent with the available reports.

Any deviation from the safety standards and procedures will be monitored by the Department of Energy and the Department of Environment and Natural Resources in the exercise of their regulatory powers.[54] Problems related to the compliance of respondent First Philippine Industrial Corporation will be addressed because the Department of Energy Certification is conditioned upon respondent's submission to the Oil Industry Management Bureau's regular monitoring and validation of the implementation of its Pipeline Integrity Management Systems and to tests or inspection by the Department of Energy and Department of Science and Technology.[55]

IV

The purpose of our environmental laws is to maintain or create conditions that are conducive to a harmonious relationship between man and nature. Environmental laws protect nature and the environment from degradation while taking into account people's needs and general welfare. Sections 1 and 2 of the Presidential Decree No. 1151, otherwise known as the Philippine Environmental Policy, embody the purpose of our environmental laws:

> SECTION 1. *Policy*.-It is hereby declared a continuing policy of the State (a) to create, develop, maintain and improve *conditions under which man and nature can thrive in productive and enjoyable harmony* with each other, (b) to fulfill the *social, economic and other requirements of present and future generations* of Filipinos, and (c) to insure the attainment of *an environmental quality that is conducive to a life of dignity and well-being.*

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52 Id. at 3143–3148. These are from respondent First Philippine Industrial Corporation's Interim Report on On-going Compliance with the Writ of Kalikasan (as of October 2013).

53 Id. at 3135.

54 Id.

55 Id.

> SEC. 2. *Goal*.-In pursuing this policy, it shall be the responsibility of the Government, in cooperation with concerned private organizations and entities, to use all practicable means, consistent with other essential considerations of national policy**, in** *promoting the general welfare* to the end that the Nation may (a) recognize, discharge and fulfill the responsibilities of each generation as trustee and guardian of the environment for succeeding generations, (b) *assure the people of a safe, decent, healthful, productive and aesthetic environment*, (c) *encourage the widest exploitation of the environment without degrading it, or endangering human life, health and safety or creating conditions adverse to agriculture, commerce and industry*, (d) preserve important historic and cultural aspects of the Philippine heritage, (e) *attain a rational and orderly balance between population and resource use*, and (f) improve the utilization of renewable and non-renewable resources. (Emphasis supplied)

This policy espouses the need for a balance between resource exploitation and environmental protection to promote the general welfare of the people. Environmental protection is a necessary means to increase the chances of the human species to subsist.

The ponencia recognized the need to achieve a balance between human necessities and environmental protection, thus:

> The Court is fully cognizant of the WOPL's value in commerce and the adverse effects of a prolonged closure thereof. Nevertheless, there is a need to balance the necessity of the immediate reopening of the WOPL with the more important need to ensure that it is sound for continued operation, since the substances it carries pose a significant hazard to the surrounding population and to the environment.[56] (Citation omitted)

This need for "balance"[57] and the incidence of oil pipeline tragedies[58] prompted the majority to further delay the lifting of the temporary environmental protection order despite findings that support the pipeline's integrity/safety. The majority also ruled that the procedures already conducted in the presence of the Department of Energy should be repeated[59] in light of the uncertainty and fear caused by the cited oil pipeline disasters.[60] In trying to achieve "balance," therefore, and in adopting the Court of Appeals' findings,[61] the majority adopted a strict application of the precautionary principle. This may result to situations inconsistent with environmental protection.

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56 Ponencia, p. 11.
57 Id.
58 Id. at 11–12.
59 Id. at 26-28.
60 Id. at 11–12.
61 Id. at 15, 17-18, and 26-28.

Under the Rules, the precautionary principle shall be applied in resolving environmental cases when the causal link between human activity and an environmental effect cannot be established with certainty.[62] Based on this principle, an uncertain scientific plausibility of serious and irreversible damage to the environment justifies actions to avoid the threat of damage.[63] Avoidance of threat or damage, as in this case, usually comes in the form of inhibition of action or activity.

Strict application of the precautionary principle means that the mere presence of uncertainty renders the degree of scientific plausibility for environmental damage irrelevant. Speculations may be sufficient causes for the grant of either a temporary environmental protection order or a permanent environmental protection order, regardless of the extent of losses and risks resulting from it.

This interpretation may be inconsistent with the purpose of avoiding threat or damage to the environment and to the people's general welfare.[64] It was argued that:

> If [the precautionary principle] is taken for all that it is worth, it leads in no direction at all. The reason is that risks of one kind or another are on all sides of regulatory choices, and it is therefore impossible, in most real-world cases, to avoid running afoul of the principle. Frequently, risk regulation creates a (speculative) risk from substitute risks or from foregone risk-reduction opportunities. And because of the (speculative) mortality and morbidity effects of costly regulation, any regulation—if it is costly—threatens to run afoul of the Precautionary Principle.[65]

Inhibiting an activity, especially one recognized for its role in commerce, has drawbacks. Although it may ensure that no risk of harm to the environment will directly result from the activity, it can also unjustifiably deprive the public of its benefits.[66] Inhibiting pipeline activities, for example, may deprive the public of the benefits of an oil transport system that can deliver more products at a given time and to a wider area, compared to other modes of distributing oil such as through roads or rails. This will slow down oil distribution along the production and distribution chains. Therefore, it will have a significant negative impact on commerce.

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62 ENVTL. PROC. RULE, Rule 20, sec. 1.

63 ENVTL. PROC. RULE, Rule 1, sec. 4(f).

64 Cass R. Sunstein, *The Paralyzing Principle*, REGULATION 34 (Winter 2002–2003) <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (visited June 18, 2015).

65 Id. at 37.

66 Cass R. Sunstein, *The Paralyzing Principle*, REGULATION 34 (Winter 2002–2003) <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (visited June 18, 2015).

Inhibiting an activity may also unduly create other risks that are not immediately apparent.[67] Inhibition of oil pipeline activities may prevent pipeline leaks from happening again. However, it will also force suppliers to resort to other modes of oil distribution to maintain a supply to address national demands. These other modes may include the use of trucks and trains, which has negative environmental impact as well.

Trucks have relatively limited capacity to distribute oil compared to pipelines. Thus, to keep up with national demands, trucks must be dispatched in greater number and with more frequency. As a result, our highways may have to be constantly lined with trucks. This will cause road congestion and—more certainly than the existence of leaks on the White Oil Pipeline—worsened air pollution. According to the World Health Organization, about seven million deaths in 2012 were linked to air pollution.[68] Air pollution is related to "cardiovascular diseases, such as strokes and ischaemic heart disease, . . . [and] respiratory diseases . . . [such as] acute respiratory infections and chronic obstructive pulmonary diseases."[69] It is also reported to increase the risk of cancer among humans.[70]

Lastly, the delay in lifting the temporary environmental protection order despite evidence that prove that the pipeline is free from leaks, as well as the order to repeat respondent First Philippine Industrial Corporation's procedures, will unnecessarily force not only respondent but also the concerned agencies to spend much needed resources that may be used for other public purposes. In effect, other equally important tasks or projects are deprived of the agencies' resources and attention. This may likewise cause unintended drawbacks that we may not yet realize.

In the end, the inhibition of pipeline activities may in itself be a plausible and equally harmful threat to the general welfare compared to the threat posed by the pipeline. Permitting the increase of air pollution and unnecessary use of public resources may be inconsistent with the precautionary principle that the majority tried to apply in resolving the case.

Thus, dealing with environmental issues is not as simple as applying the precautionary principle in its strict sense when faced with uncertainty. We must recognize the interconnectedness of variables and issues so that we can address them more effectively and truly in accordance with our policy of

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67 Id.

68 *7 million premature deaths annually linked to air pollution*, World Health Organization <http://www.who.int/mediacentre/news/releases/2014/air-pollution/en> (visited June 18, 2015).

69 Id.

70 *IARC: Outdoor air pollution a leading environmental cause of cancer deaths*, International Agency for Research on Cancer, World Health Organization <http://www.iarc.fr/en/media-centre/iarcnews/pdf/pr221_E.pdf> (visited June 18, 2015).

taking care of the people's general welfare through environmental protection.

The Department of Energy has already issued its Certification stating its conclusion that the White Oil Pipeline is already safe for commercial operations. Its conclusion is consistent with expert findings. When conclusions support the project's operation, and when there is no showing that an error was committed in arriving at such conclusions, the fear of disaster without basis is not a sufficient reason to deny the lifting of an issued temporary environmental protection order. Respondent First Philippine Industrial Corporation, the Department of Energy, and other administrative agencies need not spend more resources only to repeat a procedure that has already been and is still being done.

Accordingly, I vote to **DISMISS** the Petition because it is moot and academic.

MARVIC M.V.F. LEONEN
Associate Justice