LESSONS LEARNED FROM COMPLIANCE REVIEWS AT THE ASIAN DEVELOPMENT BANK (2004–2020)

Visayas Base-Load Power Development Project in the Philippines
The Lessons Learned from Compliance Reviews at the Asian Development Bank (2004–2020) series endeavors to provide lessons and institutional knowledge to strengthen the development effectiveness of ADB. The lessons shared through this series provide opportunities to improve project design and implementation, and to strengthen the compliance review function. In case of discrepancies between this document and ADB's operational policies and Accountability Mechanism Policies 2003 and 2012, the respective policies will prevail.

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Notes:
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Cover design by Noelito Francisco E. Trivino, Jr.

Cover page: Many steps, one process. The cover highlights the different steps involved in the compliance review of a project—the field visits, consultations, and discussions that compose the Asian Development Bank’s Accountability Mechanism (symbolized by the gear) and work toward a unified goal.
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ACKNOWLEDGMENTS

The Lessons Learned from Compliance Reviews at the Asian Development Bank (2004–2020) series was developed by the Office of the Compliance Review Panel (OCRP) of the Asian Development Bank (ADB), under the leadership of Compliance Review Panel (CRP) Chair and OCRP Head Elisea G. Gozun, and with the support of the following team members: Advisor Irum Ahsan, Senior Compliance Review Officer Josefina C. Miranda, and Associate Compliance Review Coordinator Julie Anne B. Mapilisan-Villanueva. This report was prepared with significant contributions from CRP members Halina Ward and Ajay Deshpande. Report preparation also benefited from insights generously shared by current and former ADB staff, former CRP members, and OCRP staff who were involved in the Visayas project.

ABBREVIATIONS

ADB – Asian Development Bank
CRP – compliance review panel
CSR – corporate social responsibility
DENR – Department of Environment and Natural Resources
EIA – environmental impact assessment
EMP – environmental management plan
KSPC – Korea Electric Power Corporation - SPC Power Corporation
MMT – multipartite monitoring team
MW – megawatt
NGO – nongovernment organization
OCRP – Office of the Compliance Review Panel
PSOD – Private Sector Operations Department
RAP – remedial action plan
SDP – social development plan
SEIA – summary environmental impact assessment
TA – technical assistance
The Visayas Base-Load Power Development Project (Visayas project) in the Philippines was a project supported by the Asian Development Bank (ADB) addressed through a compliance review under the 2003 Accountability Mechanism Policy. The policy’s compliance review function investigates alleged noncompliance by ADB with its operational policies and procedures where these may have directly, materially, and adversely affected complainants during the formulation, processing, or implementation of an ADB-assisted project.

This publication is the seventh in the Lessons Learned from Compliance Reviews series prepared by ADB’s Office of the Compliance Review Panel (OCRP). The series examines the completed compliance reviews of eight ADB-assisted projects that were the subject of complaints filed with the OCRP in 2004–2020. This series explores the challenges, gaps, and good practices identified in each project during the compliance review.

This report presents insights obtained following a thorough review of documents and an analysis of a survey done among current and former ADB project staff and compliance review panel members. Though the Lessons Learned series is prepared by the OCRP, it does not reflect OCRP’s opinion unless expressly specified.

This series provides practical insights to development practitioners, safeguard specialists, nongovernment and civil society organizations, government personnel, project beneficiaries, and ADB Management and staff seeking to learn more about project design and implementation, and the compliance review process. The intent is to contribute to capacity development in project management and good institutional governance.

SNAPSHOT

Project

<table>
<thead>
<tr>
<th>Project Title</th>
<th>Visayas Base-Load Power Development Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country of Implementation</td>
<td>Philippines</td>
</tr>
<tr>
<td>ADB Financing</td>
<td>$100 million (Loan 2612) which was paid in full by the borrower, KEPCO-SPC Power Corporation in April 2017</td>
</tr>
<tr>
<td>Approval Date</td>
<td>11 December 2009</td>
</tr>
<tr>
<td>Closing Date</td>
<td>31 December 2013</td>
</tr>
<tr>
<td>Project Impact Categorization</td>
<td>A for Environment, B for Involuntary Resettlement, C for Indigenous People</td>
</tr>
</tbody>
</table>

Complaint

| Date of Compliance Review Request | 25 May 2011 |
| Complaint Status | On 8 November 2017, the Compliance Review Panel (CRP) concluded the annual monitoring of the project and circulated its fifth annual monitoring report to the ADB Board of Directors. The complaint has since been closed, but the CRP still reports to the Board Compliance Review Committee on actions under the technical assistance associated with this project. |

Link to Complaint Documents

Coal-fired power plant in Naga City, Cebu. The Visayas Base-Load Power Development Project supplies base-load power to the grid to meet the growing demand of electricity consumers and supports sustainable growth in the Visayas region.
1 KEY LESSONS

The compliance review of ADB’s actions regarding the Visayas project brought out several important lessons. It also highlighted various challenges as well as opportunities to improve project management and compliance review processes. The significant lessons learned from the compliance review are discussed below.

1.1 Ensuring adherence to policy requirements on baseline and impact modeling studies is a critical aspect of project preparation, as such studies form the basis of the design of control, mitigation, and monitoring measures.

Critical project documents such as (i) field surveys establishing baseline conditions prior to project implementation and (ii) modeling studies to identify a project’s environmental, health, and socioeconomic impacts must be thoroughly reviewed by ADB, to ensure that these meet ADB’s policy requirements. Deficiencies in baseline studies affect the accuracy of assessments on the project’s impacts and the planning and design of control, mitigation, and monitoring measures. Underestimating or inaccurately identifying the project’s potential impacts would likely result in environmental management and social development plans that do not sufficiently address the mitigation of negative impacts of the project. Gaps in impact assessments can result in harm or have the potential to harm affected people, and consequently result in higher costs of remedial actions.

Inaccurate baseline and impact assessments also affect the monitoring and evaluation of the project’s impacts over time. With reliable baseline data as a basis for comparison, rigorous monitoring enables (i) a more accurate measurement of the effectiveness of control and mitigation measures; and (ii) attribution of the project’s effects, in relation to other industries operating in the region. More information can be found in section 4.1.

1.2 Efforts by project owners at meaningful consultation and public communication result in the reduction of harm to potentially affected people.

Public consultations are an opportunity for stakeholders, including project staff, to identify the potential environmental, health, and socioeconomic impacts of a project from the perspective of those who may be affected. Concerns gathered from stakeholders highlight risks and vulnerabilities that need to be addressed by project design, which includes preventive or mitigating measures to reduce potential harm. Likewise, improving the relationship between the community and project owner helps solve recurring and emerging issues and ensures smooth operation in succeeding years. More information can be found in section 4.2.

1.3 ADB must be thorough in (i) reviewing environmental and social assessment reports and (ii) guiding private sector clients to comply with ADB’s policy requirements.

While due diligence in project preparation is a shared responsibility between ADB, its clients, and development partners, ADB Management and staff perform a critical role in reviewing the project’s environmental impact assessment (EIA) and its derivative summary environmental impact assessment (SEIA) to ensure that these comply with ADB’s operational policies, especially its safeguard policies, to avoid actual or potential harm. This responsibility takes on more importance particularly in nonsovereign lending, since private sector clients may be less familiar with ADB’s operational policies and procedures than ADB’s government counterparts and have limited capacity in the implementation of ADB’s safeguards. ADB’s involvement in private sector projects may also come at a later stage in project preparation. Thus, earlier preparations need to be assessed with regard to compliance with ADB’s policies, particularly its safeguard standards.

ADB’s due diligence is intended primarily to ensure the project’s compliance with ADB’s policies, including national legislation. More information can be found in section 4.3.

1.4 A clearly crafted remedial action plan informed by studies completed on schedule and focused on practical solutions to address harm is paramount to affected people.

Delays in the completion of remedial actions have serious implications on the objective of removing or reducing the actual or potential harm to affected persons. Over time, ADB loses its influence to initiate changes in the project’s implementation,
especially when loan prepayment in private sector projects cuts off any business relationship between ADB and its client. To reduce the probability of such delays, weaknesses in remedial action planning must be addressed from the outset. A gap identified in this compliance review is the lack of clarity in the specification of responsibilities for the execution of remedial actions. Specificity ensures accountability for the completion of remedial actions.

Projects deficient in baseline and impact modeling studies still require preparatory studies to give direction to the design of mitigation, control, and monitoring measures in the final remedial action plan (RAP). However, the completion of such foundational work takes time, which neither the Accountability Mechanism Policies (AMP) of 2003 or 2012 account for sufficiently. This suggests a need to revisit provisions on the monitoring period for remedial actions, to ensure a timely implementation and monitoring of remedial actions.

The delays in this project’s RAP implementation highlight the need to focus remedial actions on pragmatic solutions for alleviating harm, especially since a pragmatic focus is more likely to deliver results in a timely manner. More information can be found in section 4.4.2.
2 BACKGROUND

2.1 Brief Project Description

The Visayas project involved the construction and operation of a 200-megawatt (MW) coal-fired power plant in Naga City, Cebu, Philippines. Located in what was formerly the ash disposal area of the Naga Power Plant Complex, this newer plant supplies base-load power to the grid to meet the growing demand of electricity consumers in the Visayas region. It supports sustainable growth in the region by increasing the availability of reliable and competitively priced power and promising increased efficiency and competitiveness in the power industry, to become a model for private sector investment in greenfield, cleaner coal-fired power generation in the country.

This project was the first collaboration between ADB and the Korean Export–Import Bank (KEXIM) on a direct loan of $120 million to Korea Electric Power Corporation Philippines Holdings, Inc. (KEPCO PHI or KPHI), approved by ADB on 11 December 2009. Owned and operated by the partnership between Korea Electric Power Corporation and the SPC Power Corporation (jointly called KSPC), the plant was fully operational on 31 May 2011.

ADB's initial review of the EIA identified deficiencies in (i) comprehensive baseline studies; (ii) ambient air dispersion modeling that needs revision to comply with international standards; (iii) a rigorous evaluation of alternatives in project design; and (iv) a comprehensive environmental management plan (EMP), which should have included an ash management plan, including the proper testing and management of historical ash disposal sites. To comply with ADB’s Environment Policy, ADB asked KSPC to address these gaps in separate studies, instead of requiring the updating of the EIA to ensure compliance befitting a project assessed as Category “A” for its environmental impact. As a result, the SEIA did not sufficiently meet ADB’s Environment Policy as it exhibited deficiencies in air quality monitoring and dispersion modeling studies, and absence of baseline studies on the cumulative impacts of existing activities in the region that affect the physical environment and people’s health.

Even prior to ADB’s involvement in the project, community representatives and civil society organizations already expressed concerns on the project’s health and environmental impacts. ADB’s failure to note these concerns and advise the borrower to address these concerns in the EMP contributed to ADB’s noncompliance, which led to the potential for harm on affected people. ADB was also remiss in advising the borrower on the need to reinforce public communication and consultation mechanisms. In doing due diligence, ADB was also lacking in its efforts to engage with nongovernment organizations (NGOs) representing community interests, as such consultations began only after the filing of complaints.

2.2 Summary of the Complaint

On 25 May 2011, the Compliance Review Panel (CRP) received a request for compliance review, filed by the secretary general of the Cebu chapter of the Freedom from Debt Coalition (an NGO) and a local engineer who was himself an affected person, on behalf of three other affected persons (who requested confidentiality). This was the first request for a compliance review of a private sector project since private sector operations came under the purview of the AMP 2003.

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2 The EMP lacked specifics, such as firm commitments from local cement manufacturers on their participation in the ash recycling plan; and the execution of the resettlement plan at a historical ash disposal site revealed a lack of a sewerage system and topsoil cover, and lapses in obtaining an environmental permit. Footnote 1, para. 21, p. 6 and para. 48, p. 13.
3 Footnote 1, p. 5, para. 17, p. 5.
4 Examples of activities and industries in the region with comparable environmental impact include the pre-existing Naga power plant, local cement manufacturers, and mobile sources (e.g., vehicular transportation). Footnote 1, Executive Summary, section A, p. v; and paras. 16–17, 22–25, and 48 on pp. 4–5, 7–8, and 13.
5 Footnote 1, paras. 32–44, pp. 9–10.
6 Such as by failing to identify the lack of representation for the community's interests in the multipartite monitoring team (MMT), a body tasked with the periodic monitoring of project implementation, as a weakness in public communication mechanisms, and failing to advise on the need to address inadequacies in the timeliness and quality of information dissemination (e.g., delays in granting public access to the SEIA and EIA; the lack of a Cebuano language component to information dissemination, and others). Footnote 1, para. 37, p. 10.
7 Footnote 1, paras. 34–35, p. 10.
The complainants allege that the project would increase health risks to residents of nearby communities due to

(i) emission of gases that may cause respiratory illnesses;
(ii) spillage of coal during transport that may expose residents to hazardous, toxic metallic elements; and
(iii) seepage from the Balili coal ash dumpsite that could contaminate marine life for human consumption.

The complainants claim that ADB failed to comply with its policies on the environment, energy, and public communications.

2.3 Compliance Review Process and Results

In its compliance review, the CRP considered relevant ADB operational policies and procedures that were in effect when the Visayas project was processed and approved; ADB’s Environment Policy (2002) and its associated section of the Operations Manual (OM), OM section F1 (2006); OM section L3 on Public Consultation and Information Disclosure (2008); OM section C3 on Incorporation of Social Dimensions in ADB Operations (2007); and Energy Policy (2009).

The CRP’s review comprised

(i) a desk review of documents;
(ii) interviews with ADB Management, staff, and project consultants;
(iii) meetings with the complainants, their authorized representatives, members of local NGOs, and some affected persons;
(iv) meetings with KSPC officials;
(v) meetings with officials of the Cebu provincial government; and
(vi) project site visits.

The CRP confirmed ADB’s noncompliance with its Environment Policy (2002) and Environmental Considerations in ADB Operations (2006) for lapses in due diligence in which ADB should have required an updated EIA and its derivative SEIA to have included studies (described in section 2.1) that were critical to formulating an appropriate EMP and eventually ensuring more effective project monitoring.9

The CRP also confirmed ADB’s noncompliance with its policies on Public Consultation, Information Disclosure (OM C3) and the Incorporation of Social Dimensions in ADB Operations (OM L3) for insufficiently recognizing the community’s concerns on the adverse health impacts of the project by omitting mention of dissenting views expressed in public consultations and failing to present data on the high incidence of respiratory diseases, local mortality, and morbidity in project documentation. More importantly, ADB was also deficient in advising the borrower on the need to (i) recognize and address the community’s concerns with appropriate mitigation plans,10 (ii) facilitate timely access to the EIA and SEIA for disclosure to the public, (iii) disseminate information to mitigate health hazards, (iv) address the lack of representation for the interests of affected persons or NGOs in the multipartite monitoring team (MMT), and (v) establish an effective communication mechanism between stakeholders.11

Though the project is consistent with Energy Policy (2009) requirements on technological criteria, the CRP determined that ADB’s noncompliance with its environmental and social safeguard policies qualifies its noncompliance with the Energy Policy.12

With the loan paid in full by KSPC in April 2017 and with the end of the 5-year maximum monitoring period prescribed in the AMP 2003, the CRP submitted its fifth and final monitoring report on this complaint to the ADB Board of Directors on 13 November 2017. Due to the partial noncompliance status of recommendations 1 and 4 (which are addressed by TA 8338: a technical assistance on Air Quality Management for the Visayas Base-Load Power Development Project), the CRP was tasked to regularly report to the Board Compliance Review Committee on the progress of remaining tasks relating to the partially compliant recommendations.

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9 Footnote 1, Executive Summary, p. v; and para. 48, pp. 13–14).
10 Particularly actions that go beyond modest corporate social responsibility (CSR) activities. Footnote 1, para. 44, p. 12.
11 Footnote 1, Executive Summary, p. v.
12 Footnote 1, Executive Summary, p. vi and paras. 45–48, pp. 12–14).
Through TA No. 8338, (i) an air quality modeling study, (ii) data collection on ambient air quality, and (iii) the validation of the air dispersion modeling were done. Furthermore, ADB provided the Environmental Management Bureau Region 7 of the Department of Environment and Natural Resources (DENR EMB7) with five CALPUFF View software licenses. CALPUFF View is a graphical user interface software for the CALPUFF modeling system, a tool for developing the air quality model for Naga City. With the completion of activities under TA 8338, DENR EMB 7 took on the full operation and maintenance of two continuous ambient air monitoring (CAAM) stations. Developing an action plan based on the recommendations of the air quality modeling study, which will be presented and is hoped to be adopted by the Airshed Governing Board of Cebu City, appears to be the only remaining task needed to comply with the CRP’s recommendations.

<table>
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<tr>
<th>CRP Recommendations</th>
<th>Feedback to Management on Actions to Bring the Project into Full Compliance</th>
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<tbody>
<tr>
<td>1. Undertake a comprehensive air dispersion modeling study that includes the key pollution sources in the project area of influence and validate the predictions with actual air emissions and ambient air quality monitoring data. Develop an action plan based on recommendations from the modeling study and emphasize the potential for continuous monitoring and recording of air emissions and ambient air quality.</td>
<td>Status of compliance: Partially complied with.</td>
</tr>
<tr>
<td>2. Undertake a comprehensive study on ash utilization at cement plants and the ready-mixed concrete plant and implement plant-specific recommendations and EMPs. In addition, prepare and implement EMPs for the existing ash ponds and historical ash disposal sites.</td>
<td>Status of compliance: Complied with.</td>
</tr>
<tr>
<td>3. Expand or complement the existing MMT to ensure representation of all directly affected communities and all appropriate NGOs and to facilitate transparent and inclusive communication and grievance redress.</td>
<td>Status of compliance: Complied with.</td>
</tr>
<tr>
<td>4. Implement a community outreach program focusing on preventing negative health impact from air, water, and noise pollution, and potentially negative impact from exposure to unprotected coal ash deposits.</td>
<td>Status of compliance: Partially complied with.</td>
</tr>
</tbody>
</table>

CRP = compliance review panel, EMP = environment management plan, MMT = multipartite monitoring team.
# 3 KEY SUCCESSES AND CHALLENGES

The table summarizes significant successes, gaps, and challenges brought out during the compliance review of the Visayas project, as identified by survey respondents and through the desk review of the compliance review documents. Each point is discussed further in section 4.

<table>
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<th>Positive Outcomes of the Compliance Review Process</th>
<th>Gaps and Challenges Identified through the Compliance Review</th>
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<tr>
<td>• Broader community and multisector participation in monitoring the plant’s performance. <a href="#">More information can be found in section 4.2</a>.</td>
<td>• Inadequate identification of significant concerns expressed by the community on the project’s potential adverse impacts. <a href="#">More information can be found in sections 1.2 and 4.2</a>.</td>
</tr>
<tr>
<td>• Improved relationship and communication between the project owner and the community, aided by establishing a direct channel for risk communication accessible to key officials in villages adjacent to the plant. <a href="#">More information can be found in sections 1.2 and 4.2</a>.</td>
<td>• Absence of a comprehensive baseline environmental audit of environmental conditions which accounts for the cumulative impact of other regional pollution sources, to aid the monitoring of the project’s impact over time. <a href="#">More information can be found in section 1.1, 1.3, and 4.1</a>.</td>
</tr>
<tr>
<td>• Expansion of the project owner’s outreach and social development plan. <a href="#">More information can be found in section 4.2</a>.</td>
<td>• Absence of baseline community health impact studies which include a statistical survey of current local health conditions, to aid the monitoring of the project’s impact on community health over time. <a href="#">More information can be found in sections 1.1, 1.2, 4.1, 4.2, Boxes 1 and 3</a>.</td>
</tr>
</tbody>
</table>

4 LESSONS LEARNED AND RECOMMENDATIONS

The compliance review process under ADB’s Accountability Mechanism Policy follows steps falling into the following categories: (i) eligibility determination, (ii) compliance review, (iii) remedial action plan and management action plan preparation, and (iv) monitoring. This section identifies lessons from the compliance review of the Visayas Base-Load Power Project and highlights their implications for ADB project design and implementation, and for future compliance reviews.

4.1 Ensuring adherence to policy requirements on baseline and impact modeling studies is a critical aspect of project preparation, as such studies form the basis of the design of control, mitigation, and monitoring measures.

The compliance review showed that ADB’s lapses in its due diligence efforts resulted in the submission of an SEIA that was deficient in its presentation of studies on baseline conditions in the project’s location. In addition, the SEIA’s assessment of the cumulative impact of existing industrial activities in the region with comparable environmental and health-related effects was inadequate. Such baseline studies are critical in delivering accurate assessments of the project’s impacts, as noted in Box 1.

In the survey conducted for this learning report, an officer in ADB’s Private Sector Operations Department (PSOD) remarked on the importance of collecting data on baseline conditions at the project site and surrounding areas that would be affected by a project, particularly in environmentally sensitive projects such as a coal plant. As the basis for an objective assessment of the project’s impact over time, “baseline data for air and water conditions within and near the project site provide the foundation for subsequent analysis and support in addressing allegations of adverse environmental and social impacts” the respondent explained, reasoning further that “understanding the incremental impact of the ADB-funded project is key to ensuring that no adverse effects arise from its implementation.” In effect, successful outcomes in project implementation also depend upon having a clear picture of baseline conditions, for future comparison.

In a region with several industrial activities contributing to pollution, proper analysis and attribution of any adverse impacts to a particular industry hinge upon having a clear baseline picture of the project area. A former PSOD staff member noted that “problems cited in the complaint were due to another old coal-fired power plant owned by the government and not related to the KEPCO project funded by ADB.” However, proving contentions either way depends on the quality of baseline assessments made and the availability of data on conditions prior to the project’s establishment.

The implications of a lack of baseline data were immediately experienced by the CRP with the difficulty of ascribing responsibility for particular impact (and the consequent mitigation) to either the project or other industries operating prior to the project. An example concerns the lack of a baseline soil sampling at the resettlement site, in which it became difficult to establish “whether the ash that were dumped in the Pangdan and Naalad sites came from the project site excavation (in which case the ADB-funded project would have liability) or were disposed by the old plant,” a PSOD staff member related.

The critical lack of baseline assessments led the CRP to recommend a comprehensive air dispersion modeling study as the foundation for further remedial action planning and the continuous monitoring of the project’s impact on air quality and health.

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13 Eligibility determination is covered in steps 1–3 of the compliance review process under the 2012 Accountability Mechanism Policy—request for Management’s response, determination of eligibility of complaint for compliance review, and Board authorization of compliance review.

14 Compliance review (fact-finding) is dealt with in steps 4–7 of the compliance review process under the 2012 Accountability Mechanism Policy—conduct of the compliance review, preparation and issuance of the CRP’s draft report, preparation and issuance of the CRP’s final report, and Board consideration of the CRP’s final report.

15 Steps 8–9 of the compliance review process under the 2012 Accountability Mechanism Policy—recommendation of remedial actions by Management and issuance of the Board’s decision on this matter—pertain to remedial action planning.

16 This is the Naga Power Plant Complex’s older power plant installation, vehicular emissions, and emissions and particulates from the Apo Cement Corporation’s plant. While two units of the older Naga-1 installation (totalling 105 MW) may not have been operational then, it is still important to account for its recorded impact on the environment (reflected in quarterly monitoring reports to the DENR Region 7 office and collated with the impact of those other activities mentioned).
A former CRP member gave a reminder on the importance of identifying and completing baseline surveys, data gathering, and analysis for environmental and social safeguard requirements during project design, development, and implementation. This is especially significant “where there is a lack of such data, or there is paucity of data, or the data available is not reliable enough to draw high quality conclusions.”

Furthermore, a lack of baseline studies relates to uncertainty and ineffectiveness of risk controls and mitigation measures. Not only does a clear picture of baseline conditions enable measuring the impact of effective design and implementation, it is also essential to enabling accurate analysis in predictive modeling for the unmitigated impact of the project and the projected impact of the range of control and mitigation measures available. Therefore, baseline studies are essential to effective project design.

4.2 Efforts by project owners at meaningful consultation and public communication result in the reduction of harm to potentially affected people.

It is essential for ADB to advise the borrower on the methods to comply with ADB’s public communication and information disclosure requirements. Accordingly, it is important for ADB to ensure that project owners consider the community’s concerns over a project’s environmental, health, and socioeconomic impacts, and reflect such concerns in project design. As communication and feedback mechanisms are the means by which some mitigation measures can be delivered and their effectiveness gauged, ensuring such mechanisms are effectively in place is essential.

Compliance with public communication and information disclosure requirements can be accomplished by ensuring

(i) public outreach programs are in place to sufficiently communicate the project’s risks and discuss the community’s concerns,
(ii) community stakeholders are educated in safety and prevention plans, and
(iii) the timeliness and accessibility of information on the project to facilitate informed consultation and participation.

Public communication and consultation are also essential to effective project delivery because informed consultation benefits a proactive approach to mitigation, which results in a more robust and cost-efficient project design and implementation when applied.

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17 ADB’s deficiencies in executing certain responsibilities in due diligence qualified as noncompliance with requirements for meaningful consultation and public communication. Footnote 1, paras. 32–37 and 42–44, pp. 9–12.

Facilitating effective consultation and the community’s participation at every step of the project also helps improve the relationship between the host communities and project owners. Improved relations ease operations by tending to reduce complaints or grievances and helping avoid or address emergent and recurring issues with open communication (Box 2 provides recommendations to improve community relations in projects).

In this project, the CRP recommended improving stakeholder engagement by proposing to include membership of NGOs and other community representatives in the MMT. In response, from 2016 onward the MMT and project owner invited NGO representatives to attend the MMT’s periodic meetings as observers. Subsequently, the minutes of meetings of the MMT were also disclosed to the public, to ensure transparency.

KSPC acted further to improve community engagement by enabling greater public participation in monitoring efforts. Select community members were invited to participate as observers in testing water samples in and around the plant. Communication and feedback were facilitated by issuing mobile phones to key officials of villages adjacent to the plant. These measures enable the plant owner and host communities to have a direct and immediate means of communicating on the plant’s environmental performance, to relay observations of unusual emissions from the plant or coal dust pollution from barges unloading coal, among other examples.

Improved communications also yielded feedback on the need for more extensive health services, now provided with greater frequency. Heeding the community’s health-related concerns, the project owner initiated biweekly medical missions, which also aided monitoring for respiratory illnesses or any adverse health impact that may relate to the plant’s operation. Sensing the need, KSPC’s outreach expanded to cover not only the villages adjacent to the plant, but also those farther on the hillside fronting the power plant.

Ultimately, lessons learned from improving relations between stakeholders benefit ADB’s development effectiveness in the long run. “The experience contributed to the strengthening of NSO [nonsovereign operations] safeguards review and complaints tracking. PSOD has expanded the capacity of its safeguards team for more effective engagement, especially at going-in stage,” the investment officer from PSOD observed.

**BOX 2: Improving Community Relations in Projects Based on the Visayas Base-Load Power Development Project**

To improve community relations in projects, it is recommended that ADB advise its clients to

(i) consider the community’s interests for representation and participation in impact monitoring mechanisms,

(ii) provide direct channels for risk communication between stakeholders, and

(iii) ensure continuous improvement in mitigation programs based on a fair assessment of risks and needs identified by periodic public consultations and accessible feedback mechanisms.

ADB = Asian Development Bank.


4.3 **ADB must be thorough in reviewing environmental reports and similar impact assessments, and in guiding its private sector clients to comply with ADB’s policy requirements.**

It is essential for ADB Management and staff to (i) walk a client through ADB’s policy requirements (especially its safeguard policies) and corresponding procedures and (ii) advise its borrowers on proper adherence to those. This is especially because private sector clients are often less familiar with ADB’s operational policies and procedures than ADB’s government counterparts. Furthermore, the nature and scope of business of private sector clients, their familiarity with good international practices, and approach to environmental, social, and governance frameworks may need to be reframed in the context of ADB’s operational policies and procedures. Likewise, ADB’s policies and procedures need to be understood in the context of their organization’s practices and approach.

For instance, corporate social responsibility (CSR) programs like medical missions may not directly translate into interventions in compliance with certain ADB policies. However, backed by baseline data on the health and social conditions of affected persons
and their communities and a clear understanding that a program designed to monitor and mitigate negative project impacts is needed, such CSR programs and their medical mission components may be designed to contribute to compliance with environmental safeguards, project monitoring or maximization of project benefits. Likewise, compliance with public communication objectives may be addressed with other program components of CSR, such as KSPC’s actions involving the issuance of mobile phones for community leaders to enable community participation in monitoring the environmental performance of the plant, as well as provide direct communication channels, in aid of reporting grievances or providing notifications or vital information.

Likewise, it is critical for ADB to perform thorough reviews of a project’s EIA and SEIA. Not only should ADB’s review ensure procedural compliance with ADB’s operational policies and procedures, it must also establish substantial compliance, i.e., compliance by adherence to the principles enunciated in ADB’s policies, and not only by form.

Due diligence in project preparation is a shared responsibility between ADB, its clients, and development partners, including host communities or affected persons. Each from their perspective performs a critical role in the project, to ensure compliance and avoid harm. While the client or project owner assumes operational responsibility for compliance, ADB is responsible for guiding and coaching its client to ensure such.

ADB’s environmental and social safeguard standards consider adherence to national policies and international treaties adopted and ratified by the country in which the project is located. It should be noted that in private sector projects, ADB is typically engaged by its clients at a later stage in project preparation, in contrast to its involvement at earlier stages in public sector projects. As such, ADB must explain to its private sector clients that there likely will be further environmental and social safeguard requirements to comply with, on top of national or local governments’ requirements, for which documentation of compliance may have already been submitted. The private sector client must be briefed on the rationale for ADB’s environmental and social safeguard requirements and guided in transforming previously prepared reports and program arrangements to comply with ADB’s requirements.

As the compliance review revealed, the project’s EIA and SEIA included air quality data and air dispersion modeling that was, for the most part, compliant with nationally legislated requirements—though there were also issues of noncompliance with national standards in monitoring concerns.19

Data sharing, when permitted by law between private companies (e.g., KSPC, in this case) and government agencies (such as DENR EMB 7), may offer a starting point in describing and assessing baseline conditions for new industries. Necessarily, such data need to be subject to an independent audit, to ensure that such data and the impact modeling they inform sufficiently meet ADB’s policy requirements and standards.20

4.4 A clearly crafted remedial action plan informed by studies completed on schedule and focused on practical solutions to address harm is paramount in bringing relief to affected people.

For remedial actions to be effective, they should be timely, specific, based on accurate baseline studies, and pragmatic. The sections below offer suggestions in designing and implementing remedial actions to address findings of noncompliance in ADB-assisted projects after a compliance review.

4.4.1 Remedial actions should be timely.

Despite improvements in community relations and the project’s SDP outreach to address the community’s health-related concerns, at the conclusion of the 5-year monitoring period in 2017, significant progress in the development of a comprehensive EMP has yet to materialize. Advancement in that area is premised on the completion of preparatory air quality monitoring and air dispersion modeling studies that improve upon the deficiencies of the baseline assessment and impact modeling studies included in the project’s EIA and SEIA.

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19 With the specification of monitoring stations not meeting national standards with sufficient rigor; sampling procedures failing to meet either national or international standards; air dispersion modeling based only on national standards; and the lack of a comprehensive audit on the validity of data inputs in air dispersion modeling and the effectivity of control and mitigation measures. Footnote 1, paras. 22–24, pp. 7–8.
20 Footnote 1, paras. 22–25, pp. 7–8.
There are serious implications to delays in the completion of remedial actions that result from a compliance review. The primary objective of removing or reducing harm (or the potential for harm) remains unaccomplished if the conditions that contribute to noncompliance continue to remain unaddressed. Over time, ADB may also lose its influence to initiate changes in the project’s implementation, as the eventual closing and full payment of the loan naturally lead to a loss of leverage to implement any remaining remedial actions in the project.21

Circumstantial factors may also influence progress in addressing noncompliance and the resulting or potential harm. In this project, as 4 years have already passed since the closing of the 5-year monitoring period in 2017, service contracts for environmental monitoring operations will have lapsed, necessitating further negotiation with the PSOD to continue the preparatory work that is the foundation of further remedial actions. While 2 years of coronavirus disease (COVID-19) pandemic restrictions have also imposed limitations in carrying out subsequent steps in the process (which include presenting the findings of the air dispersion modeling study in public consultations with stakeholders), such delays, whether unforeseen or within reasonable control of project planning and projected timelines, will have implications in carrying out the objective of reducing harm.

ADB’s internal stakeholders may need to engage in a rethink and dialogue on the end processes of a compliance review, considering that the effectivity of bringing timely relief from harm in the face of legitimate findings of noncompliance is at stake. A former CRP chair remarked that the “CRP needs to think about how to deal with the big delay in the implementation” of Board-approved recommendations and its consequent impact on the CRP, the Board Compliance Review Committee, and Board’s leverage with Management, in the implementation of remedies.

### 4.4.2 Remedial actions should be specific.

Addressing weaknesses in remedial action planning from the outset can reduce the probability of delays in implementation. For instance, addressing a gap in the clarity of responsibilities for executing remedial actions ensures the completion of actions and accountability for results.

Specificity becomes doubly important when the implementation of elements of the RAP are the responsibility of multiple actors. In this case, some actions are within the purview of the DENR, some are the responsibility of the City Government of Naga, Cebu, and some are of private sector actors—not only KSPC, but also other industrial operators in the region, such as Apo Cement Corporation.

The outputs of their individual responsibilities are to feed into the air dispersion modeling, which in turn, becomes the basis for developing the air quality management action plan. As the final output of this extensive process, the air quality management action plan (and its eventual implementation, in accordance with Republic Act 8749 or the Philippine Clean Air Act) would then be subject to the evaluation, approval, and monitoring of the Metro Cebu Airshed Governing Board, an interagency body comprised of representatives of several national and regional government agencies, local governments, private sector, civil society, and academic groups.

With several layers of responsibility over the specifics of tasks in the project’s remedial actions, ensuring that tasks remain on track for timely delivery hinges upon a shared understanding of greater objectives (e.g., regional air quality) and why these tasks are needed to address the concerns of the affected communities (e.g., health). Active engagement of all key actors from the very beginning of remedial action planning facilitates buy-in and ownership of the plan, which should include a clear delineation of roles and responsibilities as well as a timetable for deliverables. If needed, it may also include support for capacity building.

In the Philippines, the DENR secretary is designated by law (Section 9 of Republic Act (RA) 8749) as the chair of the multisector Airshed Governing Boards, which likewise include all DENR regional executive directors and EMB regional directors as deputy chairpersons of the airsheds under their concern. Their lead role in executing remedial actions to address the environmental and social impact of industrial operators within the airshed needs to be highlighted and understood by all actors, to ensure commitment, coordination, and timely results.

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21 Footnote 1.
4.4.3 Remedial actions should be prepared after detailed preparatory studies have been completed.

This step provides the foundation to remedy the conditions of noncompliance and harm (or potential harm). The empirical basis of this preparatory work enables the optimization of environmental management and social development planning, as baseline conditions and projected impacts that would have been well-identified give sufficient direction to the design objectives of mitigation, control, and monitoring actions.

In concluding the preparatory work, a clearer direction should emerge to enable the development of a more appropriately designed RAP. In this project, the expected result should be a more comprehensive EMP that includes air quality management plan with improved monitoring systems and an improved social development program that would address the affected peoples’ concerns more systematically.

However, the completion of such foundational work takes time. In this compliance review, the challenging experience of ensuring the timely delivery of preparatory studies delayed the formulation of an updated EMP. Consequently, other remedial action preparations like public consultations, final planning, implementation, and monitoring were significantly delayed, and could not be accomplished within the 3-year monitoring period of the RAP, provided for in the policy.

These delays indicate a need to revisit provisions in the AMP on the monitoring period for remedial actions which require preparatory studies to inform the identification of the needed remedial actions. In such cases, it may be more prudent for the CRP monitoring to be undertaken in phases. The first phase would cover the conduct of studies, and conclude with a final remedial action planning; while the second phase of monitoring covers the actual implementation of remedial actions. These recommendations can be considered in an updating of the 2012 AMP.

4.4.4 Remedial actions should be pragmatic.

A clearer identification of the project’s adverse impacts focuses the formulation of pragmatic solutions to alleviate the harm caused by noncompliance to project-affected people. The challenge, as a former CRP chair sees it is “how to balance the actions that need[s] to be taken immediately to address the concerns of project affected people and the action[s] that will broadly benefit the local environment.”

Notwithstanding the overall need to reinforce the environmental management of the project, a former CRP chair opined that proposed remedies focus on what the project has direct influence. In this project, the remedial action on air quality modeling and monitoring was considered as being in the domain of the regional environmental regulatory agency and for which the borrower had no influence over. Hence, monitoring and accountability for implementing specific actions also became unclear.

As the AMP 2012 specifies ADB Management’s lead role in preparing the RAP for the Board’s approval (with the CRP designated a commenting role, rather than the recommendatory role provided in AMP 2003), prioritization in focus to ensure that more actions can be achieved without losing sight of the greater goals, and within reasonable time frames for implementation and monitoring is clearly within their purview.
REFERENCES


Department of Environment and Natural Resources


Lessons Learned from Compliance Reviews at the Asian Development Bank (2004–2020)
Visayas Base-Load Power Development Project in the Philippines

Lessons Learned from Compliance Reviews at the Asian Development Bank (2004–2020) is a series of publications prepared by ADB’s Office of the Compliance Review Panel (OCRP). The series features compliance reviews of eight ADB-assisted projects that were the subject of formal complaints filed with the OCRP in 2004–2020. In this publication, the seventh in the series, the focus is on the compliance review of the Visayas Base-Load Power Development Project in the Philippines under the 2003 Accountability Mechanism Policy. Underscored here is ADB Management’s critical role in guiding private sector clients toward substantial adherence to ADB’s policies, which requires rigorous baseline and impact studies and informed consultation and public participation as necessary elements of project preparation.

About the Asian Development Bank

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members—49 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.