



DEPARTMENT OF ENERGY

**COMPENDIUM OF ENERGY LAWS
CIRCULARS AND OTHER ISSUANCES**

VOLUME 3

DOWNSTREAM AND NATURAL GAS



FOREWORD

by the Secretary

“Ignorantia juris non excusat”

The Philippine energy sector has undergone significant structural transformations over the years.

Vital up to date developments including policies and programs to guide the government, stakeholders and consumers alike in making informed energy choices is now collaboratively synergized.

The Department of Energy (DOE) is proud to present the updated Second Edition of the Compendium of Energy Laws to the public, a comprehensive reference on the various Republic Acts, Protocols and Directives to guide the DOE, its attached agencies especially the upstream and downstream industry about the dynamics of the participation and responsibilities of each energy player.

I commend the invaluable efforts of the DOE-Legal Services and their partners in gathering all these in one compilation.

This publication is tangible proof of the continuing productive growth of meeting the needs of those serviced and those supplying power.

Patriotically, let us explore more ways to raise the quality of life of our Kababayans.

Para sa Lupang Hinirang.

Maraming salamat po.


ALFONSO G. CUSI



PREFACE

by the Supervising Assistant Secretary for Legal Services

The compendium of energy laws, rules, regulations and other issuances is a helpful tool to guide all industry players, relevant government entities, practitioners and the general public. While the Department of Energy (DOE) continues to craft relevant rules and regulations in the exercise of its policy making power, the compendium's density shows the sheer volume of laws, rules and regulations that are existing currently being implemented.

But what seems to be the missing link to fully achieve the common objectives of these issuances? It is the conscious and concerted effort of all stakeholders to at all times act in accord with their respective mandates.

The policy making body, the regulator and all relevant government entities must work in unison and ensure that their duties are faithfully performed. Industry players must fully comply with their corporate, environmental and social obligations without sacrificing compliance with regulatory standards.

At the end of the day, regardless of our affiliation, we are all consumers. Filling the missing link will work to our advantage because if we fail individually, we fail as a whole. A miss is as good as a mile.

This publication is a product of the resourcefulness and hardwork of the DOE Legal Services, and the hope is that this project will serve its avowed purpose of providing everyone the necessary information as to the legal aspect of energy development in the Philippines.


CARON AICITEL E. LASCANO

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Chapter I

BATAS PAMBANSA BILANG 33

AN ACT DEFINING AND PENALIZING CERTAIN PROHIBITED ACTS INIMICAL TO THE PUBLIC INTEREST AND NATIONAL SECURITY INVOLVING PETROLEUM AND/OR PETROLEUM PRODUCTS, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES

SECTION 1. *Declaration of Policy.* – It is the declared policy of the State to institutionalize as a national way of life energy conservation geared towards the judicious and efficient use of energy in order to enhance availability of energy supplies required to support economic, social and developmental goals. In view of the continuing uncertainty of the international oil supply, it is imperative that measures to conserve energy be strengthened and/or petroleum products contrary to the intent and spirit of judicious usage and conservation of energy, which are inimical to the public interest and national security, be prohibited and appropriate sanction therefor be imposed.

SECTION 2. *Prohibited Acts.* – The following acts are prohibited and penalized:

- (a) Illegal trading in petroleum and/or petroleum products;
- (b) Hoarding of petroleum and/or petroleum products;
- (c) Overpricing in the sale of petroleum and/or petroleum products;
- (d) Misuse of petroleum allocations;

- (e) Speed contests and rallies involving mainly the use of motor vehicles, motor-driven watercraft or aircraft utilizing petroleum-derived fuels, including car and motorcycle rallies and drag racing; and
- (f) Sky-diving and water-skiing.

SECTION 3. *Definition of terms.* – For the purposes of this Act, the following terms shall be understood to mean:

“Illegal trading in petroleum and/or petroleum products” – the sale or distribution of petroleum products for profit without license or authority from the Government; non-issuance of receipts by licensed traders; misrepresentation as to quality and/or quantity; and sale by oil companies, distributors and/or dealers violative of government rules and regulations.

“Hoarding” – the undue accumulation by a trader of petroleum and/or petroleum products beyond his or its normal inventory levels and/or the unjustified refusal to dispose of, sell or distribute the same to consumers; or the unreasonable accumulation by a person other than a trader of petroleum and/or petroleum products.

“Overpricing” – the sale of petroleum and/or petroleum products at prices in excess of those duly authorized by the Government.

“Misuse of allocation” – the sale, transfer or diversion of mandated petroleum fuel allocations by oil companies, distributors, dealers of consumers contrary to the declared intent of the Government in making such allocation.

SEC. 4.*Penalties.*– Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than Two Thousand Pesos (P 2,000) but not more than Ten Thousand Pesos (P 10,000), or imprisonment of at least two (2) months but not more than one (1) year, or both, in the discretion of the court. Furthermore, the petroleum and/or petroleum products, subject-matter of the illegal trading, hoarding, overpricing and misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid, the payment made shall be the subject of the forfeiture, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer, and in addition, if the offender is a trader, the

cancellation of his license.

Trials of cases arising under this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a corporation, partnership, or other juridical person, the president, general manager, managing partner, or such other officer charged with the management of the business affairs thereof shall be criminally liable.

If the offender is a government official or employee, he shall perpetually be disqualified from office.

SEC. 5.*Repealing Clause.*– All laws, decrees, orders, instructions, rules and regulations which are inconsistent with, or contrary to, the provisions of this Act are hereby repealed or modified accordingly.

SEC. 6.*Effectivity.*– Upon its approval, this Act shall take effect after five days from its publication in at least two newspapers of general circulation.

Approved, June 6, 1979

PRESIDENTIAL DECREE NO. 1865

AMENDING BATAS PAMBANSA BILANG 33, ENTITLED “AN ACT DEFINING AND PENALIZING CERTAIN PROHIBITED ACTS INIMICAL TO THE PUBLIC INTERESTS AND NATIONAL SECURITY INVOLVING PETROLEUM AND/OR PETROLEUM PRODUCTS, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES”, BY INCLUDING SHORTSELLING AND ADULTERATION OF PETROLEUM AND PETROLEUM PRODUCTS AND OTHER ACTS IN THE DEFINITION OF PROHIBITED ACTS, INCREASING THE PENALTIES THEREIN, AND FOR OTHER PURPOSES”.

WHEREAS, Batas Pambansa Bilang 33, defines and penalizes certain prohibited acts inimical to the public interest and national security involving petroleum and/or petroleum products;

WHEREAS, adulteration of finished petroleum products or possession of adulterated finished petroleum products for the purpose of sale, distribution, transportation, exchange or barter; and underdelivery or underfilling beyond authorized limits in the sale of petroleum products or liquefied petroleum gas cylinders are pernicious practices that are rampant and widespread;

WHEREAS, there is an urgent need to curb, if not totally eliminate, such nefarious practices in the industry in order to better protect the consuming public;

WHEREAS, it is necessary to provide the implementing government agencies with increased administrative and criminal penalties with which it can effectively curtail petroleum product adulteration and shortselling as well as other prohibited acts and activities involving petroleum and/or petroleum products which are inimical to public interest and national security;

WHEREAS, in view of the foregoing considerations, it has become necessary to amend certain provisions of Batas Pambansa Bilang 33, as well as to provide new provisions in the law;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows:

SECTION 1. Section two of Batas Pambansa Bilang 33, as amended, is further amended to read as follows:

“SEC. 2. *Prohibited Acts.* – The following acts are prohibited and penalized:

“(a) Illegal trading in petroleum and/or petroleum products :

“(b) Adulteration of finished petroleum products, or possession of adulterated finished petroleum products for the purpose of sale, distribution, transportation, exchange or barter;

“(c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

“The oil company, petroleum refiller, marketer, dealer and retailer, as the case may be, and the hauler shall be responsible for the quantity and quality of the petroleum products delivered when the same is sold on

delivered basis.

“For the purpose of this subparagraph, the existence of the facts hereunder shall give rise to the following presumptions:

“(1) That cylinders containing less than the required quantity of liquefied petroleum gas which are not properly identified, tagged and set apart and removed or taken out from the display are and made accessible to the public by marketers, dealers, sub-dealers or retail outlets are presumed to be for sale;

“(2) In the case of a dispensing pump in a petroleum product retail outlet selling such products to the public, the absence of an out-of-order sign, or padlock, attached or affixed to the pump to prevent delivery of petroleum products therefrom shall constitute a presumption of the actual use of the pump in the sale or delivery of such petroleum products; and

“(3) Where the seal, whether official or of the oil company, affixed to the dispensing pump, tank truck or liquefied petroleum gas cylinder, is broken, or is absent or removed, it shall give rise to the presumption that the dispensing pump is under delivering, or that the liquefied petroleum gas cylinder is underfilled, or that the tank truck contains adulterated finished petroleum products or is underfilled;

“The use of such pumps, cylinders or containers referred to in subparagraph (1), (2), and (3) of this subparagraph, to deliver products for sale or distribution shall constitute prima facie evidence of intent of the hauler, marketer, refiller, dealer, retailer outlet operator to defraud;

“[(b)] (D) Hoarding of petroleum and/or petroleum products;

“[(c)] (E) Overpricing in the sale of petroleum products;

“[(d)] (F) Misuse of petroleum allocations;

“[(e)] (G) Speed contests and rallies involving mainly the use of motor vehicles, motor-driven watercraft or aircraft utilizing petroleum-derived fuels, including car and motorcycle rallies and drag racing, without the permit from the bureau of energy utilization; and

“[(f)] (H) Sky-diving, and water skiing except when methanol is used for the power- boat operation.”

SECTION 2. Section three of the same Act is hereby amended to read as follows:

“SEC. 3. *Definition of Terms.* – For the purpose of this Act, the following terms shall be construed to mean:

“Illegal trading in petroleum and/or petroleum products” –

“(A) the sale or distribution of petroleum products [for profit] without license or authority from the [Government] Bureau of Energy Utilization;

“(B) non-issuance of receipts by licensed [traders] oil companies, marketers, distributors, dealers, sub-dealers and other retail outlets, to final consumers; provided: that such receipts, in the case of gas cylinders, shall indicate therein the brand name, tare weight, gross weight, and the price thereof;

“(C) Refilling of liquefied petroleum gas cylinders without authority from

said bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;

“(D) Marking or using in such cylinders a tare weight other than the actual or true tare weight thereof;

“(E) Violation of rules and regulations of said bureau regarding the implementation of this Act;

“(F) Removal or unloading of petroleum products from any lorry, tank truck or delivery vehicle by any person other than the contracted purchaser, or in premises of the purchaser's retail outlet or business establishment;

“(G) Use of a pump metering unit which has not been properly calibrated and sealed by the office of the city or municipal treasurer where the station or outlet is located, or by the National Science and Technology Authority (NSTA), or by any other government agency authorized therefor, or in the absence thereof by the oil company; and

“(H) Use of a tank truck, lorry, hauling vehicle, or other conveyor other than vessels or barges for the delivery of petroleum products which has not been registered with the Bureau of Energy Utilization and the tanks, containers, or compartment thereof are not properly calibrated and sealed by the national science and technology authority or any other government agency authorized therefor [misrepresentation as to the quality and/or quantity; and sale by oil companies, distributors and/or dealers violative of government rules and regulations].

“Petroleum fuel product adulteration” – the mixing of any petroleum product with another finished or unfinished petroleum product or stock or with any non-petroleum substance or material that will result in product quality change, or resulting in the failure of such finished petroleum product to meet the required product specifications as prescribed by the products standards agency of the Ministry of Trade and Industry, for the purpose of this definition, finished petroleum products refers to any of the following: Premium gasoline, regular gasoline, aviation gasoline, aviation turbo fuel, kerosene, diesel fuel, industrial fuel or packaged lube oils. This definition shall not apply to alcogas mixture and oil emulsions.

“Underfilling or underdelivery” – Refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually beyond authorized limits than the quantity indicated or registered on the metering device of container. This refers, among others, to the quantity of petroleum products delivered by metered dispensing pumps in petroleum retail outlets or to liquefied petroleum gas in cylinder or to lube oils in packages.

“Hoarding” – the undue accumulation of a trader of petroleum and/or petroleum products beyond his or its normal inventory levels, and/or unjustified refusal to dispose of, sell or distribute the same to consumers; or the unreasonable accumulation by a person other than a trader of petroleum and/or petroleum products.

“Overpricing” – the sale of petroleum and/or petroleum products at prices in excess of those duly authorized by

the [Government] Board of Energy.

“Misuse of allocation” – the sale, transfer or diversion of mandated petroleum fuel allocation by oil companies, distributors, dealers or consumers contrary to the declared intent of the Government in making such allocation.”

SECTION 3. The same Act is further amended by inserting between Sections three and four thereof, a new Section which shall read as follows:

“SEC. 3-A. Rules and Regulations; Administrative Sanctions for violation thereof. – The Bureau of Energy Utilization shall issue such rules and regulations as are necessary to carry into effect the provisions of this act, subject to the approval of the Minister of Energy, after consultation with the affected industry sectors. Said rules and regulations shall take effect fifteen (15) days from the date of its publication in two (2) newspapers of general circulation.

“The Bureau of Energy Utilization is empowered to impose in an administrative proceeding, after due notice and hearing, upon any person who violates any provision of such rules and regulations, a fine of not more than ten thousand pesos (P 10,000.00) or to suspend or remove the license or permit of a hauler, marketer, refiller, dealer, sub-dealer or retailer or retail outlet: Provided, that hearing in any administrative proceedings may be waived by respondent: Provided, further, that during the pendency of such administrative proceeding, the bureau may suspend the business operations of such hauler, marketer, refiller, dealer, sub-dealer or retailer or retail outlet operator when the suspension is consistent with the

public interest. Administrative proceedings shall be decided within thirty (30) days after filing of the last responsive pleading by the respondent, or termination and completion of the administrative proceeding.

“All law enforcement and other concerned agencies of the government shall assist the Bureau of Energy Utilization in the implementation of this section.

“The administrative sanction that may be imposed shall be without prejudice to the filing of a criminal action as the case may warrant.”

SECTION 4. Section four of the same Act is amended to read as follows:

“SEC. 4. Penalties – Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than (two) TWENTY thousand pesos (P2,000.00) (P20,000.00) but not more than (ten) FIFTY thousand pesos (P10,000.00) (P50,000.00), or imprisonment of at least two (2) [months] YEARS but not more than [one (1)] FIVE (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products subject imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing [and] OR misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party [the payment made] shall be

indemnified twice the amount paid [the subject of forfeiture] and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is [a trader] an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

“Trials of cases arising under this Act shall be terminated within the thirty (30) days after arraignment.

“When the offender is a corporation, partnership, or other juridical person, the president, general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation, shall be criminally liable, in case the offender is an alien,

he shall be subject to deportation after serving the sentence.

“If the offender is a government official or employee, he shall be perpetually disqualified from office.”

SECTION 5. All laws, decrees, orders, instructions, rules and regulations which are inconsistent with, or contrary to, the provisions of this Act are hereby repealed or modified accordingly.

SECTION 6. This decree shall take effect upon its approval.

Done in the City of Manila, this 25th day of May in the year of Our Lord, nineteen hundred and eighty-three.

(sgd) FERDINAND E. MARCOS
President, Republic of the Philippines

By the President:

(sgd.) JUAN C. TUVERA
Presidential Executive Assistant

RULES AND REGULATIONS
ON THE IMPLEMENTATION OF BATAS PAMBANSA BLG. 33,
AS AMENDED BY PRESIDENTIAL DECREE NO. 1865, ISSUED ON MAY 25, 1983

RULE I
GENERAL PROVISIONS

SECTION 1. *Coverage.* –

These rules and regulations shall apply in the implementation of Batas PambansaBilang 33, as amended by Presidential Decree No. 1865 issued on May 25, 1983.

SECTION 2. *Definition of Terms.* –

For the purposes of these rules and regulations:

- (1) “Bureau” shall mean the Bureau of Energy Utilization.
- (2) “Ministry” shall mean the Ministry of Energy.
- (3) “Board” shall mean the Board of Energy.
- (4) “Act” shall refer to Batas PambansaBlg. 33, as amended by Presidential Decree No. 1865, issued on May 25, 1983.
- (5) An “Oil Company” is one that manufactures, processes and sells a broad range of petroleum products.

It shall refer to any of the following companies and such other companies that may be organized for this purpose or business:

- (i) Caltex Philippines, Inc.
 - (ii) Mobil Oil Philippines, Inc.
 - (iii) Petrophil Corporation
 - (iv) Pilipinas Shell Petroleum Corporation
- (6) A “Marketer” is one that is engaged in the sale or trading of petroleum products including LPG. A marketer may or may not manufacture or process the products sold. A marketer is differentiated from an oil company in that marketers include companies dealing in one product only, such as LPG. An oil company is also a marketer.
- (7) A “Dealer” refers to one involved in the sale or trading of petroleum products under contract with an oil company or marketer. The dealer shall sell only the products of the marketer.
- (8) A “Retail Outlet” refers to one who sells petroleum products directly to a consumer.
- (9) A “Hauler” is one engaged in the transportation of petroleum products as a business.
- (10) “NSTA” shall refer to the National Science and Technology Authority.
- (11) “PSA” shall refer to the Products Standards Agency.

RULE II
ILLEGAL TRADING

Non-compliance with or violation of the following provisions of this rule shall constitute ILLEGAL TRADING and shall be punishable under the Act.

SECTION 1. Bureau of Energy Utilization Licensing. –

No person or entity may produce, sell, transport, process, or manufacture, blend or package petroleum products for business or profit without prior registration and license from the Bureau of Energy Utilization. The registration and licensing requirements are/ shall be specified in BEU administrative rules and regulations in this regard.

Annual license renewal is required.

SECTION 2. Issuance of Receipts. –

All transactions involving the sale or transfer of petroleum products to final consumers or end-users must be covered by an official receipt bearing the registered name and address of the seller and detailing the quantity, price and type of petroleum product sold and the date of the transaction. In the case of the sale of LPG in cylinders, the receipt shall also indicate the brand of the product, the gross weight of the cylinder including its contents, the tare weight of the cylinder, excluding the contents, the net weight of the LPG contained, the total price and the unit price per cylinder.

SECTION 3. Refilling of LPG Cylinders. –

Refilling of LPG cylinders for purposes of sale or distribution for business or profit must have prior registration and license from the Bureau as provided for in BEU rules and regulations in this regard. Refilling of LPG cylinders not owned by the refilling entity may be performed only with the written authorization of the cylinder owner or the entity that has entitlement to such cylinders.

SECTION 4. Marking of LPG Cylinder. –

Within ninety (90) days of the effectivity of these Rules and Regulations, all LPG cylinders must be properly marked with the weight of the cylinder either engraved or embossed. The weight shall be expressed in kilograms

and shall be indicated to the last one-tenth (0.1) of one kilogram. The marking must be in a conspicuous spot in the cylinder and shall not be less than 0.6 cm in height. All LPG cylinders must also have the owner's trade name, a distinguishing color and distinctive serial number marked on every cylinder.

SECTION 5. *Unloading of Petroleum Products.*

Petroleum products may be unloaded only by/or in the presence of the buyer, or his authorized representative, as named on the sales invoice. Moreover, unloading of the product may be performed only at the premises designated by the buyer and indicated on the sales invoice. For this purpose, the supplier must indicate on the sales invoice the name of the buyer and the delivery point of every shipment.

SECTION 6. *Calibration and Sealing of Dispensing Pumps.* –

All fuel pumps used in petroleum retail outlets to dispense petroleum products sold to the public must be properly calibrated and after calibration immediately sealed by authorized calibrating entity. A dispensing pump that is not calibrated or sealed or one that goes off calibration shall be marked with an "out-of-order" sign and shall not be used until the said pump is recalibrated and resealed.

The authorized calibrating entities are the Municipal or City Treasurer, or in their absence or incapacity, the NSTA or, in their absence or incapacity, any other government agency authorized therefor, or in their absence, the oil company. In locations where the Municipal or City Treasurer is capable of calibration, a calibration by other authorized entities shall be provisional and subject to final calibration by the Treasurer. The authority performing the calibration shall install a seal after calibration to guard against unauthorized adjustment of the dispensing pump meter which seal may not be broken until the next calibration by an authorized entity.

The calibration shall be performed as often as may be necessary to correct any deviation from the appropriate delivered quantity as measured by a calibration bucket certified and sealed by the NSTA. Such a calibration bucket shall be maintained at all times in the retail outlet premises.

SECTION 7. *Calibration, Registration and Sealing of Petroleum Product Transport Containers.* –

All tank trucks, tank trailers and other mobile containers used to transport measured amounts of petroleum products in bulk must be registered with the Bureau. Moreover, the capacity of such transport containers must be certified and calibrated by the National Science and Technology Authority or by an other government agency authorized therefor. Calibration markers shall be fixed and provided with seal by the calibrating agency. Removal, tampering or absence of such seals shall disqualify such containers from further use until recalibration and resealing by the proper authorities is performed. In the absence or incapacity of a properly constituted authority to perform this requirement, calibration and sealing by the oil company shall suffice.

To guard against pilferage in transit, tank trucks, tank trailers and other mobile containers of petroleum products in bulk shall have all the valves, hatches, and other openings sealed closed by the marketer before leaving the source depot. Such seal may not be removed, tampered or broken except by buyer or his representative, or the supplier, and only at their respective places of business.

A broken or tampered valve or hatch seal, or the absence of one, shall give rise to the presumption that the container is underfilled or that the product contained is adulterated and the shipment may be refused by the buyer.

SECTION 8. *LPG Cylinder Sealing.* –

Within one hundred eighty (180) days from the effectivity of these rules and regulations, all LPG cylinders shall be provided with seal after every filling. LPG in cylinders with broken seal or without seal shall not be sold or distributed thereafter.

The seal must be of the type that must be broken or destroyed before the product can flow out of the cylinder. The seal shall be subject to approval of the Bureau.

The marketer and the filling plant, if the latter is a different entity, shall be jointly responsible for providing the seal required under the Act.

RULE III

PETROLEUM PRODUCT ADULTERATION

SECTION 1. Petroleum products not meeting the pertinent PSA specifications shall be deemed adulterated: *Provided*, That in the case of the octane number specifications for gasoline, a deviation of one (1) octane or less below the minimum shall be considered as meeting specifications for the purpose of the Act.

Mixing water or other substances not miscible and forming a separate layer from the petroleum product, in quantities exceeding the PSA allowable water and sediments content, shall constitute adulteration.

The sale, distribution, transportation, exchange or barter of adulterated products as defined in this Section or possession thereof for any of the above purposes, shall constitute an act of adulteration prohibited and penalized under the Act.

SECTION 2. *Sampling and Testing of Petroleum Products by Oil Companies.* –

(a) Oil companies shall take storage tank samples after every shipment of premium and regular gasoline to their depots/bulk

plants and shall keep such samples except where such storage tank samples have been tested, and found to meet the PSA specifications in which case the results of the test shall be duly recorded and kept in the depot for at least one year. Each sample shall be clearly identified as to source tank and date of sampling. The sample shall be kept for at least three weeks more after the next shipment.

- (b) Oil companies shall expeditiously respond to dealer request for confirmatory or verification testing of petroleum products.
- (c) Oil companies shall also periodically take samples and test premium and regular gasoline stock of their retail outlets at least once every three (3) months. The test results shall include octane number and shall be reported to the Bureau on a monthly basis.

SECTION 3. *Testing or Retention of Sample of Petroleum Products by the Dealer/Operator.* –

As a measure against delivery of adulterated products, dealers are required to do either (a) or (b) below:

- (a) The dealer/operator shall take one (1) liter sample each of the premium and/or regular gasoline delivered. The samples shall be placed in a suitable container and sealed in the presence of the tank truck driver who shall verify the sample-taking by so indicating on the invoice. The sample shall be kept by the dealer for at least one (1) month or until the third delivery thereafter, whichever is shorter.
- (b) Using a hydrometer, take the API gravity or density and obtain the corrected API gravity at 60 degrees Fahrenheit or specific gravity at 15 degrees Celsius and compare this against the API gravity at 60 degrees.

(c) Fahrenheit or density at 15 degrees Celsius as indicated in the product invoice. For this purpose, oil companies shall indicate the API gravity at 60 degrees Fahrenheit or density at 15 degrees Celsius of all deliveries of premium and regular gasoline the corresponding invoice. A dealer may refuse to accept the shipment if the API gravity difference exceeds by 0.6 degrees API or the density difference exceeds by 0.0024. Both oil company and dealer specific gravity or density readings should be recorded in a logbook kept for this purpose.

Dealers may require their oil company supplier to perform verifactory quality tests on products received.

SECTION 4. *Sample Taking by the Bureau.* –

Bureau inspectors and other law enforcement agents may require oil companies, marketers, dealers, haulers and retail outlets to provide one (1) liter sample of petroleum products for sale for laboratory test purposes.

SECTION 5. *Removal of Water Phase in Underground Tank by Dealer/Operator of Petroleum Product Retail Outlet.* –

The oil company supplier of dealers and operators of petroleum retail outlets should ensure that the product suction line of their storage tanks is elevated at least four (4) inches from the bottom of the tank and the dealers and operators of petroleum retail outlets should periodically remove the water phase to avoid water draw off with the product.

RULE IV

UNDERDELIVERY AND UNDERFILLING

SECTION 1a. *Underdelivery in Dispensing Pumps.* –

The quantity of petroleum products delivered by dispensing pumps in retail outlets as

measured by the dispensing pump meter shall not be less than actual quantity by more than 50 millimeters for every 10 liters as measured by a calibrating bucket certified by the NSTA. The calibrating bucket shall be filled to the 10 liter mark three (3) times as low, medium and fast flow rates and the average quantity as measured by the pump meter shall constitute the quantity to be compared with the actual quantity. Pumps delivering less than the tolerable minimum shall be deemed to be underdelivering. Use of such pumps in the sale of petroleum products shall be punishable under the Act. The absence of an “out-of-order” sign or padlock on the pump that is found under-delivering shall constitute a presumption of actual use of the pump in the sale of the petroleum product. A dispensing pump found with broken or no seal shall be presumed to be underdelivering and absence of “out-of-order” notice or padlock shall likewise give rise to a presumption of actual use of the pump in the sale of the product.

SECTION 1b. *Daily Testing of Dispensing Pumps by Dealer.* –

All retail outlets shall test dispensing pump meters daily before opening for business using an NSTA calibrated bucket. Any pump not delivering the correct quantity shall be marked with an “out-of-order” sign and shall not be used until said pump is recalibrated and resealed by a proper authority.

Retail outlets are given thirty (30) days from the date of effectivity of these Rules to secure an NSTA certified calibrating bucket and comply with the requirement of this Section. The oil companies shall be responsible for informing their respective dealers of the requirements of this Section and of reporting to the Bureau their dealer’s compliance.

The dealer calibration bucket must be recalibrated and resealed once every twelve (12) months by the NSTA.

The dealer shall keep a written record or logbook of the daily testing required herein shall be made available to Bureau inspectors and to the public upon demand.

SECTION 1c. *Calibration of Dispensing Pumps by Oil Companies.* –

Oil companies shall respond expeditiously to their dealer's request for calibration of pumps subject to the provisions of Section 6, Rule 12 hereof.

All oil companies shall also periodically calibrate all of the dispensing pumps of their dealers and check their calibration bucket at least once every sixty (60) days. The results of these calibrations must be reported to the Bureau every three (3) months.

All calibrations shall be duly documented and signed by the mechanic who performed the calibration and check their calibration bucket and countersigned by the retail outlet dealer. A copy of this document shall be kept on file at the retail outlet.

After the calibration, a sticker of at least one-half (1/2) inch by two (2) inches bearing the date of the calibration and the initials of the mechanic who calibrated the pump shall be posted on the face of the pump calibrated.

SECTION 1d. *Testing of Dispensing Pumps by Bureau Personnel and/or by Other Law Enforcement Agents.* –

The dealer shall allow and cooperate with Bureau inspectors and other law enforcement agents in testing the calibration of dispensing pumps.

SECTION 2a. *Underfilling of LPG Cylinders.* –

In case of LPG for sale in cylinders, the net LPG quantity contained shall not be more than three tenths (0.3) of one kilogram less than the required cylinder content. Shortage in the quantity contained exceeding this

quantity shall constitute underfilling. A broken or tampered seal, or the absence of one, shall give rise to the presumption that the LPG cylinder is underfilled. Possession of underfilled LPG cylinders not properly so identified or taken out from the sales area accessible to the public, gives rise to presumption that they are for sale.

LPG cylinders with water capacity of twenty-one (21) liters to twenty-nine (29) liters shall contain eleven (11) kilograms.

SECTION 2b. *Weighing Devices Required.* –

All LPG marketers, dealers and retail outlets selling directly to end-users shall maintain at all times in their premises a suitable weighing scale for LPG cylinders calibrated and sealed by the proper authority. Such devices shall meet the required contents before selling or delivering these in its sales area accessible to its customers.

SECTION 2c. *Checking of LPG Cylinder Content by Dealers and Retail Outlets.* –

All marketers, dealers and retail outlets selling directly to end-users shall check by weighing that the LPG in its cylinders meet the required contents before selling or delivering or placing these in its sales or pick-up area accessible to its customers.

SECTION 2d.

Oil companies, marketers and dealers shall periodically sample and check the LPG sold by their respective dealers and/or retail outlets to verify compliance with the LPG contents requirement at least once every ninety (90) days. They shall likewise check whether dealers' and/or retail outlets' weighing devices are calibrated and sealed in accordance with Section 2b above. The results of such test shall be recorded and kept by the oil company, marketer or dealer for at least one (1) year and shall be made available to the Bureau on demand.

RULE V

HOARDING

SECTION 1. All oil companies and marketers shall be open during normal business hours herein set to be from eight in the morning (8:00 A.M.) to four-thirty in the afternoon (4:30 P.M.), Monday through Friday.

All dealers of gasoline products shall be open daily and during normal business hours herein set to be from seven in the morning (7:00 A.M.) to seven in the evening (7:00 P.M.). Dealers and retail outlets of liquefied petroleum gas shall be open during normal business hours set to be from eight in the morning (8:00 A.M.) to five in the afternoon (5:00 P.M.), Monday through Friday.

Except for good cause, all oil companies, marketers, dealers and retail outlets may not refuse to sell petroleum products. Refusal to sell when the product is available and the consumer is paying in cash shall constitute hoarding except when the available product consists of unusable bottoms usually consisting of the bottom four inches content of the storage tank in the case of gasoline dealers.

SECTION 2. Undue accumulation of petroleum products in times of tight supply and shortly before an anticipated price increase by marketers, retail outlets or consumers shall constitute hoarding. Undue accumulation shall mean quantities beyond the normal inventory levels maintained during the immediately preceding thirty (30) days for marketers or retail outlets, and in the case of consumers.

RULE VI

OVERPRICING

SECTION 1. Petroleum products whose prices are set by the Board of Energy may not be sold above such fixed prices. Sale of petroleum products at prices in excess of the fixed prices shall constitute overpricing punishable under

the Act.

SECTION 2. In outlying areas where no price is published by the Board of Energy, the retailer shall not sell at a price not more than the ceiling price in the nearest locality where a Board of Energy price is set. A retailer may, for reasonable cause, request the Board of Energy to set a different price for his locality.

RULE VII

MISUSE OF PETROLEUM ALLOCATION

SECTION 1. In times of short supply of petroleum products, the Minister of Energy and/or any other authority created for this purpose may, with the approval of the President of the Philippines allocate or ration the available supplies. Any consumer or marketer who sells, exchanges, disposes or uses such allocation or ration other than for the purpose of which granted by the authority shall be in violation of the Act. Any misrepresentation for the purpose of gaining subject allocation shall likewise be a violation of the Act.

RULE VIII

SPEED CONTESTS OR RALLIES

SECTION 1. Speed contests or rallies involving mainly the use of motor powered vehicles, watercraft or aircraft may not be held without prior authorization and permit from the Bureau.

RULE IX

SKYDIVING AND WATERSKIING

SECTION 1. Skydiving and waterskiing for pleasure or sports requiring the use of motorized aircraft or watercraft, respectively, shall not be allowed except when the fuel used in the aircraft or watercraft is methanol.

RULE X

IMPOUNDING OF EVIDENCE

SECTION 1. Impounding of petroleum and/or petroleum products constituting

evidence of illegal trading, adulteration, short selling, hoarding, overpricing and misuse of petroleum allocation shall be applicable in the following cases:

- (1) Adulterated petroleum products in bulk depots, retail outlets, or in transit.
- (2) LPG in cylinders found to be underfilled.
- (3) Petroleum products held in violation of the Anti-Hoarding provisions of the Act.
- (4) Petroleum product allocations obtained or disposed in violation of the Misuse of Allocation provisions of the Act.
- (5) Petroleum products sold at a price exceeding the authorized price including all stocks still in possession of the seller.
- (6) Petroleum products diverted from buyer's designated delivery point.
- (7) Petroleum products sold without Bureau's license or transported by haulers without Bureau license.
- (8) Petroleum products sold without receipts.
- (9) LPG filled into cylinders by filling plants without license from the Bureau and/or filled in cylinders not owned by the filling plant or marketer and who do not have written authorization by the owner to use or fill the cylinder.
- (10) LPG in cylinders without tare weight, or without seal after the sealing requirement goes into effect.

During the pendency of the criminal or administrative proceedings, the petroleum products stored in fixed tanks and which constitute evidence may be impounded in site by the appropriate authorities.

RULE XI

ADMINISTRATIVE PROCEEDINGS

SECTION 1. Requirement of Notice and Hearing and Waiver Thereof. –

Through the administrative proceedings, the Bureau is empowered to impose, after due notice and hearing, the penalties stated hereunder for violation of any provision of the Act and these implementing rules and regulations: *Provided, however,* That hearing in any administrative proceedings may be waived by respondent.

SECTION 2. Duration of Administrative Proceeding. –

Administrative proceeding shall be decided within thirty (30) days after filing of the last responsive pleading by the respondent, or the termination and completion of the administrative proceedings.

SECTION 3. Effect of Imposition of Administrative Sanction. –

The administrative sanction that may be imposed shall be without prejudice to the filing of a criminal action as the case may warrant.

SECTION 4. Administrative Penalties. –

Pursuant to the power of the Bureau to issue, suspend or revoke licenses, and in order to protect the public from short selling and adulteration of petroleum products, the following administrative actions may be taken:

- (a) Preventive Suspension – During the pendency of an administrative proceeding, the Bureau may suspend the operations of an oil company, marketer, dealer, hauler, LPG refiller or retail outlet where any one of the following circumstances are present:

- (1) Where at least three pumps in a retail outlet are found to be under delivering by 100 milliliters or greater per 10 liters;
 - (2) Where more than fifty (50) percent of the pumps in an outlet are under delivering by 100 milliliters or greater per 10 liters;
 - (3) Where the under delivering pump or pumps are without seal or the seal is broken or tampered;
 - (4) Where the product sold is found adulterated by BEU inspectors, as to the tank and pump involved;
 - (5) Where more than twenty (20) percent of the LPG cylinders inspected and tested are underfilled;
 - (6) Where an LPG marketer, refiller, dealer or retail outlet sells LPG in cylinders without the required seal;
 - (7) Where tank truck, lorry, hauling vehicle and other conveyors are not calibrated and sealed as required by the Act.
- (b) The preventive suspension shall not exceed thirty (30) days.
- (8) Fine or suspension of not more than Ten Thousand Pesos (P 10,000.00); or
 - (9) Suspension of license; or
 - (10) Revocation of license.

SECTION 5. *Bureau Rules of Practices and Procedures Applicable.* –

Whenever practicable and convenient, the provisions of *Bureau Rules of Practice and Procedures Governing Hearings Before the Bureau* issued on August 2, 1982, and which took effect on October 18, 1982, shall be applicable in the administrative proceedings under the Act.

RULE XII
REPEALING CLAUSE

SECTION 1. Any rule or regulation inconsistent with the provisions of these Rules is hereby repealed or modified accordingly.

RULE XIII
SEPARABILITY

SECTION 1. If, for any reason or reasons, any part of these Rules be declared unconstitutional or invalid, no other part of provisions hereof shall be affected thereby.

RULE XIV
EFFECTIVITY

SECTION 1. These Rules and Regulations shall take effect fifteen (15) days from the date of its publication in two (2) newspapers of general circulation.

Makati, Metro Manila, 3 August 1983.

ORLANDO GALANG
Acting Director
Bureau of Energy Utilization

APPROVED:

GERONIMO Z. VELASCO
Minister of Energy

**REPUBLIC OF THE PHILIPPINES
MINISTRY OF ENERGY**

BUREAU OF ENERGY UTILIZATION

BEU MEMORANDUM CIRCULAR 85-3-348

TO: ALL AUTHORIZED LIQUIFIED PETROLEUM GAS (LPG) REFILLERS

**SUBJECT: AMENDMENT TO RULE IV, SECTION 2a (UNDERFILLING OF LPG CYLINDER) OF THE
RULES AND REGULATIONS ON THE IMPLEMENTATION OF BATAS PAMBANSA BLG. 33, AS
AMENDED BY PRESIDENTIAL DECREE NO. 1865 ISSUED ON MAY 25, 1983**

SECTION 1. Rule [V, Section 2a is hereby amended to read as follows:

SECTION 2a. UNDERFILLING OF LPG CYLINDERS

The net LPG content sold in LPG cylinders with water capacity of twenty one (21) liters to twenty-nine (29) liters shall not be less than 11.0 kilograms when measured at the refilling plants. The net quantity contained when sold to the consumer shall not be more than three tenths (0.3) of one kilogram less than 11.0 kilograms, a shortage of more than three tenths (0.3) of one kilogram per cylinder shall constitute an act of underfilling. A broken or tampered seal, or the absence of one, shall give rise to the presumption that the LPG cylinder is underfilled. Possession of underfilled LPG

cylinders not properly so identified or taken out from sales area accessible to the public gives rise to the presumption that they are for sale. Moreover, the allowable deviation in the contents of other cylinder sizes shall not exceed three tenths (0.3) of one kilogram from the indicated net weight.

SECTION 2. This amendment shall take effect fifteen (15) days from the date of its publication in two newspapers of general circulation.

Makati, Metro Manila, 04 March 1985.

ORLANDO L. GALANG

Acting Director

Bureau of Energy Utilization

EIAB MEMORANDUM CIRCULAR NO. 95-03-001

WHEREAS, pursuant to Sec. 12 (c) and Sec. 17 of R.A. No. 7638, the Department of Energy through the Energy Industry Administration Bureau is mandated by law to regulate among others the trade and business, sale, marketing, and distribution of Liquefied Petroleum Gas (LPG);

WHEREAS, it has come to the knowledge of the Bureau that a number of 50 kg. cylinders presently used in the market do not have any cylinder head collar making it difficult to handle and/or hold these cylinders, thus incidents of dropping of cylinders during deliveries are not far-fetched, which result to leakages of gas, endangering human lives and properties;

WHEREAS, as a precautionary measure, all LPG cylinders, especially the 50 kg. cylinders, must have cylinder head collars for better handling and for safety reasons;

WHEREAS, the installation of cylinder head collars by duly accredited LPG tank manufacturers or repair service entities cannot be done on a short period without adversely affecting the LPG supply to consumers, thus in the interim the use of an LPG valve protective cap on all 50 kg. cylinders would suffice until such time that the required LPG tank collar is installed;

WHEREAS, the Bureau is also aware of instances wherein refilled LPG cylinders comes out or are released from the refilling plant with no brand name indicated on the refilled cylinders, thus making it difficult to identify the source or owner of the tank for purposes of pinpointing responsibility in cases of underfilling and/or unsafe condition of the tank;

WHEREAS, reports have also been received by this Bureau from the LPG refillers/marketers of the existence of several LPG delivery trucks with different brand-names and/or unbranded for refilling with no signboard or name indicated on the delivery truck showing the specific LPG brand name which the truck represents or is authorized by this Bureau to carry, resulting in the problem of distinguishing the legitimate LPG truck hauler from those haulers that are unauthorized or not duly registered with this Bureau;

WHEREFORE, premises considered, and by virtue of the powers vested in this Bureau, it is ordered, as it is hereby ordered, the following:

(1) Within one (1) year from the date of this Circular, all LPG refillers and/or marketers shall cause the installation of cylinder head collar on all LPG tanks especially the 50 kg. tanks owned by them or which have come to their possession for refilling and/or use. The installation

of said cylinder collar should be made only by government accredited LPG tank manufacturer or installer. To ensure compliance with the safety standards on repair of LPG tanks, the accredited manufacturer/installer must submit a certification to this Bureau as soon as said repair and installation is completed, attesting to such compliance.

- (2) Pending completion of the installation of the required cylinder collar, all LPG refillers and/or marketers shall install protective cylinder valve cap or cover on all 50 kg. cylinders, immediately upon notice of this Circular. Said valve cap shall always be used especially during deliveries of cylinders and while the same is in transit unless the cylinder collar has already been installed, in which case the protective valve cap can be dispensed with.
- (3) Immediately upon notice of this Circular, all LPG refillers and/or marketers are strictly prohibited from releasing; or discharging from their refilling plants and/or selling to the consumers any LPG tanks whether 11 kg. or 50 kg. with no brand name indicated on the tanks (unbranded). Accordingly, upon effectivity of this Circular, all LPG cylinders released from the refilling plant or LPG depots should bear clearly the brand name of the refiller or marketer as the case may be.
- (4) Furthermore, all LPG refillers and/or marketers are prohibited from refilling LPG tanks coming from LPG trucks or haulers that do not have clear and legible signboard attached to said delivery trucks showing the specific LPG brand name that it represents or sells to the general public. The absence of the signboard or LPG brand name on the delivery trucks gives rise to the presumption that said hauler is not duly registered or authorized by this Bureau. Corollary thereto, all owners of LPG truck haulers are directed

to strictly observe the requirement on the display of a signboard on the delivery trucks as aforementioned.

- (5) Any violation of the directives in this Circular shall be subject to administrative sanctions:

First violation	Warning and fine of Three Thousand Pesos (P 3,000.00)
Second Violation	Fifteen (15) days suspension of operation and fine of Five Thousand Pesos (P 5,000.00)
Third Violation	Thirty (30) days suspension of operation and fine of Five Thousand Pesos (P 5,000.00)
Fourth Violation	Revocation and/or cancellation of license.

- (6) This Circular shall take effect fifteen (15) days after its publication in the *Official Gazette*.

NEPTALI S. FRANCO
Director

Approved by:

FRANCISCO L. VIRAY
Secretary

DEPARTMENT CIRCULAR NO. 2000-05-007

EMBOSSSED IDENTIFYING MARK ON LPG CYLINDERS AND INSTILLATION OF COLLARS WITH DISTINCTIVE DESIGN OR MARKINGS ON EXISTING LPG CYLINDERS DURING REQUALIFICATION

FOR :

- LPG REFILLERS ASSOCIATION (LPGRA)
- PHILIPPINE LPG ASSOCIATION (PLGPA)
- SOUTHERN ISLAND TASK FORCE (SILTF)
- LIQUIGAZ PHILIPPINES CORPORATION (LPC)
- PETRONAS ENERGY PHILIPPINES, INC. (PEPPI)
- PRYCE GASES INCORPORATED (PGI)
- NATION GAS (NATION)
- TOTAL LPG PHILIPPINES (TOTAL)
- PETRON CORPORATION (PETRON)
- PILIPINAS SHELL PETROLEUM CORP. (PSPC)
- CALTEX (PHILIPPINES), INC. (CPI)
- ISLAND AIR PRODUCTS (ISLAND)
- CAPITOL ALLIED TRADING CORP. (CATGAS)
- MANILA GAS CORPORATION (MGC)
- PHILIPPINE ASSOCIATION OF LPG CYLINDERRS MANUFACTURERS, INC. (PALCMI)
- ALL OTHERS CONCERNED

WHEREAS, pursuant to Section 2 and Section 5 (k) of Chapter 1 of RA No. 7638, the Department of Energy (DOE) shall formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution;

WHEREAS, it has come to the attention of this Office that there is a substantial number of LPG cylinders circulating without appropriate distinguishing marks to identify the owner or source for purpose of pinpointing responsibility in cases of underfilling and other violations related to said cylinders;

WHEREAS, with the intensified drive against violators in the conduct of the downstream LPG industry the DOE finds that there is a need to address the problem of proper identification;

WHEREFORE, premises considered, all concerned LPG players are hereby directed to

strictly comply with the following:

- (1) In the manufacture of new LPG cylinders the body shall be embossed with clear markings or signs indicating ownership.
- (2) New and locally manufactured cylinders shall conform to the required Product Standard (PS) mark.
- (3) For imported cylinders the same shall be marked with the appropriate Import Commodity Clearance (ICC) prior to local circulation.
- (4) For existing LPG cylinders without the embossed markings or signs, including all imported cylinders, distinctive collars or collars with distinctive designs or markings of permanent character shall be installed upon requalification or prior

to local circulation, as the case may be.

- (5) The installation of the required collar or distinctive markings of permanent character shall be made only by government accredited cylinders manufacturers or requalifiers with the date of installation properly indicated thereon.

This Department Circular shall take effect on (1) month after its complete publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, May 26, 2000.

MARIO V. TIAOQUI
Secretary

DEPARTMENT CIRCULAR 2000-06-010

REVISED SCHEDULE OF PENALTIES IN THE LPG INDUSTRY OF 2000

WHEREAS, Batas Pambansa Blg. 33, as amended by P.D. 1865 defined certain prohibited acts inimical to the public interest and national security involving petroleum and/or petroleum products, prescribing penalties therefore and for other purposes;

WHEREAS, in 1983, the Bureau of Energy Utilization of the then Ministry of Energy issued rules and regulations on the implementation of Batas Pambansa Blg. 33, as amended by P.D. 1865;

WHEREAS, Section 15 of Republic Act No. 8479 provides for additional powers for the DOE Secretary which may readily be availed of to deter, restrain, and/or penalize any and all illegal, irregular, and anomalies business

practice or activity, with the end in view of cultivating and instilling discipline, honesty, and fair trade practices in the consciousness of each and every player in all levels of the downstream oil industry.

WHEREAS, the recent development in the downstream oil industry more particularly the transition and shift from regulation to deregulation, the entry of new players in the industry, the growing concerns of consumers, relative to unfair trade practices, and the pressing need for government to protect and safeguard public interests has made it imperative for the Department of Energy (DOE) to draw and formulate a new set of penalties for the various offenses relative to the LPG industry as outlined in the

Implementing Rules and Regulations (IRR) of Batas Pambansa Bilang 33, as amended by the Presidential Decree No. 1865.

WHEREFORE, premises considered, the foregoing schedule of penalties shall complement said IRR and is hereby adopted for implementation subject to the pertinent provisions on procedures prescribed in the latter.

ARTICLE I GENERAL PROVISIONS

SECTION 1. SHORT TITLE - This Department Circular shall be known as the *“Revised Schedule of Penalties in the LPG Industry of 2000.”*

SECTION 2. COVERAGE - This Department Circular shall apply to all persons or entities engaged in any and all activities involving the commerce of Liquefied Petroleum Gas (LPG).

SECTION 3. DEFINITION OF TERMS -

- (a) **Refiller** - refers to any person, whether natural or juridical, who buys LPG in bulk from bulk suppliers, refills LPG into cylinders under his own brand name or that of other LPG marketers.
- (b) **Marketer** - refers to any person, whether natural or juridical, engaged in the sale of LPG, whether in bulk or retail, under his own brand name.
- (c) **Dealer** - refers to any person, whether natural or juridical, engaged in the sale of LPG bottled into cylinders under contract with an oil company or marketer who owns the brand.
- (d) **Retail Outlet** - refers to one who sells LPG bottled into cylinders directly to a consumer, with maximum floor stock of twenty (20) LPG cylinders.

(e) **Tare-weight** - refers to the weight of the LPG cylinder engraved in the collar and shall be expressed in kilograms indicated to at least one-tenth (0.1) of one kilogram. The marking shall not be less than 2.0 cm. in height.

(f) **Authorized of Appropriate LPG Seal** - refers to the protective cover placed on the gas outlet of an LPG cylinder, of the type that must be broken or destroyed before the LPG can flow out of the cylinder. It shall have a distinctive design, symbol, emblem or mark, identifying the owner of the LPG cylinder. The seal shall be subject to approval by the Department of Energy.

ARTICLE II TABLE OF OFFENSES AND THEIR CORRESPONDING PENALTIES

SECTION 4. NO PRICE DISPLAY BOARD -

LPG Marketer/LPG Dealer/LPG Retail Outlet

- 1st Offense - Reprimand/warning letter
- 2nd Offense - Recommend suspension of business operation to the proper local government unit
- 3rd Offense - Recommend business closure to the proper local government unit and initiate criminal proceedings

SECTION 5. NO WEIGHING SCALE –

A. LPG REFILLER/MARKETER

- 1st Offense - Fine of P 5,000
- 2nd Offense - Fine of P 10,000
- 3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

- 1st Offense - Fine of P3,000
- 2nd Offense - Fine of P7,000

3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

1st Offense - Reprimand

2nd Offense - Fine of P500.00

3rd Offense - Fine of P1,000.00

SECTION 6. NO TARE WEIGHT OR INCORRECT TARE WEIGHT MARKINGS (REQUIREMENT ON ENGRAVED TARE WEIGHT SHALL TAKE EFFECT TWO (2) YEARS AFTER EFFECTIVITY OF THIS CIRCULAR)

A. LPG REFILLER/MARKETER

1st Offense - Fine of P3,000 for each cylinder

2nd Offense - Fine of P5,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

1st Offense - Fine of P2,000 for each cylinder

2nd Offense - Fine of P4,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

1st Offense - Fine of P1,000 for each cylinder

2nd Offense - Fine of P2,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit.

SECTION 7. NO APPROPRIATE OR AUTHORIZED LPG SEAL

A. LPG REFILLER/MARKETER

1st Offense - Fine of P3,000 for each cylinder

2nd Offense - Fine of P5,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

1st Offense - Fine of P2,000 for each cylinder

2nd Offense - Fine of P4,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

1st Offense - Fine of P1,000 for each cylinder

2nd Offense - Fine of P2,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit

SECTION 8. NO TRADE NAME, UNBRANDED LPG CYLINDERS, NO SERIAL NUMBER, NO DISTINGUISHING COLOR, NO EMBOSSED IDENTIFYING MARKINGS ON CYLINDER OR DISTINCTIVE COLLAR OR DESIGN (REQUIREMENT ON SERIAL NUMBER AND DISTINCTIVE COLLAR OR DESIGN SHALL TAKE EFFECT TWO (2) YEARS AFTER EFFECTIVITY OF THIS CIRCULAR).

A. LPG REFILLER/MARKETER

1st Offense - Fine of P4,000 for each cylinder

2nd Offense - Fine of P5,000 for each cylinder

3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

- 1st Offense - Fine of P3,000 for each cylinder
- 2nd Offense - Fine of P4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

- 1st Offense - Fine of P1,000 for each cylinder
- 2nd Offense - Fine of P2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 9. UNDERFILLED LPG CYLINDERS

A. LPG REFILLER/MARKETER

- 1st Offense - Fine of P4,000 for each cylinder
- 2nd Offense - Fine of P6,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

- 1st Offense - Fine of P3,000 for each cylinder
- 2nd Offense - Fine of P4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

- 1st Offense - Fine of P1,000 for each cylinder
- 2nd Offense - Fine of P2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 10. TAMPERING, ALTERING, OR MODIFYING OF LPG CYLINDER THRU ANY MEANS SUCH AS BUT NOT LIMITED TO CHANGING THE VALVE, REPAINTING, AND RELABELLING BY ANY PERSON OR ENTITY OTHER THAN THE LEGITIMATE AND REGISTERED OWNER OF THE SAME. FOR THIS PURPOSE, LPG REFILLER, MARKETER, DEALER, OR RETAIL OUTLET, AS THE CASE MAY BE, WHO HAS POSSESSION OF SUCH ILLEGALLY TAMPERED, ALTERED, OR OTHERWISE MODIFIED LPG CYLINDER SHALL BE HELD LIABLE FOR THIS OFFENSE.

A. LPG REFILLER/MARKETER

- 1st Offense - Fine of P5,000 for each cylinder
- 2nd Offense - Fine of P10,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

- 1st Offense - Fine of P3,000 for each cylinder
- 2nd Offense - Fine of P5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

- 1st Offense - Fine of P1,500 for each cylinder
- 2nd Offense - Fine of P3,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 11. UNAUTHORIZED DECANTING OR REFILLING OF LPG CYLINDERS

- 1st Offense - Fine of P5,000 for each cylinder

- 2nd Offense - Fine of P10,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 12. HOARDING OF PETROLEUM PRODUCTS INCLUDING LIQUEFIED PETROLEUM GAS

- 1st Offense - Fine of P10,000 per cylinder
- 2nd Offense - Recommend business closure to the proper local government unit plus the filing of appropriate criminal action.

SECTION 13. REFUSAL TO ALLOW OR COOPERATE WITH DULY AUTHORIZED INSPECTORS OF THE ENERGY INDUSTRY ADMINISTRATION BUREAU (EIAB) OF THE DEPARTMENT OF ENERGY IN THE CONDUCT OF THEIR INSPECTION/INVESTIGATION, WHETHER REGULAR AND ROUTINARY OR COMPLAINT-INITIATED.

- 1st Offense - Fine of P10,000
- 2nd Offense - Recommend business closure to the proper local government unit

SECTION 14. REFUSAL OR FAILURE TO PAY FINE – The Department of Energy shall recommend to the proper local government unit the closure of business of a respondent who refuses or fails to pay any administrative fine without prejudice to the filing of an appropriate criminal action if warranted.

**ARTICLE III
FINAL PROVISION**

SECTION 15. SUCCESSION OF OFFENSES

– For purposes of determining the First, Second, and Third offenses the lapse of five (5) years of fifteen (15) official inspections of the Department of Energy, which ever comes first, from the time of the commission of the previous offense, shall be indicative of good business conduct and thus operate to give a new and clean record to the former offender. This, however, shall have no application in the event that the offender’s LPG business has been previously closed by the proper local government unit pursuant to the provisions of this Circular.

SECTION 16. MAXIMUM TOTAL PENALTY –

In the imposition of pecuniary penalties the total fine shall not exceed Twenty Thousand Pesos (P20,000.00) for retail outlets.

SECTION 17. SEPARABILITY CLAUSE –

If, for any reason, any part or parts of these provisions be declared unconstitutional or invalid, no other part of the provisions hereof shall be affected thereby.

SECTION 18. EFFECTIVITY –

This Department Circular which supersedes Department Circular No. 2000-05-008 shall take effect one (1) month after its complete publication in two (2) newspapers of general circulation. However, the requirements of “Engraved Tare Weight Marking” referred to in Section 6 and “Serial Number and Distinctive Collar or Design” referred to in Section 8 shall take effect two (2) years after effectivity of this circular.

(SGD)
MARIO V. TIAOQUI
Secretary

RELATED CASE:

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION
G.R. No. 159149
June 26, 2006

The HONORABLE SECRETARY VINCENT S. PEREZ, in his capacity as the Secretary of the Department of Energy, petitioner,

vs.

LPG REFILLERS ASSOCIATION OF THE PHILIPPINES, INC., respondent

QUISUMBING, J.:

Before us is a petition for review on certiorari under Rule 45, assailing the Decision¹ and Order² of the Regional Trial Court of Pasig City, Branch 161, in SCA Case No. 2318, which nullified Circular No. 2000-06-010 of the Department of Energy (DOE).

The facts are undisputed.

Batas Pambansa Blg. 33, as amended, penalizes illegal trading, hoarding, overpricing, adulteration, underdelivery, and underfilling of petroleum products, as well as possession for trade of adulterated petroleum products and of underfilled liquefied petroleum gas (LPG) cylinders.³ The said law sets the

¹ *Rollo*, pp. 64-72. Penned by Judge Alicia P. Mariño-Co. Id. at 73-77.

² SEC. 2. *Prohibited Acts*. – The following acts are prohibited and penalized:

- (a) Illegal trading in petroleum and/or petroleum products;
- (b) Adulteration of finished petroleum products, or possession of adulterated finished petroleum products for the purpose of sale, distribution, transportation, exchange or barter;
- (c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

xxxx

monetary penalty for violators to a minimum of ₱20,000 and a maximum of ₱50,000.⁴

On June 9, 2000, Circular No. 2000-06-010 was issued by the DOE to implement B.P. Blg. 33, thus:

SECTION 4. NO PRICE DISPLAY BOARD –

LPG Marketer/LPG Dealer/LPG Retail Outlet

- 1st Offense - Reprimand/warning letter
- 2nd Offense - Recommend suspension of business operation to the proper local government unit
- 3rd Offense - Recommend business closure to the proper local government unit and initiate criminal proceedings

SECTION 5. NO WEIGHING SCALE –

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱5,000
- 2nd Offense - Fine of ₱10,000
- 3rd Offense - Recommend business closure to the proper local government unit

- [(b)] (D) Hoarding of petroleum and/or petroleum products;
- [(c)] (E) Overpricing in the sale of petroleum products;
- [(d)] (F) Misuse of petroleum allocations;
- [(e)] (G) Speed contests and rallies involving mainly the use of motor vehicles, motor-driven watercraft or aircraft utilizing petroleum-derived fuels, including car and motorcycle rallies and drag racing, without the permit from the Bureau of Energy Utilization; and
- [(f)] (H) Sky-diving, and water-skiing except when methanol is used for the power-boat operation.

⁴ SEC. 4. *Penalties*. – Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than [two] TWENTY thousand pesos [(P 2,000)] (P 20,000) but not more than [Ten] FIFTY thousand pesos [(P 10,000)] (P 50,000)....

B. Dealer

- 1st Offense - Fine of ₱3,000
- 2nd Offense - Fine of ₱7,000
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Reprimand
- 2nd Offense - Fine of ₱500.00
- 3rd Offense - Fine of ₱1,000.00

SECTION 6. NO TARE WEIGHT OR INCORRECT TARE WEIGHT MARKINGS. (REQUIREMENT ON ENGRAVED TARE WEIGHT SHALL TAKE EFFECT TWO (2) YEARS AFTER EFFECTIVITY OF THIS CIRCULAR)

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱2,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,000 for each cylinder
- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 7. NO APPROPRIATE OR AUTHORIZED LPG SEAL

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱2,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,000 for each cylinder
- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 8. NO TRADE NAME, UNBRANDED LPG CYLINDERS, NO SERIAL NUMBER, NO DISTINGUISHING COLOR, NO EMBOSSED IDENTIFYING MARKINGS ON CYLINDER OR DISTINCTIVE COLLAR OR DESIGN (REQUIREMENT ON SERIAL NUMBER AND DISTINCTIVE COLLAR OR DESIGN SHALL TAKE EFFECT TWO (2) YEARS AFTER EFFECTIVITY OF THIS CIRCULAR)

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱4,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder

- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,000 for each cylinder
- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 9. UNDERFILLED LPG CYLINDERS

A. LPG REFILLER/MARKETER

- 1st Offense - Fine of ₱4,000 for each cylinder
- 2nd Offense - Fine of ₱6,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

- 1st Offense - Fine of ₱1,000 for each cylinder

- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 10. TAMPERING, ALTERING, OR MODIFYING OF LPG CYLINDER THRU ANY MEANS SUCH AS BUT NOT LIMITED TO CHANGING THE VALVE, REPAINTING, AND RELABELLING BY ANY PERSON OR ENTITY OTHER THAN THE LEGITIMATE AND REGISTERED OWNER OF THE SAME. FOR THIS PURPOSE, LPG REFILLER, MARKETER, DEALER, OR RETAIL OUTLET, AS THE CASE MAY BE, WHO HAS POSSESSION OF SUCH ILLEGALLY TAMPERED, ALTERED, OR OTHERWISE MODIFIED LPG CYLINDER SHALL BE HELD LIABLE FOR THIS OFFENSE

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱5,000 for each cylinder
- 2nd Offense - Fine of ₱10,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,500 for each cylinder
- 2nd Offense - Fine of ₱3,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 11. UNAUTHORIZED DECANTING OR REFILLING OF LPG CYLINDERS

- 1st Offense - Fine of ₱5,000 for each cylinder
- 2nd Offense - Fine of ₱10,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 12. HOARDING OF PETROLEUM PRODUCTS INCLUDING LIQUEFIED PETROLEUM GAS

- 1st Offense - Fine of ₱10,000 per cylinder
- 2nd Offense - Recommend business closure to the proper local government unit plus the filing of appropriate criminal action

SECTION 13. REFUSAL TO ALLOW OR COOPERATE WITH DULY AUTHORIZED INSPECTORS OF THE ENERGY INDUSTRY ADMINISTRATION BUREAU (EIAB) OF THE DEPARTMENT OF ENERGY IN THE CONDUCT OF THEIR INSPECTION/INVESTIGATION, WHETHER REGULAR AND ROUTINARY OR COMPLAINT-INITIATED

- 1st Offense - Fine of ₱10,000
- 2nd Offense - Recommend business closure to the proper local government unit

SECTION 14. REFUSAL OR FAILURE TO PAY FINE – *The Department of Energy shall recommend to the proper local government unit the closure of business of a respondent who refuses or fails to pay any administrative fine without prejudice to the filing of an appropriate criminal action if warranted.*⁵

Respondent LPG Refillers Association of the Philippines, Inc. asked the DOE to set aside

the Circular for being contrary to law. The DOE, however, denied the request for lack of merit.

Respondent then filed a petition for prohibition and annulment with prayer for temporary restraining order and/or writ of preliminary injunction before the trial court.

After trial on the merits, the trial court nullified the Circular on the ground that it introduced new offenses not included in the law.⁶ The court intimated that the Circular, in providing penalties on a per cylinder basis for each violation, might exceed the maximum penalty under the law. The decretal part of its Decision reads:

IN VIEW OF THE FOREGOING, this Court renders judgment declaring DOE Circular No. 2000-06-010 null and void and prohibits the respondent from implementing the same.

SO ORDERED.⁷

The trial court denied for lack of merit petitioner’s motion for reconsideration. Hence this petition, raising the following issues:

I

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING THAT “A CLOSE SCRUTINY OF BP 33, PD 1865 AND R.A. NO. 8479 SHOWS THAT OFFENSES LIKE NO PRICE DISPLAY [BOARD], NO WEIGHING SCALE, ETC. SET FORTH IN THE CIRCULAR ARE NOT PROVIDED FOR IN ANY OF THE THREE (3) LAWS”.

⁵Rollo, pp. 274-280.

⁶Batas PambansaBlg. 33 (1979), Presidential Decree No. 1865 (1983), or Republic Act No. 8479 (1998).

⁷Rollo, p. 72.

II

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING THAT “A SCRUTINY OF THE NEW SET OF PENALTIES PROVIDED BY THE CIRCULAR SHOWS THAT THE PENALTIES THIS TIME ARE BASED ON PER CYLINDER BASIS”; THAT “BEING SUCH, NO CEILING WAS PROVIDED FOR AS TO THE ADMINISTRATIVE FINES”; THAT “AS ILLUSTRATED BY THE PETITIONER, FOR JUST ONE LPG CYLINDER FOUND VIOLATING AT LEAST SEC[TIONS] 6, 7, 8, 9, 10 AND 11 OF THE [CIRCULAR], A FINE OF ₱24,000.00 IS IMPOSED;” AND THAT “THIS WILL CLEARLY BE BEYOND THE ₱10,000.00 PROVIDED BY THE LAWS.”

III

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING THAT SECTION 16 OF PETITIONER’S CIRCULAR WHICH AUTHORIZES THE IMPOSITION OF PECUNIARY PENALTIES WITH THE TOTAL FINE NOT EXCEEDING ₱20,000.00 FOR RETAIL OUTLETS VIOLATES THE PENALTY CEILING OF ₱10,000.00 SET UNDER BP BLG. 33, AS AMENDED.

IV

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING THAT SINCE SECTION 5 (g) OF R.A. 7638 FINDS NO REFERENCE IN DOE CIRCULAR NO. 2000-06-010, THE SAME SHOULD BE DISREGARDED.

V

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING

THAT “ON THE NEW OFFENSES INTRODUCED IN THE CIRCULAR SUCH AS SECTIONS 4, 5, 10, 13 AND 14 AND THE IMPOSITION OF THE GRADUATED PENALTIES ON ‘A PER CYLINDER BASIS’, THIS COURT FINDS [NO] REASON TO DISTURB ITS FINDINGS THAT RESPONDENT-MOVANT EXCEEDED ITS AUTHORITY. X XX IT SHOULD BE REMEMBERED THAT BP BLG. 33 AS AMENDED AND P.D. 1865 ARE CRIMINAL STATUTES AND MUST BE CONSTRUED WITH SUCH STRICTNESS AS TO CAREFULLY SAFEGUARD THE RIGHTS OF THE DEFENDANT.”

VI

WHETHER OR NOT THE COURT **A QUO** ERRED IN HOLDING THAT “THE ASSAILED CIRCULAR SETS NO MAXIMUM LIMIT AS TO THE FINE THAT MAY BE IMPOSED ON AN ERRING PERSON OR ENTITY TO WHICH FACT MOVANT CONCEDES. FOR ONE (1) CYLINDER ALONE, NOT ONLY DOES THE CIRCULAR MAKE THE FINE EXCESSIVE TO THE EXTENT OF BEING CONFISCATORY, BUT IT EVEN IMPOSES A PENALTY WHICH MAY EVEN GO BEYOND THAT MAXIMUM IMPOSABLE FINE OF ₱50,000.00 SET BY P.D. 1865 IN ITS SEC. 4 AFTER A CRIMINAL PROCEEDING.”⁸

To our mind, the issue raised by petitioner may be reduced to the sole issue of whether the Regional Trial Court of Pasig erred in declaring the provisions of the Circular null and void, and prohibiting the Circular’s implementation.

Petitioner argues that the penalties for the acts and omissions enumerated in the Circular

⁸*Id.* at 500-502.

are sanctioned by Sections 1⁹ and 3-A¹⁰ of B.P. Blg. 33 and Section 23¹¹ of Republic Act No. 8479.¹² Petitioner adds that Sections 5(g)¹³ and 21¹⁴ of Republic Act No. 7638¹⁵ also authorize the DOE to impose the penalties provided in the Circular.

Respondent counters that the enabling laws, B.P. Blg. 33 and R.A. No. 8479, do not expressly penalize the acts and omissions enumerated in the Circular. Neither is the Circular supported by R.A. No. 7638, respondent claims, since the said law does not pertain to LPG traders. Respondent maintains that the Circular is not in conformity with the law it seeks to implement.

We resolve to grant the petition.

⁹ SECTION 1. *Declaration of Policy.* – It is the declared policy of the State to institutionalize as a national way of life energy conservation geared towards the judicious and efficient use of energy in order to enhance availability of energy supplies required to support economic, social and developmental goals. In view of the continuing uncertainty of the international oil supply, it is imperative that measures to conserve energy be strengthened and that acts and activities involving petroleum and/or petroleum products contrary to the intent and spirit of judicious usage and conservation of energy, which are inimical to the public interest and national security, be prohibited and appropriate sanction therefor be imposed.

¹⁰ Section 3-A (inserted by Section 3 of PD No. 1865) reads:

“SEC. 3-A. *Rules and Regulations; Administrative sanctions for violation thereof.* – The Bureau of Energy Utilization shall issue such rules and regulations as are necessary to carry into effect the provisions of this Act, subject to the approval of the Minister of Energy, after consultation with the affected industry sectors. Said rules and regulations shall take effect fifteen (15) days from the date of its publication in two (2) newspapers of general circulation.

“The Bureau of Energy Utilization is empowered to impose in an administrative proceeding, after due notice and hearing, upon any person who violates any provision of such rules and regulations, a fine of not more than ten thousand pesos (P10,000.00) or to suspend or remove the license or permit of a hauler, marketer, refiller, dealer, sub-dealer or retail outlet: *Provided*, That hearing in any administrative proceedings may be waived by respondent. *Provided, Further*, That during the pendency of such administrative proceeding, the Bureau may suspend the business operations of such hauler, marketer, refiller, dealer, sub-dealer or retailer or retail outlet operator when the suspension is consistent with public interest....

xxxx

“The administrative sanction that may be imposed shall be without prejudice to the filing of a criminal action as the case may warrant.”

For an administrative regulation, such as the Circular in this case, to have the force of penal law, (1) the violation of the administrative regulation must be made a crime by the delegating statute itself; and (2) the penalty for such violation must be provided by the statute itself.¹⁶

The Circular satisfies the *first* requirement. B.P. Blg. 33, as amended, criminalizes illegal trading, adulteration, underfilling, hoarding, and overpricing of petroleum products. Under this general description of what constitutes criminal acts involving petroleum products, the Circular merely lists the various modes by which the said criminal acts may be perpetrated, namely: no price display board, no weighing scale, no tare weight or incorrect tare weight markings, no authorized LPG seal, no trade name, unbranded LPG cylinders, no serial number, no distinguishing color, no embossed identifying markings on cylinder,

¹¹ SEC. 23. *Implementing Rules and Regulations.* – The DOE, in coordination with the Board, the DENR, DFA, Department of Labor and Employment (DOLE), Department of Health (DOH), DOF, DTI, National Economic and Development Authority (NEDA) and TLRC, shall formulate and issue the necessary implementing rules and regulations within sixty (60) days after the effectivity of this Act.

¹² AN ACT DEREGULATING THE DOWNSTREAM OIL INDUSTRY, AND FOR OTHER PURPOSES.

¹³ SEC. 5. *Powers and Functions.* – The Department shall have the following powers and functions:

xxxx

(g) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

¹⁴ SEC. 21. *Appropriations.* –

xxx

Subject to existing rules and regulations, the funds and monies collected or which otherwise come into the possession of the Department and its bureaus from fees, surcharges, fines and penalties which the Department and its bureaus may impose and collect under this Act, x xx shall be disbursed for expenses necessary for the effective discharge of the powers and functions of the Department under this Act.

¹⁵ AN ACT CREATING THE DEPARTMENT OF ENERGY, RATIONALIZING THE ORGANIZATION AND FUNCTIONS OF GOVERNMENT AGENCIES RELATED TO ENERGY, AND FOR OTHER PURPOSES.

¹⁶ See *United States vs. Panlilio*, 28 Phil. 608, 613-614 (1914).

underfilling LPG cylinders, tampering LPG cylinders, and unauthorized decanting of LPG cylinders. These specific acts and omissions are obviously within the contemplation of the law, which seeks to curb the pernicious practices of some petroleum merchants.

As for the *second* requirement, we find that the Circular is in accord with the law. Under B.P. Blg. 33, as amended, the monetary penalty for any person who commits any of the acts aforesaid is limited to a minimum of ₱20,000 and a maximum of ₱50,000. Under the Circular, the maximum pecuniary penalty for retail outlets is ₱20,000,¹⁷ an amount within the range allowed by law. However, for the refillers, marketers, and dealers, the Circular is silent as to any maximum monetary penalty. This mere silence, nonetheless, does not amount to violation of the aforesaid statutory maximum limit. Further, the mere fact that the Circular provides penalties on a per cylinder basis does not in itself run counter to the law since all that B.P. Blg. 33 prescribes are the minimum and the maximum limits of penalties.

Clearly, it is B.P. Blg. 33, as amended, which defines what constitute punishable acts involving petroleum products and which set the minimum and maximum limits for the corresponding penalties. The Circular merely implements the said law, albeit it is silent on the maximum pecuniary penalty for refillers, marketers, and dealers. Nothing in the Circular contravenes the law.

Noteworthy, the enabling laws on which the Circular is based were specifically intended to provide the DOE with increased administrative and penal measures with which to effectively curtail rampant adulteration and shortselling,

as well as other acts involving petroleum products, which are inimical to public interest. To nullify the Circular in this case would be to render inutile government efforts to protect the general consuming public against the nefarious practices of some unscrupulous LPG traders.

WHEREFORE, the petition is **GRANTED**. The assailed Circular No. 2000-06-010 of DOE is declared valid. The Decision and Order of the Regional Trial Court of Pasig City, Branch 161, in SCA Case No. 2318, nullifying said Circular and prohibiting its implementation are hereby **REVERSED** and **SET ASIDE**.

No pronouncement as to costs.

SO ORDERED.

LEONARDO A. QUISUMBING

Associate Justice

WE CONCUR:

ANTONIO T. CARPIO

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

DANTE O. TIÑA

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

¹⁷ DOE Circular No. 2000-06-010.

SEC. 16. Maximum Total Penalty. In the imposition of pecuniary penalties the total fine shall not exceed Twenty Thousand Pesos (P 20,000.00) for retail outlets.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING

Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN

Chief Justice

DEPARTMENT CIRCULAR NO. 2001-11-004

PROHIBITION ON THE REFILLING OF LPG CYLINDERS COVERED BY THE RECALL AND REPLACEMENT ORDER OF THE DEPARTMENT OF TRADE AND INDUSTRY (DTI) – BUREAU OF PRODUCTS STANDARDS (BPS), AND THE SALE OF SUBJECT CYLINDERS, WHETHER REFILLED OR NOT

WHEREAS, pursuant to Section 2 and Section 5 (k) of Chapter 1 of RA No. 7638, the Department of Energy shall formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution;

WHEREAS, Section 14 of Republic Act No. 8479 mandates the DOE to monitor refining, manufacturing and marketing processes of petroleum products to ensure that clean and safe technologies are applied;

WHEREAS, Section 15 of Republic Act No. 8479 provides for additional powers for the DOE Secretary which may be readily be availed of to deter, restrain, and/or penalize any and all illegal, irregular, and anomalous business practice or activity, with the end in view of cultivating and instilling discipline, honesty, and fair trade practices in the consciousness

of each and every player in all levels of the downstream oil industry;

WHEREAS, Section 7 of Republic Act No. 8479 requires DTI and DOE to take all measures to promote fair trade, among other;

WHEREAS, the DOE and DTI forged a Memorandum of Agreement on 18 January 2001 to provide a mechanism for close coordination and enforcement of quality standards for LPG cylinders to avert the proliferation and use of LPG cylinders which pose continuous hazard and threat to the health and safety of consumers;

WHEREAS, to ensure consumers' safety the DTI-BPS issued on 24 September 2001 a product recall & replacement order to PILIPINAS DAECHANG STEEL, INC. (PDSI) and subsequently published a NOTICE to the Public, for 11-kg. cylinders produced from

01 December 2000 to 30 April 2001 with the following serial numbers and date of testing:

Serial Numbers	Date Tested
00001 – 09574	12-00
00001 – 09504	01-01
00001 – 11000	02-01
00001 – 13681	03-01
00001 – 00250	04-01

WHEREFORE, premises considered, all concerned LPG industry players are hereby directed NOT to refill the LPG cylinders which are subject to the recall order of the DTI-BPS, nor to sell or offer to sell LPG contained in subject cylinders whether refilled or not;

Disposition of the recalled cylinders shall be pursuant to the DTI-BPS guidelines.

Any person, whether natural or juridical, found to have violated this directive shall be subject to an administrative penalty of Five Thousand Pesos (P 5,000.00) per cylinder refilled, sold, or offered for sale without prejudice to any other criminal or civil action that may be filed under existing applicable laws, rules and regulations.

This Circular shall be effective fifteen (15) days after its publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 9 November 2001.

VINCENT S. PEREZ, JR.
Secretary

DEPARTMENT CIRCULAR NO. 2007-10-0007

LPG CYLINDER OWNERSHIP AND OBLIGATIONS RELATED THERETO

WHEREAS, pursuant to Republic Act Nos. 7638 (Department of Energy Act of 1992) and 8479 (Downstream Oil Industry Deregulation Act of 1998), Batas Pambansa Blg. 33 as amended by Presidential Decree 1865 (Defining and penalizing certain prohibited acts involving petroleum/petroleum products), and under pertinent rules and regulations, the DOE has the power to monitor, supervise and regulate the petroleum industry and impose corresponding administrative penalties for violations thereof;

WHEREAS, disputes and disagreements among industry players have increased in the recent years regarding generally, the ownership of liquefied petroleum gas (LPG) cylinders, owing to the absence of clear guidelines defining such ownership, misunderstanding by consumers and dealers

alike, and the inordinate indifference of industry players to address this particular concern amongst themselves;

WHEREAS, the DOE has already issued Department Circular No. DC 2000-05-007, requiring among others that the owners or sources of LPG cylinders to emboss their brand and ownership markings on LPG cylinders, in an attempt to identify the owners thereof for purposes of accountability;

WHEREAS, illegal practices in LPG industry are escalating, more particularly in the refilling LPG cylinders without the prior approval or consent of the owner of the LPG cylinders, in the process depriving the latter of reasonable business return, fomenting unsafe handling practice, and thus increasing risk and danger to the consuming public;

WHEREAS, there is now a pressing need to establish clear directives in order to diminish, if not totally eliminate, illegal practices and abuses such as above, to prevent evasion of liability on the part of LPG industry players, and to provide clear guidelines and reference on the ownership of LPG cylinders, to enable, the Department to identify the proper liable persons and impose the appropriate penalty, thereof;

WHEREAS, in, consideration of the foregoing, the following guidelines are hereby promulgated to govern these concerns:

SECTION 1. The brand owner whose permanent mark/markings appear/s on the LPG cylinder shall be presumed the owner thereof irrespective of the party in custody or possession of the cylinder, and regardless of whether such cylinder is, or continues to be, properly marked, stamped or identified to contain its LPG brand, or whether such cylinder is in compliance, or continues to comply with any other product or quality standard prescribed under law, by the DOE or by the Department of Trade and Industry (DTI), unless there is any unequivocal proof or indication that such cylinder was sold, alienated, or otherwise disposed of by the brand owner to an unrelated third party under a written instrument.

SECTION 2. The brand owner shall have the obligation to ensure that its cylinders comply with all required product quality, quantity and safety standards and specifications before they are released for sale/distribution and while they are in circulation: *Provided*, That receipt by the DOE of a verified notice or report from the brand owner regarding

any loss, stolen or missing LPG cylinders shall *prima facie* relieve the cylinder owner of the obligation to ensure the quality, safety and exact net content of such LPG cylinders. Such report may be rebutted by contrary evidence.

SECTION 3. The brand owner shall issue authorization to entity/firm authorized to refill their LPG cylinders. Consequently, an entity/firm who shall refill LPG cylinders without authority from the brand owner shall be charged with “Illegal Refilling” and corresponding sanctions shall be applied.

SECTION 4. Upon notice of this Circular, all brand owners shall immediately commence LPG cylinder audit and recovery program for a period not exceeding six (6) months from effectivity of this Circular, and report the same to OIMB.

Provisions to complement this definition may be issued subsequently, as necessary.

Penalties and sanctions for violations of this Circular, shall be covered by existing regulations, including DOE D.C. No. 2000-06-010 or amendments thereto.

This Memorandum Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation

Fort Bonifacio, Taguig City, Oct. 13, 2007.

ANGELO T. REYES
Secretary

RELATED CASE:

**Republic of the Philippines
COURT OF APPEALS
Manila**

SPECIAL SIXTH DIVISION

NBI SUPERVISING CA-G.R. SP
AGENT E. MARVIN NO. 98054
DE JEMIL, ET. AL.,

Petitioners

- versus-

HONORABLE RAUL
M. GONZALES, SECRETARY,
ET. AL.,

Respondents.

Promulgated:
SEP 20, 2007

X-----X

DECISION

BATO, JR., J.:

Assailed in this Petition for Certiorari under Rule 65 of the Revised Rules of Court is the October 9, 2006 Resolution¹ of Honorable Ernesto L. Pineda, Undersecretary of the Department of Justice, which directed the withdrawal of the Informations against herein private respondents for violations of Section 2(a) and 2(c) of B.P. Blg. 33,² as amended by P.D. 1865; as well as the December 14, 2006 Resolution³ of Honorable Raul M. Gonzalez Secretary of the Department of Justice, which denied the motion for reconsideration thereof.

¹ Acting Senior Member vice Justice Jose C. Mendoza, who is on leave, per Office Order No. 36-07-CMV dated September 13, 2007 Annex "A" of the Petition, pp. 043-046.

² BP Blg. 33, otherwise known as "An act Defining and Penalizing Certain Prohibited Acts Inimical To The Public Interest And National Security Involving Petroleum

³ Products, Prescribing Penalties Therefor And For Other Purposes." Annex "B" of the Petition, pp. 049-050.

The facts of the case are as follows:

On March 22, 2004, The National Bureau of Investigation (NBI) received a letter-complaint from Atty. Genesis M. Adario on behalf of several Liquefied Petroleum Gas Dealers Association, Inc., Petron Gasul Dealers Association, Inc., and Totalgaz Dealers Association, Inc., requesting assistance in the surveillance investigation and, if warranted, apprehension and prosecution of certain persons and/or establishments who/which are engaged in the illegal trading of establishments who/which are engaged in the illegal trading of petroleum products or possession of underfilled LPG cylinders in violation of BP 33, as amended. One of the establishments suspected of violating said law is Omni Gas Corporation (OMNI), owned and controlled by private respondents Arnel Ty, Marie Antonette Ty, Jason Ong, Willy Dy, and Alvin Ty.

Acting on the complaint, the NBI Field Operations Division-Intelligence Service (NBI FOD-IS) conducted surveillance on OMNI's refilling plant during the months of March and April 2004.⁴ On April 15, 2004, a test-buy was conducted where (8) empty LPG cylinders branded as Shellane, Gasul, Totalgaz, and Superkalan Gaz, were refilled at OMNI's refilling plant for a consideration of One Thousand Five Hundred Twenty Eight Pesos (P1,528.00) with Sales Invoice⁵ No. 90040 dated April 15, 2004.

On April 23, 2004, Noel N. Navio, Inspector of the Liquefied Petroleum Gas Industry Association (LPGIA), inspected the eight (8) LPG cylinders refilled by OMNI.⁶ The Inspection revealed that the LPG cylinders had no LPG valve seals, and one (1) cylinder was underfilled.⁷

⁴ Complaint-affidavit, Rollo, pp. 076-080

⁵ Rollo, p. 097.

⁶ Supre, Note 3

⁷ Rollo, p. 099.

Consequently, on application by the operatives of the NBI FODIS, the Regional Trial Court of Pasig City, Branch 167 issued Search Warrant Nos. 2624⁸ and 2625⁹ against the private respondents. Upon implementation of the search warrants on the premises of OMNI in Sandoval Avenue, San Miguel, Pasig City, the following items were seized,¹⁰ to wit:

QUANTITY/ UNIT	DESCRIPTION
7	Totalgaz LPG cylinders 11.0 kg. (filled)
1	Petron Gasol LPG cylinder 11.0 kg. (filled)
1	Shellane LPG cylinder 11.0 kg. (filled)
29	Superkalan Gaz LPG cylinder 2.7 kg. (empty)
17	Petron Gasol LPG cylinder 2.7 kg (empty)
8	Shellane LPG cylinders marked as "Omnigas" 11.0 kg. (empty)
5	Totalgaz LPG cylinders marked as "Omnigas" 11.0 kg. (empty)
23	Shellane LPG cylinders 11.0 kg. (empty)
3	Petron Gasol LPG cylinders but remarked as "Omnigas" 11.0 kg. (empty)
21	Totalgaz LPG cylinders (empty)

Accordingly, two (2) criminal complaints¹¹ one for violation of Section 2 (a) of BP 33, as amended, in relation to Sections 3 (c) and 4 thereof, and the other for violation of Section 2 (c) of BP 33, in relation to Sections 3 and 4 thereof, were filed by petitioner Marvin E. De Jemil ("Agent De Jemil" for brevity) with the Prosecution Division of the Department of Justice (DOJ) against the private respondents.

The complaint for violation of Section 2 (c) which was docketed as I.S. No. 2004-616, alleged that private respondents are criminally liable of underfilling LPG products and/or possession of underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange of barter.¹² The second complaint, which was docketed as I.S. No. 2004-618, alleged that private respondents are criminally liable of illegal trading of LPG cylinders, *i.e.* refilling LPG cylinders branded as Shellane, Petron Gasol,

Totalgaz and Superkalan Gaz, without the respective companies' written authorization, a clear violation of Section 2(a) in relation to Sections 3(c) and 4 of BP 33, amended.¹³

In their Joint Counter-Affidavit,¹⁴ private respondents vehemently denied ownership of the LPG cylinders seized from OMNI's premises, maintaining that the empty LPG cylinders were taken from the swapping section while the filled ones from the trucks belonged to their customers. Private respondents contended that OMNI is a corporation duly licensed to engage in trading and refilling of LPG cylinders with adequate facilities and equipment. They further contended that there is no probable cause that OMNI refilled the eight (8) LPG cylinders of Shell, Petron, Totalgaz and Superkalan Gaz as the receipt presented by NBI FOD-IS did not state with particularity the brand of LPG cylinders refilled by OMNI during the alleged "test-buy" operation and that there is no sufficient evidence that the eight (8) LPG cylinders supposedly refilled by OMNI are underfilled. Private respondents posited that before any violation of Section 2(a) in relation to Section 3(c) of BP 33, as amended (illegal trading and refilling of LPG cylinders of another company) would lie, ownership of the subject cylinders must be determined. Such a requirement is wanting in the present case since they are not the owners of the LPG cylinders in question but mere dealers of the brand or trademark they carry. Private respondents further posited that the LPG cylinders brought to OMNI by household customers are already owned by said household users, thus, they can use it for whatever purpose they like including the purchase of another LPG brand. The private respondents also pointed out that the industry practice of cylinder swapping is that customers would bring their own empty LPG cylinders and exchanges them for already filled LPG cylinders. Lastly, private respondents posited that being mere directors or officers of OMNI,

⁸ Ibid., pp. 337-338.

⁹ Ibid., pp. 339-340.

¹⁰ Ibid., p. 268.

¹¹ Ibid., pp. 076-080; pp. 289-294.

¹² Rollo, pp. 289-294; p. 292.

¹³ Ibid., pp. 076-080; p. 079.

¹⁴ Ibid., pp. 345-348.

they cannot be held liable as provided for by the said law because they are not in-charge of the management of the business affairs of the said corporation.

In his Reply-Affidavit,¹⁵ Agent De Jemil retorted that despite the fact that private respondents' corporation is duly licensed to operate a refilling plant or station, it does not necessarily follow that they can no longer violate the provisions of BP 33, as amended. He pointed out that notwithstanding the fact that the receipt presented by NBI FOD-IS did not state with particularity the brand names of the LPG cylinders, he personally witnessed the illegal refilling of the same by OMNI employees. He posited further that the question as to whether or not the customers of OMNI would bring their own empty LPG cylinders to exchange them for another refilled LPG cylinder is not the crux of the matter, but it is whether or not OMNI has refilled, is refilling and/or continues to refill Petron Gasul, Shellane, Superkalan Gaz, and Totalgaz LPG cylinders without the permission of the said companies. He also posited that while some LPG cylinders taken during the raid were from a marked section of the premises of OMNI, a good number of LPG cylinders were done. There were taken from the place where the refilling of the cylinders were done. There were even walk-in customers who entered OMNI's premises to have their empty branded LPG cylinders refilled which all the more proves that OMNI is known to be refilling branded LPG cylinders. As to the last contention of the private respondents, Agent De Jemil countered that it would be highly incredible and preposterous for anyone to believe that private respondents, who are all directors and at the same time majority of them are the highest ranking officials of OMNI, are not in-charge with the management of the business affairs of the said company.

On November 7, 2005, the Office of the Chief State Prosecutor issued a Joint Resolution¹⁶

finding probable cause against the private respondents. The pertinent portions thereof read:

"After evaluation of the evidence submitted by both parties, this Office finds probable cause to hold all the respondents criminally liable for violation of Section 2 [a] (illegal trading of LPG cylinders) and Section 2 [c] (underfilling of LPG cylinders), both of BP33, as amended.

Section 2[a] of BP33, as amended, prohibits the illegal trading in petroleum and/or petroleum products, which is specifically defined by Section 3[c] of the same law, to wit:

(c) Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's of firm's cylinders without such company's of firm's written authorization' (Underscoring and emphasis supplied).

Based on the foregoing, taking into consideration the surveillance and investigation conducted by the NBI FOD-IS and the documentary evidence submitted by complainants LPGDA, it clearly established the fact that respondents and/or OMNI Gas is not an authorized refiller of Shellane, Petron Gasul, Totalgaz, and Superkalan LPG cylinders and in the absence of the required written authorization proceeded to refill complainant's LPG cylinders in wanton violation of the law.

Respondents claim that the ownership of the LPG cylinders does not belong either to the above-named LPG companies or to complainants LPGDA but to the household users who have already purchased the same is without merit, considering that the ownership of the LPG cylinders are shown by the stamp markings appearing on the LPG cylinders themselves, which provide that said LPG cylinders are properties of

¹⁵ Rollo, pp. 350-356.

¹⁶ Ibid, pp. 357-362.

their respective companies. Obviously, there is prima facie evidence that respondents violated Section 2 [a], in relation to Sections 3[c], and 4, of BPO33, as amended.

The allegation in the criminal complaint of underfilling under Section 2[c] of BP33, as amended, finds support in the uncontroverted Inspection Report of LPGIA, Inspector Noel N. Navio.

“WHEREFORE, premises considered, it is hereby recommended that two (2) Informations for violations of Section 2[c] (illegal trading in petroleum and/or petroleum products) and Section 2 [c] (underfilling of LPG cylinders), both of Batas Pambansa Bilang 33, as amended, be filled against respondents ARNEL TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY and ALVIN TY.”

A Motion for Reconsideration¹⁷ of the aforesated Resolution was filed by private respondents on February 9, 2006, which was duly opposed¹⁸ by the petitioners. A Reply¹⁹ thereto was then filed by petitioners. However, the said motion was not favorably acted upon²⁰ prompting the private respondents to file a Petition for Review²¹ with the Office of the DOJ Secretary on June 1, 2000.

Meanwhile, two (2) separate Informations for violation of BP33, as amended were filled against private respondents before the Office of the Clerk of Court of the Regional Trial Court of Pasig City.²²

On October 9, 2006 public respondent DOJ Undersecretary Ernesto Pineda, issued the assailed 1st Resolution²³ granting private respondents’ Petition for Review and thereby reversing and setting aside the joint resolution of the Office of the State

Prosecutor. Consequently, public respondent DOJ Undersecretary directed the withdrawal of the Informations against the respondents. Quoted hereunder are the salient portions of the said resolution:

“Verily, there is no basis in finding probable cause for underfilling against respondents. One of the eight (8) cylinders allegedly filled during the alleged “test buy”, only one was said to be underfilled. Such one and isolated instance of underfilling, even if true, cannot give rise to a sweeping conclusion that Omni had indeed willfully and illegally engaged itself in underfilling LPG cylinders for sale as part of its business practices. Such isolated underfilling can be said to have been caused by an oversight or technical or honest human error, unless other circumstances show a clear pattern of deliberate underfilling. Other than the one and only underfilled LPG cylinder, there is no indication of a pattern of underfilling that would show a willful act of deception or fraud on the part of Omni. In fact, not one of those more numerous filled LPG cylinders subsequently seized from Omni by virtue of the search warrants was shown to be underfilled.

A mere underfilling, even of more than one gas cylinder, if not substantial and deliberate, is not necessarily a violation of Batas Blg 33, as amended. Not even the most advanced machine or equipment or the most diligent and prudent person could precisely and consistently comply with a given measurement or standard, especially in a numerous and successive but similar and repetitive activities such as LPG cylinder refillings. Overfilling or underfilling may happen under these circumstances. This is precisely the reason why section 2 (c) of Batas

¹⁷ Rollo, pp. 363-377.

¹⁸ Ibid, pp. 378-389.

¹⁹ Ibid, pp. 390-398.

²⁰ Ibid, pp. 399-401.

²¹ Ibid, pp. 390-402-413.

²² Petition for Certiorari, Rollo, pp. 002-042; p. 008.

²³ Ibid, pp. 043-048

Blg. 33, as amended, only punishes “underfilling beyond authorized limits” and not otherwise. Insubstantial or insignificant underfillings of LPG cylinders for sale, especially if done innocently, is not punishable under the said law. Remarkably, complainant NBI and LPGIA did not state to what extent did the LPG cylinder was underfilled in the alleged “test buy” operation.

Complainant NBI’s plain declaration of underfilling by respondent’s is even clouded with doubt as the volume or weight verification or inspection on the eight (8) LPG cylinders was solely anchored on the inspection and discovery of Noel V. Navio, an inspector of LPGIA, which stands in this case as on of the private complainants. Without doubt, such declaration is self serving which is not impressed with merit.

There is likewise no sufficient basis to hold respondents liable for violation of Section 2 (c) (sic) of Batas Blg. 33, as amended, which prohibits the refilling of another company of firm’s LPG cylinder without is written authorization. Before one could be charged with this offense, it must be proven that the LPG cylinder that was filled belongs to another company or firm. Other than the marks or brands appearing on the LPG cylinders and the written statement of ownership stamped or printed thereon, it could not be conclusively proven that the said cylinders that were claimed to have been filled by Omni belong to another company or firm. The appearances and colors of LPG cylinders can be changed, altered or modified by simple manual reformation or repainting, in the same way that marks and brands printed thereon, may be conveniently altered or changed,

In short ownership of these LPG cylinders cannot be based solely and reliably on the brands and marks or statements printed or stamped thereon because they are susceptible to tampering. The said company or firm should have provided some kind of scientific or technical foolproof way of identifying their LPG cylinders, such as serial numbers engraved on the cylinders backed up by official records or inventories of these serialized cylinders. This however, does not obtain in the case at bar.

Even then, as rightly argued by respondents, even assuming that the LPG cylinders were initially distributed and owned by another company or firm, or bear their brands or marks, there is no proof that they remain the owners thereof, as ownership had been transferred to consumers and the others by way of sale or other mode of disposition.

It is common and time honored practice that when a consumer initially buys a liquefied petroleum gas in an LPG cylinder. The consumer then takes full control, ownership and possession of both the gas and LPG cylinder. He may thereafter keep, resell, swap reuse it to his liking or even destroy the same. The contract between the consumer and the distributor is, for all intents and purposes, evidently a sale of both the gas and LPG cylinder. The consumers may than (sic) exercise all the attributes of ownership over the LPG cylinder and the original owner, which is the gas company, loses the (sic) complete control and ownership of the same, notwithstanding any statement printed on the purchase receipt or on the LPG cylinder or demanding the return thereof after purchase except probably in exchange for a new filled up cylinder upon

repurchase of liquefied petroleum gas. Consequently, the LPG cylinders that were found in Omni, though initially owned and bearing the marks of another company or firm, belonged to the consumers who brought them into Omni’s premises, or Omni itself, which may have, in turn acquired ownership therefore through swapping.

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The Chief State Prosecutor is directed to cause the withdrawal of the informations for violations of Sections 2 (a) and 2 (c) of B.P. Blg. 33, as amended by PD1865, against respondents Arnel Ty, Mari Antonette Ty, Jason Ong Willy Dy and Alvin Ty and report the action taken within ten (10) days from receipt hereof.

SO ORDERED.²⁴

Petitioners then filed a Motion for Reconsideration²⁵ of the aforementioned resolution, arguing that the conclusion reached as regards the susceptibility of tampering of the embossed brands and markings are speculative and argumentative. The stressed that the LPG cylinders used by the NBI operatives during the test-buy operation were not tampered as evidenced by the photographs taken therefrom. The contended that there were also tampered LPG cylinders carrying the brands of Totalgaz, Petron, Gasul, Superkalan Gaz and Shellane that were seized by them from the refilling plant of OMNI. As to the ruling that the customers become the owners of the LPG cylinders upon purchase of their contents, petitioners argued that the customers pay an additional amount for the said branded transfer ownership from the manufacturer and/or distribution only by way of “deposit” which can be refunded in exchange of the said branded LPG cylinders. They declared

that if any of those branded LPG cylinders fall short of the standard requirements imposed by the State and if the same caused by any damage, it is not the end-consumers that are held liable, but he distributors and/ or manufacturers themselves, therefore, ownership thereof is retained by the LPG companies. They also contended that probable cause for commission of underfilling of LPG products by the private respondents was sufficiently established as the law does not contemplate that the underfilling be substantial, deliberate and repetitive.

After private respondents filed their Comment/Opposition²⁶ to the petitioners’ Motion for Reconsideration, the second assailed Resolution dated December 14, 2006 was issued, this time by public respondent DOJ Secretary Raul M. Gonzalez. The second assailed Resolution denied petitioners’ Motion for Reconsideration on the premise that the issues raised therein were duly considered and passed upon in the October 9, 2006 Resolution.

Hence, the instant petition for certiorari based on the following grounds:

I.

THE PUBLIC RESPONDENTS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY RULED ON THE ISSUE OF OWNERSHIP OF LPG CYLINDERS CONTRARY TO EXISTING LAWS, RULES AND REGULATIONS AND USURPING THE FUNCTIONS AND AUTHORITY OF THE DEPARTMENT OF ENERGY.

II.

THE PUBLIC RESPONDENTS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY RULED THAT THERE IS NO BASIS FOR FINDING PROBABLE CAUSE AGAINST THE PRIVATE RESPONDENTS FOR VIOLATION OF ILLEGAL

²⁴ Rollo, pp. 045-047.

²⁵ Rollo, pp. 053-071.

²⁶ Ibid, pp. 460-468.

TRADING OF LPG PRODUCTS PUNISHABLE UNDER SECTION 2 (A). IN RELATION TO SECTIONS 3 (C) AND 4, OF BP 33, AS AMENDED.

III.

THE PUBLIC RESPONDENTS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY RULED THAT THERE IS NO BASIS FOR FINDING PROBABLE CAUSE AGAINST THE PRIVATE RESPONDENTS FOR VIOLATION OF UNDERFILLING OF LPG PRODUCTS PUNISHABLE UNDER SECTION 2 (C), IN RELATION TO SECTIONS 3 AND 4, OF BP, AS AMENDED.

By way of Comment,²⁷ private respondents question the propriety of this petition contending that it is not the adequate nor the appropriate remedy provided by law to assail the questioned DOJ resolutions.

We do not, however, agree with the above contention of the private respondents. It bears stressing that a writ *certiorari* is of the highest utility and importance of curbing excessive jurisdiction and correcting errors and most essential to the safety of the people and the public welfare.²⁸ Its scope has been broadened and extended, and is now one of the recognized modes for the correction of errors by this Court.²⁹ The cases in which it will lie cannot be defined. To do so would be to destroy its comprehensiveness and limit its usefulness.³⁰ Hence, *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is the appropriate remedy available to the aggrieved party if the Secretary of Justice commits grave abuse of discretion amounting to lack or excess of jurisdiction.³¹

Going now to the merits of case at bar.

The pivotal issue to be resolved is whether or not the public respondents committed grave

abuse of discretion amounting to lack or excess of jurisdiction in reversing the findings of the Office of the Chief State Prosecutor on the existence of probable cause against private respondents for violations of Section 2(a), in relation to Sections 3(c) and 4, and Section 2(c) in relation to Sections 3 and 4, of BP 33, as amended.

We hold that public respondents, indeed, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise stated, the instant petition is impressed with merit.

Traditionally, grave abuse of discretion is confined to capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.³² There is grave abuse of discretion where the power is exercised in arbitrary or despotic manner by reason of passion, prejudice or personal hostility amounting to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.³³ However, the meaning of grave abuse of discretion has been expanded to include any action done contrary to the constitution, the law or jurisprudence.³⁴

It must be stressed that the City Prosecutor in determining probable cause is required only to determine whether or not the person or persons against whom a specific complaint is filed has performed specific acts, or committed specific omissions, in violation of existing provisions of law. In determining probable cause for the filing of information in court, the City Prosecutor is not required that all reasonable doubt of the guilt of the accused must be removed. Thus, in *Trocio vs. Manta*³⁵, the Supreme Court held that:

“When a fiscal investigates a complaint in order to determine

²⁷ Rollo, pp. 530-541.

²⁸ *Preferred Home Specialists, Inc. vs. Court of Appeals*, 478 SCRA 387, [December 16, 2005].

²⁹ *Supra*, note 28.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Benito vs. Comelec*, 349 SCRA 705.

³³ *People vs. Marave*, 11 SCRA 618; *Panaligan vs. Adolfo*, 67 SCRA 176.

³⁴ *Republic vs. Cocola*, 423 Phil. 735.

³⁵ 118 SCRA, 241.

whether he should file charges with the court against the person complained of, the scope of the investigation is far short of a trail of an accused before the court. It is not required that all reasonable doubt of the guilt of the accused must be removed; It is only required that the evidence be sufficient to establish probable cause that the accused committed the crime charged. xxx
 “(Emphasis supplied.)

Pertinent also is the following pronouncement of the Supreme Court in the case of *Pilapil vs. Sandiganbayan*:³⁶

“Probable cause has been defined in the leading case of *Buchanan vs. Vda. De Esteban* as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.

Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded, such as a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion that a thins is so. **The term does not mean ‘actual and positive cause’ nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of the evidence of the prosecution in**

support of the charge.” (Emphasis supplied)

In the case of *Webb vs. De Leon*,³⁷ the Supreme Court declared that:

“A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not an evidence establishing absolute certainty of guilt. As well put in *Brinegar v. United States*, while probable cause demands more than “bare suspicion,” it requires “less than evidence which would justify x x x conviction.” A finding of probable cause merely binds over the suspect to stand trail. It is not a pronouncement of guilt.”

In I.S. No. 2004-616, private respondents are being prosecuted for underfilling of LPG cylinders in violation of Section 2(c) in relation to Sections 3 and 4 of BP Blg. 33, as amended. However, public respondent DOJ Undersecretary Ernesto Pineda resolved that there is no basis in finding probable cause for the violation thereof by the private respondents because it was only an isolated instance of underfilling. He further ruled that insubstantial or insignificant underfillings of LPG for sale, especially if done innocently, is not punishable under the said law.

We do not agree.

Section 1 of Presidential Decree No. 1865, which amended BP 33 provides that:

“SECTION 1. Section 2 of Batas Pambansa Blg. 33, as amended is further amended to read as follows:

³⁶ 221 SCRA 349 [April 7, 1993].

³⁷ G.R. No. 1211234, 247 SCRA 652.

“Sec. 2. Prohibited Acts. The following acts are prohibited and penalized:

- (a) Illegal trading in petroleum and/ or petroleum products;
- (b) Adulteration of finished petroleum products, or possession of adulterated finished petroleum products for the purpose of sale, distribution, transportation, exchange or barter.
- (c) **Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;”** (Emphasis supplied)

Section 2 of the aforementioned law further provides that:

SECTION 2. Section 3 of the same Act is hereby amended to read as follows:

‘Section 3. Definition of terms. - For the purpose of this Act, the following terms shall be construed to mean:

xxx xxx

‘Underfilling or Underdelivery – Refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually beyond authorizes limits than the quantity indicated or registered on the metering device of the container. This refers among others, to the quantity of petroleum retail outlets or to liquefied petroleum gas in cylinder or lube oils in packages. “(Emphasis supplied)

Nowhere can it be found in the aforementioned provisions of the law that for underfilling or underdelivery of LPG cylinder to be punished thereby, it must be shown to be substantial and deliberate. Conversely, what is readily apparent in the said provisions is that even a single or isolated instance of underfilling or underdelivery of LPG cylinder is punishable under BP Blg. 33 as amended by PD No. 1865.

In the case at Bench, contrary to the findings of the public respondents, there is probable cause to believe that private respondents violated the above quoted provisions of BP Blg. 33 as amended by PD No. 1865. After the conduct of the test-buy operation of the NBI FODI-IS, the refilled cylinders bought at Omni was thereafter weighed, Inspected and examined by Inspector Noel N, Navio. This fact was witnessed by Agent De Jemil as categorically narrated by him in his Complaint-Affidavit.³⁸ The inspection revealed thereof revealed that the eight (8) refilled cylinders without seals and one (1) refilled cylinders was underfilled. This was shown by the Inspection Report³⁹ of Inspector Noel N. Navio which the petitioners presented during the preliminary investigation. Pictures⁴⁰ of the refilled LPG cylinders were also taken after the test-buy operation and were also presented. The pieces of evidence are more than sufficient to engender a well-founded belief that the private respondents committed underfilling of LPG cylinder punishable by Blg. Pp.33, as amended.

Furthermore, Section1 of BP Blg. 33, as amended, provides for presumptions of underdelivery or underfilling of LPG cylinders, thus:

“xxx xxx xxx

For the purpose of this subparagraph, the existence of the facts hereunder

³⁸ Rollo, pp. 289-294.

³⁹ Ibid, pp. 314-315

⁴⁰ Ibid, p. 313.

shall give rise to the following presumptions:

1) That cylinders containing less than the required quantity of liquefied petroleum gas which are not properly identified, tagged and set apart and remove and taken out from display area and made accessible to the public by marketers, dealers, sub-dealers, outlets are presumed to be on sale;

“xxx xxx xxx

3) When the seal, whether official or of the Oil Company, affixed to the dispensing pump, tank trunk or liquefied gas cylinder, is broken or absent or removed, it shall give rise to the presumption that the dispensing pump is underdelivering, or that the liquefied petroleum gas cylinder is underfilled, or that the tank truck contains adulterated finished petroleum products or underfilled;

The use of such pumps, cylinders, or containers referred to in subparagraph (1), (2) and (3) of this paragraph, to deliver products for sale or distribution shall constitute prima facie evidence of intent of the hauler, marketer, refiller, dealer, retailer outlet operator to defraud;”
(Emphasis supplied).

Prescinding from the foregoing, the fact that the eight (8) refilled cylinders taken at OMNI were found to be without seals not only by Inspector Navio, but also by Agent De Jemil and his companion, NBI confidential asset Edgardo C. Kawada, during the test-buy operation as shown by their affidavits,⁴¹ would strongly support a finding of probable cause that private respondents committed the crime of underfilling of LPG cylinders.

Anent I.S. No. 2004-618, private respondents are being prosecuted for illegal trading by refilling LPG cylinders without written authorization from the concerned company, in violation of Section 2(a) in relation to Sections 3(c) and 4 of BP Blg.33, as amended. IN reversing the finding of probable cause of the Office of the Chief State Prosecutor, public respondent DOJ Undersecretary Pineda postulated that private respondents should not be held liable for violation of the aforestated law as there was no showing that the refilled LPG cylinders were owned by another company or even assuming that the ownership thereof was sufficiently established, such ownership had already been transferred to consumers by way of sale, citing the industry practice of cylinder swapping.

Again, we do not agree with public respondent’s ratiocination.

Quoted hereunder are the pertinent provisions of PD No. 1856, which amended BP Blg. 33, the law under which private respondents are being indicted, viz:

“SECTION 1.Section two of Batas Pambansa Blg. 33, as amended is further amended to read as follows:

‘Sec. 2. Prohibited Acts.-The following are prohibited and penalized:

(a) Illegal trading in petroleum and/or petroleum products;

xxx xxx xxx

“(Emphasis added)

“SECTION 2. Section three of the same Act is hereby amended to read as follows:

‘Sec. 3. Definition of terms- For the purpose of this Act, the following terms shall be construed to mean:

41 Rollo, pp. 289-294; pp. 324-326.

Illegal trading in petroleum and/or petroleum products’-

xxx xxx xxx

(c) Refilling of liquefied petroleum gas cylinders without authority from the said Bureau, or refilling of another company’s or firm’s cylinders without such company’s or firm’s written authorization;” (Emphasis added)

Evidently, what is being punished under the aforementioned provisions of the law is the act of refilling another company’s or firm’s LPG cylinder without the written authorization of the said company or firm. In the instant case, there are pieces of evidence that will prove the existence of probable cause to indict private respondents for violation of the said law. The Affidavits⁴² of Agent De Jemil and NBI confidential asset Edgardo C. Kawada were presented to prove that a test-buy operation was conducted at OMNI and to further prove that OMNI is engaged in the refilling of LPG cylinders without the written authorization of the owners of the LPG branded cylinders like Shellane, Petron Gasul. Totalgaz, and Superkalan Gaz. Agent De Jemil and NBI confidential asset Edgardo Kawada personally witnessed that OMNI employees refilled the eight (8) branded LPG cylinders that they brought during the test-buy operation. In fact, a receipt⁴³ or sales invoice was issued by OMNI after the eight (8) LPG cylinders were filled by them. Moreover, photograph⁴⁴ of the LPG branded cylinders that were filled was also taken. Certifications⁴⁵ of lack of written authorization by the aforementioned companies were also produced bolstering the fact that OMNI refilled the branded LPG cylinders without the written authorizations of the said companies. What is more, the search and seizure operation conducted by the NBI FOD-IS by virtue of search warrants is issued by the RTC of Pasig City, Branch

167, yielded several filled and empty branded LPG cylinders owned by the said companies. In sum, there is probable cause to indict private respondents for the crime of illegal trading punished by Section 2(a) in relation to Sections 3(c) and 4 of BP Blg. 33, as amended.

DOJ Undersecretary Pineda’s postulation that there was no showing that the refilled LPG cylinders were owned by another company is belied by the evidence presented, particularly the LPG cylinders which do not show any markings showing OMNI’s ownership and is instead bear the marking Shellane, Petron Gasul, Totalgaz and Superkalan Gaz, brands owned by companies other than OMNI. As ruled by the Office of the Chief Prosecutor *“the ownership of the LPG cylinders are shown by the stamp markings appearing on the LPG cylinders themselves, which provide that the said LPG cylinders are properties of their respective companies.”*⁴⁶ This is consistent with the Republic Act No. 4109, otherwise known as the Product Standards Law, and the Philippine National Standard (PNS) 03-1, Series of 2000, which requires that LPG cylinders bear the permanent markings of their respective owners.

Simply relying on private respondents’ unsupported and bare allegation, DOJ Undersecretary Pineda further postulated that even assuming the ownership of the LPG cylinders have been established, such ownership had already been transferred to consumers by way of sale, citing the supposed industry practice of cylinder swapping.

We are not persuaded. No less than the Department of Energy, the government agency tasked to regulate the LPG industry and which has the technical expertise to decide issues regarding the LPG industry, has held that the sale of LPG cylinders and its content merely transfers the possession and actual use of LPG cylinders and its content to consumers. The Department of Energy has promulgated rules and regulations and letter-opinions confirming that LPG

⁴² Rollo, pp. 076-080; pp. 105-107; pp. 108-109; p. 265.

⁴³ Rollo, p. 097.

⁴⁴ Rollo, p. 098.

⁴⁵ Rollo, pp. 090-095.

⁴⁶ Rollo, pp. 357-361; p. 360-361.

cylinders are considered properties of the companies whose stamp markings appear on the LPG cylinders.⁴⁷ The Department of Energy further held that the acts of refilling or modifying the appearance of LPG cylinders are reserved for the owners of the LPG cylinders as shown in the markings thereon. As a consequence, the possession of the LPG cylinders by another, such as the consumer, does “not relieve the brand owner thereof of its obligations to the public under the Rules and Regulations implementing R.A. No. 8479.”⁴⁸ Such is the industry practice in order to pinpoint responsibility for substantial and underfilled LPG cylinders for the protection of the consuming public.⁴⁹ This Court gives great weight and respect to the rulings of the Department of Energy because the LPG industry is an area within its competence and technical expertise.

The Motions to Intervene and to Admit Petitions-In-Intervention dated 24 August 2007 and 31 August 2007, filled by Nationwide Association of Consumers Inc. and Petron Corporation, respectively, are noted.

WHEREFORE, the instant petition is **GRANTED**. The assailed resolutions dated October 9, 2006 and December 14, 2006 are hereby **REVERSED** and **SET ASIDE**. The joint resolution dated November 7, 2005 of the Office of the Chief State Prosecutor finding probable cause against private respondents Arnel Ty, Marie Antonette Ty, Jason Ong, Wily Dy and Alvin Ty is hereby **REINSTATED**.

SO ORDERED.

...ORDERED.

RAMON M. BATO, JR.
Associate Justice

WE CONCUR:

ANDRES B. REYES, JR.
Associate Justice

ARCANGELITA ROMILLA LONTOK
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

ANDRES B. REYES, JR.
Associate Justice
Chairman, Special Sixth Edition

⁴⁷ Rollo, pp. 443-446, Opinion of then Secretary Vincent S. Perez embodied in his letter dated December 9, 2004 addressed to Pilipinas Shell Petroleum Corporation.

⁴⁷ Rollo, Ibid, p.445.

⁴⁹ Rollo, p. 442, Department Circular No. 2000-05-007.

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 182147

December 15, 2010

ARNEL U. TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY, and ALVIN TY, Petitioners,

vs.

NBI SUPERVISING AGENT MARVIN E. DE JEMIL, PETRON GASUL DEALERS ASSOCIATION, and TOTAL GAZ DEALERS ASSOCIATION, Respondents.

DECISION

VELASCO, JR., J.:

The Case

In this Petition for Review on Certiorari under Rule 45, petitioners seek the reversal of the Decision¹ dated September 28, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 98054, which reversed and set aside the Resolutions dated October 9, 2006² and December 14, 2006³ of the Secretary of Justice, and reinstated the November 7, 2005 Joint Resolution⁴ of the Office of the Chief State Prosecutor. Petitioners assail also the CA Resolution⁵ dated March 14, 2008, denying their motion for reconsideration.

The Facts

Petitioners are stockholders of Omni Gas Corporation (Omni) as per Omni's General Information Sheet⁶ (GIS) dated March 6, 2004 submitted to the Securities and Exchange

Commission (SEC). Omni is in the business of trading and refilling of Liquefied Petroleum Gas (LPG) cylinders and holds Pasig City Mayor's Permit No. RET-04-001256 dated February 3, 2004.

The case all started when Joaquin Guevara Adarlo & Caoile Law Offices (JGAC Law Offices) sent a letter dated March 22, 2004⁷ to the NBI requesting, on behalf of their clients Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc., and Totalgaz Dealers Association, Inc., for the surveillance, investigation, and apprehension of persons or establishments in Pasig City that are engaged in alleged illegal trading of petroleum products and underfilling of branded LPG cylinders in violation of Batas Pambansa Blg. (BP) 33,⁸ as amended by Presidential Decree No. (PD) 1865.⁹

Earlier, the JGAC Law Offices was furnished by several petroleum producers/brand owners their respective certifications on the dealers/plants authorized to refill their respective branded LPG cylinders, to wit: (1) On October 3, 2003, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) issued a certification¹⁰ of the list of entities duly authorized to refill *Shellane* LPG cylinders; (2) on December 4, 2003, Petron Corporation (Petron) issued a certification¹¹ of their dealers in Luzon, Visayas, and Mindanao authorized to refill

1 Rollo, pp. 72-92. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Andres B. Reyes and Arcangelita Romilla Lontok.

2 Id. at 375-380. Penned by DOJ Undersecretary Ernesto L. Pineda.

3 Id. at 417-418. Penned by DOJ Secretary Raul M. Gonzalez.

4 Id. at 269-274.

5 Id. at 61-63.

6 Id. at 112-115.

7 Id. at 107-108.

8 "An Act Defining and Penalizing certain Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties therefor and for Other Purposes," promulgated on June 6, 1979.

9 "Amending Batas Pambansa Blg. 33, x x x, by Including Short-Selling and Adulteration of Petroleum and Petroleum Products and Other Acts in the Definition of Prohibited Acts, Increasing the Penalties therein, and for Other Purposes," issued on May 25, 1983.

10 Rollo, p. 117.

11 Id. at 118-119.

Petron Gasul LPG cylinders; and (3) on January 5, 2004, Total (Philippines) Corporation (Total) issued two certifications¹² of the refilling stations and plants authorized to refill their *Totalgaz* and *Superkalan Gaz* LPG cylinders.

Agents De Jemil and Kawada attested to conducting surveillance of Omni in the months of March and April 2004 and doing a test-buy on April 15, 2004. They brought eight branded LPG cylinders of *Shellane*, *Petron Gasul*, *Totalgaz*, and *Superkalan Gaz* to Omni for refilling. The branded LPG cylinders were refilled, for which the National Bureau of Investigation (NBI) agents paid PhP 1,582 as evidenced by Sales Invoice No. 90040¹³ issued by Omni on April 15, 2004. The refilled LPG cylinders were without LPG valve seals and one of the cylinders was actually underfilled, as found by LPG Inspector Noel N. Navio of the Liquefied Petroleum Gas Industry Association (LPGIA) who inspected the eight branded LPG cylinders on April 23, 2004 which were properly marked by the NBI after the test-buy.

The NBI's test-buy yielded positive results for violations of BP 33, Section 2(a) in relation to Secs. 3(c) and 4, i.e., refilling branded LPG cylinders without authority; and Sec. 2(c) in relation to Sec. 4, i.e., underdelivery or underfilling of LPG cylinders. Thus, on April 28, 2004, Agent De Jemil filed an Application for Search Warrant (With Request for Temporary Custody of the Seized Items)¹⁴ before the Regional Trial Court (RTC) in Pasig City, attaching, among others, his affidavit¹⁵ and the affidavit of Edgardo C. Kawada,¹⁶ an NBI confidential agent.

On the same day of the filing of the application for search warrants on April 28, 2004, the RTC, Branch 167 in Pasig City issued Search Warrants No. 2624¹⁷ and 2625.¹⁸ The NBI

served the warrants the next day or on April 29, 2004 resulting in the seizure of several items from Omni's premises duly itemized in the NBI's Receipt/Inventory of Property/Item Seized.¹⁹ On May 25, 2004, Agent De Jemil filed his Consolidated Return of Search Warrants with Ex-Parte Motion to Retain Custody of the Seized Items²⁰ before the RTC Pasig City.

Subsequently, Agent De Jemil filed before the Department of Justice (DOJ) his Complaint-Affidavits against petitioners for: (1) *Violation of Section 2(a), in relation to Sections 3(c) and 4, of B.P. Blg. 33, as amended by P.D. 1865*,²¹ and (2) *Violation of Section 2(c), in relation to Section 4, of B.P. Blg. 33, as amended by P.D. 1865*,²² docketed as I.S. Nos. 2004-616 and 2004-618, respectively.

During the preliminary investigation, petitioners submitted their Joint Counter-Affidavit,²³ which was replied²⁴ to by Agent De Jemil with a corresponding rejoinder²⁵ from petitioners.

The Ruling of the Office of the Chief State Prosecutor in I.S. No. 2004-616 and I.S. No. 2004-618

On November 7, 2005, the 3rd Assistant City Prosecutor Leandro C. Catalo of Manila issued a Joint Resolution,²⁶ later approved by the Chief State Prosecutor Jovencito R. Zuño upon the recommendation of the Head of the Task Force on Anti-Intellectual Property Piracy (TFAIPP), Assistant Chief State Prosecutor Leah C. Tanodra-Armamento, finding probable cause to charge petitioners with violations of pertinent sections of BP 33, as amended, resolving as follows:

12 Id. at 120-122.

13 Id. at 123.

14 Id. at 127-129.

15 Id. at 132-134.

16 Id. at 135-137.

17 Id. at 148-149.

18 Id. at 150-151.

19 Id. at 140.

20 Id. at 144-147, dated April 30, 2004.

21 Id. at 102-106, dated May 31, 2004.

22 Id. at 156-161, dated May 31, 2004.

23 Id. at 214-217, dated June 28, 2004.

24 Id. at 219-225, Reply-Affidavit, dated July 9, 2004.

25 Id. at 226-229, Joint Rejoinder-Affidavit, dated July 30, 2004.

26 Supra note 4.

WHEREFORE, premises considered, it is hereby recommended that two (2) Informations for violations of Section 2 [a] (illegal trading in petroleum and/or petroleum products) and Section 2 [c] (underfilling of LPG cylinders), both of Batas Pambansa Bilang 33, as amended, be filed against respondents [herein petitioners] ARNEL TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY and ALVIN TY.²⁷

Assistant City Prosecutor Catalo found the existence of probable cause based on the evidence submitted by Agent De Jemil establishing the fact that Omni is not an authorized refiller of *Shellane*, *Petron Gasul*, *Totalgaz* and *Superkalan Gaz* LPG cylinders. Debunking petitioners' contention that the branded LPG cylinders are already owned by consumers who are free to do with them as they please, the law is clear that the stamped markings on the LPG cylinders show who are the real owners thereof and they cannot be refilled sans authority from Pilipinas Shell, Petron or Total, as the case may be. On the underfilling of one LPG cylinder, the findings of LPG Inspector Navio of the LPGIA were uncontroverted by petitioners.

Petitioners' motion for reconsideration,²⁸ was denied through a Resolution²⁹ by the Office of the Chief State Prosecutor issued on May 3, 2006.

In time, petitioners appealed to the Office of the Secretary of Justice.³⁰

The Ruling of the DOJ Secretary in I.S. No. 2004-616 and I.S. No. 2004-618

On October 9, 2006, the Office of the Secretary of Justice issued a Resolution³¹ reversing and setting aside the November 7, 2005 Joint Resolution of the Office of the

Chief State Prosecutor, the dispositive portion of which reads:

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The Chief State Prosecutor is directed to cause the withdrawal of the informations for violations of Sections 2(a) and 2(c) of B.P. Blg. 33, as amended by P.D. 1865, against respondents Arnel Ty, Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty and report the action taken within ten (10) days from receipt hereof.

SO ORDERED.³²

The Office of the Secretary of Justice viewed, first, that the underfilling of one of the eight LPG cylinders was an isolated incident and cannot give rise to a conclusion of underfilling, as the phenomenon may have been caused by human error, oversight or technical error. Being an isolated case, it ruled that there was no showing of a clear pattern of deliberate underfilling. *Second*, on the alleged violation of refilling branded LPG cylinders sans written authority, it found no sufficient basis to hold petitioners responsible for violation of Sec. 2 (c) of BP 33, as amended, since there was no proof that the branded LPG cylinders seized from Omni belong to another company or firm, holding that the simple fact that the LPG cylinders with markings or stamps of other petroleum producers cannot by itself prove ownership by said firms or companies as the consumers who take them to Omni fully owned them having purchased or acquired them beforehand.

Agent De Jemil moved but was denied reconsideration³³ through another Resolution³⁴ dated December 14, 2006 prompting him to repair to the CA via a petition for certiorari³⁵ under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 98054.

²⁷ Rollo, p. 273.

²⁸ Id. at 275-289, dated February 8, 2006.

²⁹ Id. at 318-320.

³⁰ Id. at 321-338, Petition for Review, dated June 1, 2006.

³¹ Supra note 2.

³² Rollo, p. 379.

³³ Id. at 381-309, Motion for Reconsideration (Re: Resolution dated 9 October 2006), dated October 20, 2006.

³⁴ Supra note 3.

³⁵ Rollo, pp. 419-459.

The Ruling of the CA

The Office of the Solicitor General (OSG), in its Comment³⁶ on Agent De Jemil's appeal, sought the dismissal of the latter's petition viewing that the determination by the Office of the Secretary of Justice of probable cause is entitled to respect owing to the exercise of his prerogative to prosecute or not.

On August 31, 2007, Petron filed a Motion to Intervene and to Admit Attached Petition-in-Intervention³⁷ and Petition-in-Intervention³⁸ before the CA in CA-G.R. SP No. 98054. And much earlier, the Nationwide Association of Consumers, Inc. (NACI) also filed a similar motion.

On September 28, 2007, the appellate court rendered the assailed Decision³⁹ revoking the resolutions of the Office of the Secretary of Justice and reinstated the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor. The fallo reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed resolutions dated October 9, 2006 and December 14, 2006 are hereby **REVERSED** and **SET ASIDE**. The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor finding probable cause against private respondents Arnel Ty, Marie Antonette Ty, Jason Ong, Willy Dy, and Alvin Ty is hereby **REINSTATED**.

SO ORDERED.⁴⁰

Citing Sec. 1 (1) and (3) of BP 33, as amended, which provide for the presumption of underfilling, the CA held that the actual underfilling of an LPG cylinder falls under the prohibition of the law which does not require for the underfilling to be substantial and deliberate.

Moreover, the CA found strong probable violation of "refilling of another company's or firm's cylinders without such company's or firm's written authorization" under Sec. 3 (c) of BP 33, as amended. The CA relied on the affidavits of Agents De Jemil and Kawada, the certifications from various LPG producers that Omni is not authorized to refill their branded LPG cylinders, the results of the test-buy operation as attested to by the NBI agents and confirmed by the examination of LPG Inspector Navio of the LPGIA, the letter-opinion⁴¹ of the Department of Energy (DOE) to Pilipinas Shell confirming that branded LPG cylinders are properties of the companies whose stamp markings appear thereon, and Department Circular No. 2000-05-007⁴² of the DOE on the required stamps or markings by the manufacturers of LPG cylinders.

After granting the appeal of Agent De Jemil, however, the motions to intervene filed by Petron and NACI were simply noted by the appellate court.

Petitioners' motion for reconsideration was rebuffed by the CA through the equally assailed March 14, 2008 Resolution.⁴³

Thus, the instant petition.

The Issues

- I. WHETHER OR NOT RESPONDENTS WERE ENTITLED TO THE SPECIAL CIVIL ACTION OF CERTIORARI IN THE COURT OF APPEALS.
- II. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(A) OF BATAS PAMBANSA BLG. 33, AS AMENDED.

36 Id. at 490-499, dated May 8, 2007.

37 Id. at 811-826, dated August 30, 2007.

38 Id. at 827-855, dated August 30, 2007.

39 Supra note 1.

40 Rollo, pp. 91-92.

41 Id. at 565-568, signed by DOE Secretary Vincent S. Perez, dated December 9, 2004.

42 Id. at 361, issued by DOE Secretary Mario V. Tiaoqui.

43 Supra note 5.

III. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(C) OF BATAS PAMBANSA BLG. 33, AS AMENDED.

IV. WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE UNDER BATAS PAMBANSA BLG. 33, AS AMENDED, FOR BEING MERE DIRECTORS, NOT ACTUALLY IN CHARGE OF THE MANAGEMENT OF THE BUSINESS AFFAIRS OF THE CORPORATION.⁴⁴

The foregoing issues can be summarized into two core issues: *first*, whether probable cause exists against petitioners for violations of Sec. 2 (a) and (c) of BP 33, as amended; and *second*, whether petitioners can be held liable therefor. We, however, will tackle at the outset the sole procedural issue raised: the propriety of the petition for certiorari under Rule 65 availed of by public respondent Agent De Jemil to assail the resolutions of the Office of the Secretary of Justice.

Petron's Comment-in-Intervention

On April 14, 2009, Petron entered its appearance by filing a Motion for Leave to Intervene and to Admit Comment-in-Intervention⁴⁵ and its Comment-in-Intervention [To petition for Review on *Certiorari* dated 13 May 2008].⁴⁶ It asserted vested interest in the seizure of several *Gasul* LPG cylinders and the right to prosecute petitioners for unauthorized refilling of its branded LPG cylinders by Omni. Petitioners duly filed their Comment/Opposition⁴⁷ to Petron's motion to intervene. It is clear, however, that Petron has substantial interest

to protect in so far as its business relative to the sale and refilling of *Petron Gasul* LPG cylinders is concerned, and therefore its intervention in the instant case is proper.

The Court's Ruling

We partially grant the petition.

Procedural Issue: Petition for Certiorari under Rule 65 Proper

Petitioners raise the sole procedural issue of the propriety of the legal remedy availed of by public respondent Agent De Jemil. They strongly maintain that the Office of the Secretary of Justice properly assumed jurisdiction and did not gravely abuse its discretion in its determination of lack of probable cause—the exercise thereof being its sole prerogative—which, they lament, the appellate court did not accord proper latitude. Besides, they assail the non-exhaustion of administrative remedies when Agent De Jemil immediately resorted to court action through a special civil action for certiorari under Rule 65 before the CA without first appealing the resolutions of the Office of the Secretary of Justice to the Office of the President (OP).

We cannot agree with petitioners.

For one, while it is the consistent principle in this jurisdiction that the determination of probable cause is a function that belongs to the public prosecutor⁴⁸ and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case;⁴⁹ such determination is subject to judicial review where it is established that grave abuse of discretion tainted the determination.

⁴⁴ Rollo, p. 44.

⁴⁵ Id. at 726-745, dated April 13, 2009.

⁴⁶ Id. at 749-772, dated April 13, 2009.

⁴⁷ Id. at 961-971, Comment/Opposition (To the Motion for Leave to Intervene and to Admit Attached Comment-in-Intervention), dated June 29, 2009.

⁴⁸ *Baltazar v. People*, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 291.

⁴⁹ *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 535; citing *Advincula v. Court of Appeals*, G.R. No. 131144, October 18, 2000, 343 SCRA 583, 589-290 and *Punzalan v. Dela Peña*, G.R. No. 158543, July 21, 2004, 434 SCRA 601.

For another, there is no question that the Secretary of Justice is an alter ego of the President who may opt to exercise or not to exercise his or her power of review over the former's determination in criminal investigation cases. As aptly noted by Agent De Jemil, the determination of probable cause by the Secretary of Justice is, under the doctrine of qualified political agency, presumably that of the Chief Executive unless disapproved or reprobated by the latter.

*Chan v. Secretary of Justice*⁵⁰ delineated the proper remedy from the determination of the Secretary of Justice. Therein, the Court, after expounding on the policy of non-interference in the determination of the existence of probable cause absent any showing of arbitrariness on the part of the public prosecutor and the Secretary of Justice, however, concluded, citing *Alcaraz v. Gonzalez*⁵¹ and *Preferred Home Specialties, Inc. v. Court of Appeals*,⁵² that an aggrieved party from the resolution of the Secretary of Justice may directly resort to judicial review on the ground of grave abuse of discretion, thus:

xxx [T]he findings of the Justice Secretary may be reviewed through a petition for certiorari under Rule 65 based on the allegation that he **acted with grave abuse of discretion**. This remedy is available to the aggrieved party.⁵³ (Emphasis supplied.)

It is thus clear that Agent De Jemil, the aggrieved party in the assailed resolutions of the Office of the Secretary of Justice, availed of and pursued the proper legal remedy of a judicial review through a petition for certiorari under Rule 65 in assailing the latter's finding of lack of probable cause on the ground of grave abuse of discretion.

First Core Issue: Existence of Probable Cause

Petitioners contend that there is no probable cause that Omni violated Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended, prohibiting the refilling of another company's or firm's LPG cylinders without its written authorization. First, the branded LPG cylinders seized were not traded by Omni as its representative annotated in the NBI receipt of seized items that the filled LPG cylinders came from customers' trucks and the empty ones were taken from the warehouse or swapping section of the refilling plant and not from the refilling section. Second, the branded LPG cylinders are owned by end-user customers and not by the major petroleum companies, i.e., Petron, Pilipinas Shell and Total. And even granting arguendo that Omni is selling these LPG cylinders, still there cannot be a prima facie case of violation since there is no proof that the refilled branded LPG cylinders are owned by another company or firm.

Third, granting that Petron, Total and Pilipinas Shell still own their respective branded LPG cylinders already sold to consumers, still such fact will not bind third persons, like Omni, who is not privy to the agreement between the buying consumers and said major petroleum companies. Thus, a subsequent transfer by the customers of Petron, Total and Pilipinas Shell of the duly marked or stamped LPG cylinders through swapping, for example, will effectively transfer ownership of the LPG cylinders to the transferee, like Omni.

Fourth, LPG cylinder exchange or swapping is a common industry practice that the DOE recognizes. They point to a series of meetings conducted by the DOE for institutionalizing the validity of swapping of all and any kind of LPG cylinders among the industry players. The meetings resulted in a draft Memorandum of Agreement (MOA) which unfortunately was not signed due to the withdrawal of petroleum major players Petron, Total and Pilipinas Shell. Nonetheless, the non-signing of the MOA does not diminish the fact of

50 G.R. No. 147065, March 14, 2008, 548 SCRA 337.

51 G.R. No. 164715, September 20, 2006, 502 SCRA 518.

52 G.R. No. 163593, December 16, 2005, 478 SCRA 387.

53 *Chan v. Secretary of Justice*, supra note 50, at 350.

the recognized industry practice of cylinder exchange or swapping. Relying on Republic Act No. (RA) 8479,⁵⁴ petitioners maintain that said law promotes and encourages the entry of new participants in the petroleum industry such as Omni. And in furtherance of this mandate is the valid practice of cylinder exchange or swapping in the LPG industry.

We are not persuaded by petitioners’ strained rationalizations.

Probable violation of Sec. 2 (a) of BP 33, amended

First. The test-buy conducted on April 15, 2004 by the NBI agents, as attested to by their respective affidavits, tends to show that Omni illegally refilled the eight branded LPG cylinders for Php 1,582. This is a clear violation of Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended. It must be noted that the criminal complaints, as clearly shown in the complaint-affidavits of Agent De Jemil, are not based solely on the seized items pursuant to the search warrants but also on the test-buy earlier conducted by the NBI agents.

Second. The written certifications from Pilipinas Shell, Petron and Total show that Omni has no written authority to refill LPG cylinders, embossed, marked or stamped *Shellane*, *Petron Gasul*, *Totalgaz* and *Superkalan Gaz*. In fact, petitioners neither dispute this nor claim that Omni has authority to refill these branded LPG cylinders.

Third. Belying petitioners’ contention, the seized items during the service of the search warrants tend to show that Omni illegally refilled branded LPG cylinders without authority.

On April 29, 2004, the NBI agents who served the search warrants on Omni seized the following:

Qty./Unit	Description
7	LPG cylinders Totalgaz, 11.0 kg [filled]
1	LPG cylinder Petron Gasul, 11.0 kg [filled]
1	LPG cylinder Shellane, 11.0 kg [filled]
29	LPG cylinders Superkalan Gaz, 2.7 kg [empty]
17	LPG cylinders Petron Gasul, 11.0 kg [empty]
8	LPG cylinders Marked as Omnigas with Shell emboss, 11.0 kg [empty]
5	LPG cylinders Marked as Omnigas with Totalgaz emboss, 11.0 kg [empty]
23	LPG cylinders Shellane, 11.0 kg [empty]
3	LPG cylinders Marked as Omnigas with Gasul emboss, 11.0 kg [empty]
21	LPG cylindersTotalgaz, 11.0 kg [empty]

The foregoing list is embodied in the NBI’s Receipt/Inventory of Property/Item Seized⁵⁵ signed by NBI Agent Edwin J. Roble who served and implemented the search warrants. And a copy thereof was duly received by Atty. Allan U. Ty, representative of Omni, who signed the same “under protest” and made the annotation at the bottom part thereon: “The above items/cylinders were taken at customers’ trucks and the empty cylinders taken at the warehouse (swapping section) of the company.”⁵⁶

Even considering that the filled LPG cylinders were indeed already loaded on customers’ trucks when confiscated, yet the fact that these refilled LPG cylinders consisting of nine branded LPG cylinders, specifically *Totalgaz*,

54 Downstream Oil Industry Deregulation Act of 1998.

55 Supra note 19.
56 Rollo, p. 140.

Petron Gasul and Shellane, tends to show that Omni indeed refilled these branded LPG cylinders without authorization from Total, Petron and Pilipinas Shell. Such a fact is bolstered by the test-buy conducted by Agent De Jemil and NBI confidential agent Kawada: Omni's unauthorized refilling of branded LPG cylinders, contrary to Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended. Said provisos provide:

Sec. 2. Prohibited Acts.—The following acts are prohibited and penalized:

(a) **Illegal trading in petroleum and/or petroleum products;**

x x x x

Sec. 3. Definition of terms.—For the purpose of this Act, the following terms shall be construed to mean:

Illegal trading in petroleum and/or petroleum products—

x x x x

(c) **Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;** (Emphasis supplied.)

As petitioners strongly argue, even if the branded LPG cylinders were indeed owned by customers, such fact does not authorize Omni to refill these branded LPG cylinders without written authorization from the brand owners Pilipinas Shell, Petron and Total. In *Yao, Sr. v. People*,⁵⁷ a case involving criminal infringement of property rights under Sec. 155 of RA 8293,⁵⁸ in affirming the courts *a quo's* determination of the presence of probable cause, this Court held that from Sec.

155.1⁵⁹ of RA 8293 can be gleaned that “mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is *likely* to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement.”⁶⁰ The Court affirmed the presence of infringement involving the unauthorized sale of *Gasul* and *Shellane* LPG cylinders and the unauthorized refilling of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

Similarly, in the instant case, the fact that Omni refilled various branded LPG cylinders even if owned by its customers but without authority from brand owners Petron, Pilipinas Shell and Total shows palpable violation of BP 33, as amended. As aptly noted by the Court in *Yao, Sr. v. People*, only the duly authorized dealers and refillers of *Shellane*, *Petron Gasul* and, by extension, *Total* may refill these branded LPG cylinders. Our laws sought to deter the pernicious practices of unscrupulous businessmen.

Fourth. The issue of ownership of the seized branded LPG cylinders is irrelevant and hence need no belaboring. BP 33, as amended, does not require ownership of the branded LPG cylinders as a condition *sine qua non* for the commission of offenses involving petroleum and petroleum products. Verily, the offense of refilling a branded LPG cylinder without the written consent of the brand owner constitutes the offense regardless of the buyer or possessor of the branded LPG cylinder.

57 G.R. No. 168306, June 19, 2007, 525 SCRA 108.

58 Intellectual Property Code of the Philippines, promulgated on June 6, 1997 and took effect on January 1, 1998.

59 Sec. 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; x x x (Emphasis supplied.)

60 *Yao, Sr. v. People*, supra note 57, at 126.

After all, once a consumer buys a branded LPG cylinder from the brand owner or its authorized dealer, said consumer is practically free to do what he pleases with the branded LPG cylinder. He can simply store the cylinder once it is empty or he can even destroy it since he has paid a deposit for it which answers for the loss or cost of the empty branded LPG cylinder. Given such fact, what the law manifestly prohibits is the refilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner. Apropos, a refiller cannot and ought not to refill branded LPG cylinders if it has no written authority from the brand owner.*lavvphi1*

Besides, persuasive are the opinions and pronouncements by the DOE: brand owners are deemed owners of their duly embossed, stamped and marked LPG cylinders even if these are possessed by customers or consumers. The Court recognizes this right pursuant to our laws, i.e., Intellectual Property Code of the Philippines. Thus the issuance by the DOE Circular No. 2000-05-007,⁶¹ the letter-opinion⁶² dated December 9,

61 Supra note 42, DOE Department Circular No. 2000-05-07 provides:

Embossed Identifying Mark on LPG Cylinders and Installation of Collars with Distinctive Design or Markings on Existing LP Cylinders During Requalification

FOR: LPG REFILLERS ASSOCIATION (LPGRA) PHILIPPINE LPG ASSOCIATION (PLPGA) LPG INSTITUTE OF THE PHILIPPINES (LPGIP) SOUTHERN ISLANDS TASK FORCE (SILTF) LIQUIGAS PHILIPPINES CORPORATION (LPC) PETRONAS ENERGY PHILIPPINES, INC. (PEPI) PRYCE GASES INCORPORATED (PGI) NATION GAS (NATION) TOTAL LPG PHILIPPINES (TOTAL) PETRON CORPORATION (PETRON) PILIPINAS SHELL PETROLEUM CORP. (PSPC) CALTEX TRADING CORP. (CATGAS) MANILA GAS CORPORATION (MGC) PHILIPPINE ASSOCIATION OF LPG CYLINDERS MANUFACTURERS, INC. (PALCMI) ALL OTHERS CONCERNED

WHEREAS, pursuant to Section 2 and Section 5 (k) of Chapter 1 of RA No. 7638, the DEPARTMENT OF ENERGY (DOE) shall formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution.

WHEREAS, it has come to the attention of his Office that there is a substantial number of LPG cylinders circulating without appropriate distinguishing marks to identify the owner or source for purposes of pinpointing responsibility in cases of underfilling and other violations related to said cylinders;

WHEREAS, with the intensified drive against violators in the conduct of the downstream LPG industry the DOE finds that there is a need to address this problem of proper identification;

WHEREAS, premises considered, all concerned LPG industry players are hereby directed to strictly comply with the following: In the manufacture of new LPG cylinders the body shall be embossed with clear markings or signs indicating ownership. New and locally manufactured cylinders shall conform to the

2004 of then DOE Secretary Vincent S. Perez addressed to Pilipinas Shell, the June 6, 2007 letter⁶³ of then DOE Secretary Raphael P.M. Lotilla to the LPGIA, and DOE Department Circular No. 2007-10-0007⁶⁴ on LPG Cylinder Ownership and Obligations Related Thereto issued on October 13, 2007 by DOE Secretary Angelo T. Reyes.

Fifth. The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence.

required Product Standard (PS) mark. For imported cylinders the same shall be marked with the appropriate Import Commodity Clearance (ICC) prior to local circulation. For existing LPG cylinders without the embossed markings or signs, including all imported cylinders, distinctive collars or collars with distinctive designs or markings of permanent character shall be installed upon requalification or prior to local circulation, as the case may be. The installation of the required collar or distinctive markings of permanent character shall be made only by government accredited cylinders manufacturers or requalifiers with the date of installation properly indicated thereon.

This Department Circular shall take effect one (1) month after its complete Publication in two (2) newspaper [sic] of general circulation.

MARIO V. TIAOQUI

Secretary

(Emphasis supplied.)

62 Supra note 41.

63 Rollo, pp. 563-564.

64 Id. at 658-659, DOE Department Circular No. 2007-10-0007 provides:

LPG CYLINDER OWNERSHIP AND OBLIGATIONS RELATED THERETO

WHEREAS, pursuant to Republic Act Nos. 7368 (Department of Energy Act of 1992) and 8479 (Downstream Oil Industry Deregulation Act of 1998), Batas Pambansa Blg. 33 as amended by Presidential Decree 1865 (Defining and penalizing certain prohibited acts involving petroleum/petroleum products), and under pertinent rules and regulations, the DOE has the power to monitor, supervise and regulate the petroleum industry and impose corresponding administrative penalties for violations thereof;

WHEREAS, disputes and disagreements among industry players have increased in the recent years regarding generally, the ownership of liquefied petroleum gas (LPG) cylinders, owing to the absence of clear guidelines defining such ownership, misunderstanding by consumers and dealers alike, and the inordinate indifference of industry players to address this particular concern amongst themselves;

WHEREAS, the DOE has already issued Department Circular No. DC2000-05-07, requiring among others that the owners or sources of LPG cylinders to emboss their brand and ownership markings on the LPG cylinders, in an attempt to identify the owners thereof for purposes of accountability;

WHEREAS, illegal practices in LPG industry are escalating, more particularly in the refilling LPG cylinders without the prior approval of consent of the owner of the LPG cylinders, in the process depriving the latter of reasonable business return, fomenting unsafe handling practice, and thus increasing risk and danger to the consuming public;

The law does not require that the property to be seized should be owned by the person against whom the search warrants is directed. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized.⁶⁵ Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound.

WHEREAS, there is now a pressing need to establish clear directives in order to diminish, if not totally eliminate, illegal practices and abuses such as above, to prevent evasion of liability on the part of LPG industry players, and to provide clear guidelines and reference on the ownership of LPG cylinders, to enable the Department to identify the proper liable persons and impose the appropriate penalty thereof;

WHEREAS, in consideration of the foregoing, the following guidelines are hereby promulgated to govern these concerns:

SECTION 1. The brand owner whose permanent mark/markings appear/s on the LPG cylinder shall be presumed the owner thereof, irrespective of the party in custody or possession of the cylinder, and regardless of whether such cylinder is, or continues to be, properly marked, stamped or identified to contain its LPG brand, or whether such cylinder is in compliance, or continues to comply with any other product or quality standard prescribed under law, by the DOE or by the Department of Trade and Industry (DTI), unless there is any unequivocal proof or indication that such cylinder was sold, alienated, or otherwise disposed of by the brand owner to an unrelated third party under a written instrument.

SECTION 2. The brand owner shall have the obligation to ensure that its cylinders comply with all required product quality, quantity and safety standards and specifications before they are released for sale/distribution and while they are in circulation; Provided that receipt by the DOE of a verified notice or report from the brand owner regarding any loss, stolen or missing LPG cylinders shall prima facie relieve the cylinder owner of the obligation to ensure the quality, safety and exact net content of such LPG cylinders. Such report may be rebutted by contrary evidence.

SECTION 3. The brand owner shall issue authorization to entity/firm authorized to refill their LPG cylinders. Consequently, an entity/firm who shall refill LPG cylinders without authority from the brand owner shall be charged with "Illegal Refilling" and corresponding sanctions shall be applied;

SECTION 4. Upon notice of this Circular, all brand owners shall immediately commence LPG cylinder audit and recovery program for a period not exceeding six (6) months from effectivity of this Circular; and report the same to OIMB.

Provisions to complement this definition may be issued subsequently, as necessary.

Penalties and sanctions for violations of this Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig City, October 13, 2007.

ANGELO T. REYES

Secretary

Department of Energy

(Emphasis supplied.)

⁶⁵ Yao, Sr. v. People, supra note 57, at 138; citing Burgos, Sr. v. Chief of Staff, AFP, No. L-64261, December 26, 1984, 133 SCRA 800.

In fine, we also note that among those seized by the NBI are 16 LPG cylinders bearing the embossed brand names of *Shellane*, *Gasul* and *Totalgaz* but were marked as Omnigas. Evidently, this pernicious practice of tampering or changing the appearance of a branded LPG cylinder to look like another brand violates the brand owners' property rights as *infringement* under Sec. 155.1 of RA 8293. Moreover, tampering of LPG cylinders is a mode of perpetrating the criminal offenses under BP 33, as amended, and clearly enunciated under DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation.

Foregoing considered, in the backdrop of the quantum of evidence required to support a finding of probable cause, we agree with the appellate court and the Office of the Chief State Prosecutor, which conducted the preliminary investigation, that there exists probable cause for the violation of Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended. Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.⁶⁶ After all, probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief—probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.⁶⁷

Probable violation of Sec. 2 (c) of BP 33, as amended

⁶⁶ Aguirre v. Secretary, Department of Justice, G.R. No. 170723, March 3, 2008, 547 SCRA 431, 452; Tan v. Ballena, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 251, citing Cruz v. People, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 453-454 as cited in Ladlad v. Velasco, G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 348, 335.

⁶⁷ Chan v. Secretary of Justice, supra note 50, at 352; citing Ching v. The Secretary of Justice, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 629; The Presidential Ad Hoc Fact-Finding Committee on Behest Loans (FFCBL) v. Desierto, G.R. No. 136225, April 23, 2008, 552 SCRA 513, 528.

Anent the alleged violation of Sec. 2 (c) in relation to Sec. 4 of BP 33, as amended, petitioners strongly argue that there is no probable cause for said violation based upon an underfilling of a lone cylinder of the eight branded LPG cylinders refilled during the test-buy. Besides, they point out that there was no finding of underfilling in any of the filled LPG cylinders seized during the service of the search warrants. Citing DOE's Bureau of Energy Utilization Circular No. 85-3-348, they maintain that some deviation is allowed from the exact filled weight. Considering the fact that an isolated underfilling happened in so many LPG cylinders filled, petitioners are of the view that such is due to human or equipment error and does not in any way constitute deliberate underfilling within the contemplation of the law.

Moreover, petitioners cast aspersion on the report and findings of LPG Inspector Navio of the LPGIA by assailing his independence for being a representative of the major petroleum companies and that the inspection he conducted was made without the presence of any DOE representative or any independent body having technical expertise in determining LPG cylinder underfilling beyond the authorized quantity.

Again, we are not persuaded.

Contrary to petitioners' arguments, a single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*,⁶⁸ the Court affirmed the validity of DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation, thus:

B.P. Blg. 33, as amended, criminalizes **illegal trading**, adulteration, **underfilling**, hoarding, and overpricing of petroleum products. Under this general description of what constitutes criminal acts involving petroleum

products, the Circular merely lists the various modes by which the said criminal acts may be perpetrated, namely: no price display board, no weighing scale, no tare weight or incorrect tare weight markings, no authorized LPG seal, no trade name, unbranded LPG cylinders, no serial number, no distinguishing color, no embossed identifying markings on cylinder, **underfilling LPG cylinders, tampering LPG cylinders**, and unauthorized decanting of LPG cylinders. These specific acts and omissions are obviously within the contemplation of the law, which seeks to curb the pernicious practices of some petroleum merchants.⁶⁹ (Emphasis supplied.)

Moreover, in denying the motion for reconsideration of the LPG Refillers Association of the Philippines, Inc., the Court upheld the basis of said DOE Circular No. 2000-06-010 on the imposition of penalties on a per cylinder basis, thus:

Respondent's position is untenable. The Circular is not confiscatory in providing penalties on a per cylinder basis. Those penalties do not exceed the ceiling prescribed in Section 4 of B.P. Blg. 33, as amended, which penalizes "*any person who commits **any act** [t]herein prohibited.*" Thus, violation on a per cylinder basis falls within the phrase "*any act*" as mandated in Section 4. To provide the same penalty for one who violates a prohibited act in B.P. Blg. 33, as amended, regardless of the number of cylinders involved would result in an indiscriminate, oppressive and impractical operation of B.P. Blg. 33, as amended. The equal protection clause demands that "*all persons subject to such legislation shall be treated alike, **under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.***"⁷⁰

The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of **any act** as mandated under

⁶⁹ Id. at 649-650.

⁷⁰ *Perez v. LPG Refillers Association of the Philippines, Inc.*, G.R. No. 159149, August 28, 2007, 531 SCRA 431, 435.

⁶⁸ G.R. No. 159149, June 26, 2006, 492 SCRA 638.

Sec. 4 of BP 33, as amended. Ineluctably, the underfilling of one LPG cylinder constitutes a clear violation of BP 33, as amended. The finding of underfilling by LPG Inspector Navio of the LPGIA, as aptly noted by Manila Assistant City Prosecutor Catalo who conducted the preliminary investigation, was indeed not controverted by petitioners.

On the issue of manifest bias and partiality, suffice it to say that aside from the allegation by petitioners, they have not shown that LPG Inspector Navio is neither an expert nor qualified to determine underfilling. Besides, it must be noted that the inspection by LPG Inspector Navio was conducted in the presence of NBI agents on April 23, 2004 who attested to that fact through their affidavits. Moreover, no rules require and petitioners have not cited any that the inspection be conducted in the presence of DOE representatives.

Second Core Issue: Petitioners' Liability for Violations

Sec. 4 of BP 33, as amended, provides for the penalties and persons who are criminally liable, thus:

Sec. 4. Penalties. — Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (P20,000) but not more than fifty thousand pesos (P50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party

shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a **corporation**, partnership, or other juridical person, the **president**, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office. (Emphasis supplied.)

Relying on the third paragraph of the above statutory proviso, petitioners argue that they cannot be held liable for any perceived violations of BP 33, as amended, since they are mere directors of Omni who are not in charge of the management of its business affairs. Reasoning that criminal liability is personal, liability attaches to a person from his personal act or omission but not from the criminal act or negligence of another. Since Sec. 4 of BP 33, as amended, clearly provides and enumerates who are criminally liable, which do not include members of the board of directors of a corporation, petitioners, as mere members of the board of directors who are not in charge of Omni's business affairs, maintain that they cannot be held liable for any perceived violations of BP 33, as amended. To bolster their position, they attest to being full-time employees of various firms

as shown by the Certificates of Employment⁷¹ they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable thereof not being in any way connected with the commission of the alleged violations, and, consequently, the criminal complaints filed against them based solely on their being members of the board of directors as per the GIS submitted by Omni to SEC are grossly discriminatory.

On this point, we agree with petitioners except as to petitioner Arnel U. Ty who is indisputably the President of Omni.

It may be noted that Sec. 4 above enumerates the persons who may be held liable for violations of the law, viz: (1) the president, (2) general manager, (3) managing partner, (4) such other officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

It is undisputed that petitioners are members of the board of directors of Omni at the time pertinent. There can be no quibble that the enumeration of persons who may be held liable for corporate violators of BP 33, as amended, excludes the members of the board of directors. This stands to reason for the board of directors of a corporation is generally a policy making body. Even if the corporate powers of a corporation are reposed in the board of directors under the first paragraph of Sec. 23⁷² of the Corporation Code, it is of

common knowledge and practice that the board of directors is not directly engaged or charged with the running of the recurring business affairs of the corporation. Depending on the powers granted to them by the Articles of Incorporation, the members of the board generally do not concern themselves with the day-to-day affairs of the corporation, except those corporate officers who are charged with running the business of the corporation and are concomitantly members of the board, like the President. Section 25⁷³ of the Corporation Code requires the president of a corporation to be also a member of the board of directors.

Thus, the application of the legal maxim *expressio unius est exclusio alterius*, which means the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.⁷⁴ The fourth officer in the enumerated list is the catch-all “such other officer charged with the management of the business affairs” of the corporation or juridical entity which is a factual issue which must be alleged and supported by evidence.

A scrutiny of the GIS reveals that among the petitioners who are members of the board of directors are the following who are likewise elected as corporate officers of Omni: (1) Petitioner Arnel U. Ty (Arnel) as President;

⁷² Sec. 23. The board of directors or trustees.—Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (Emphasis supplied.)

⁷³ Sec. 25. Corporate officers, quorum.—Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

⁷⁴ Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 93 (citations omitted).

⁷¹ Rollo, pp. 241-243.

(2) petitioner Mari Antonette Ty as Treasurer; and (3) petitioner Jason Ong as Corporate Secretary. Sec. 4 of BP 33, as amended, clearly indicated firstly the president of a corporation or juridical entity to be criminally liable for violations of BP 33, as amended.

Evidently, petitioner Arnel, as President, who manages the business affairs of Omni, can be held liable for probable violations by Omni of BP 33, as amended. The fact that petitioner Arnel is ostensibly the operations manager of Multi-Gas Corporation, a family owned business, does not deter him from managing Omni as well. It is well-settled that where the language of the law is clear and unequivocal, it must be taken to mean exactly what it says.⁷⁵ As to the other petitioners, unless otherwise shown that they are situated under the catch-all “such other officer charged with the management of the business affairs,” they may not be held liable under BP 33, as amended, for probable violations. Consequently, with the exception of petitioner Arnel, the charges against other petitioners must perforce be dismissed or dropped.

WHEREFORE, premises considered, we PARTIALLY GRANT the instant petition. Accordingly, the assailed September 28, 2007 Decision and March 14, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 98054 are AFFIRMED with MODIFICATION that petitioners Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty are excluded from the two Informations charging probable violations of Batas Pambansa Bilang 33, as amended.

The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor is modified accordingly.

No pronouncement as to costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.

Associate Justice

WE CONCUR:

RENATO C. CORONA

Chief Justice

Chairperson

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

JOSE PORTUGAL PEREZ

Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.

RENATO C. CORONA

Chief Justice

⁷⁵ Yu v. Orchard Golf & Country Club, Inc., G.R. No. 150335, March 1, 2007, 517 SCRA 169, 177 (citations omitted).

DEPARTMENT CIRCULAR NO. DC2011 -08-0008

GUIDELINES FOR THE RELEASE AND DISPOSAL OF IMPOUNDED LIQUEFIED PETROLEUM GAS CYLINDERS

WHEREAS, Republic Act (R.A.) No. 7638, otherwise known as the “Department of Energy Act of 1992” mandates the Department of Energy (DOE) to exercise supervision and control over all government activities relative to energy projects, as well as establish and administer programs for the storage of energy resources;

WHEREAS, Batas Pambansa (B.P.) Bilang 33, as amended by Presidential Decree (P.D.) No. 1865, defines and penalizes certain prohibited acts inimical to the public interest and national security involving petroleum and/or petroleum products, and mandates the DOE to issue such rules and regulations to carry into effect the provisions thereof;

WHEREAS, Section 1, Rule X of the Implementing Rules and Regulations (IRR) of B.P. 33, as amended, authorizes the impounding of petroleum and/or petroleum products constituting evidence in the following cases, among others: 1) liquefied petroleum gas (LPG) in cylinders found to be underfilled; 2) LPG filled into cylinders by filling plants without license from the Bureau¹ and/or filled in cylinders not owned by the Filling plant or marketer which do not have written authorization by the owner to use or fill the cylinder; and 3) LPG in cylinders without tare weight, or without seal after the sealing requirement goes into effect;

WHEREAS, Article 45 of the Revised Penal Code of the Philippines provides for the confiscation of the proceeds of the crime and the instruments or tools with which it was committed and subsequently the forfeiture in

favor of the Government of these instruments or tools unless these are the property of a third person not liable for the offense;

WHEREAS, over the years, confiscated LPG cylinders have accumulated in the DOE-authorized impounding facilities;

WHEREAS, the proper handling, storage, release and/or eventual disposal of impounded LPG cylinders promotes and ensures public health and safety, and environmental protection;

NOW, THEREFORE, premises considered, and pursuant to its statutory mandate, the DOE hereby promulgates the following guidelines:

Section 1. Scope and Application. This Circular shall apply to all LPG Industry Participants specifically on the matter of confiscated LPG cylinders stored in impounding facilities.

Section 2. Definition of Terms. As used in this Circular, the following terms shall be understood to mean, as follows:

- a) **“Abandoned Cylinder”** shall refer to an impounded cylinder wherein:
 - i) The violator, owner, or respondent fails to claim the cylinder within ten (10) working days from receipt of the Release Order issued by the Director of the Legal Services; or
 - ii) The violator, owner or respondent gives the DOE a written notice expressly and absolutely abandoning the cylinders in favor of the latter.

¹ “Bureau” under B.P. 33, as amended refers to the Bureau of Energy Utilization. Its successor under the present organizational structure of the DOE is the Oil Industry Management Bureau

- b) **“Brand Owner”** shall refer to a person or entity whose permanent mark appears on the LPG cylinder, irrespective of the party in custody or possession of the cylinder, and regardless of whether such cylinder is, or continues to be, properly marked, stamped or identified to contain its LPG brand, or whether such cylinder is in compliance, or continues to comply with any other product or quality standard prescribed under the law, by the DOE or by the Department of Trade and Industry (DTI), unless there is any unequivocal proof or indication that such cylinder was sold, alienated, or otherwise disposed of by the brand owner to an unrelated third party under a written instrument.
- c) **“OIMB”** shall refer to the Oil Industry Management Bureau of the DOE;
- d) **“Permanent Marking”** shall refer to the marking of the brand name or name of the owner and such markings that are embossed, etched or stamped on the cylinder collar or foot ring as required under Philippine National Standards (PNS) 03-1:2000;
- e) **“Re-qualification”** shall refer to the method or procedure by which an LPG cylinder is subjected to inspection and re-evaluation by the DTI in accordance with the specifications set forth in PNS 03-2000, “Steel Cylinders for Liquefied Petroleum Gas”, Part 2- “Method of Requalification to determine its acceptability for continuous use and distribution and subsequent repair or scrappage, where appropriate”;
- f) **“Re-qualifier”** shall refer to any person or entity duly accredited by the Department of Trade and Industry (DTI) to engage in the business of re-qualifying LPG cylinders;
- g) **“Repair”** shall refer to the removal from and replacement of parts or attachments of LPG cylinders or the performance of any other necessary corrective and restorative measures pursuant to the PNS, to restore the fitness of LPG cylinders for refilling, distribution and use;
- h) **“Repairer”** shall refer to any person, duly certified by the DTI to engage in the business of repairing LPG cylinders;
- i) **“Serviceable Cylinder”** shall refer to a LPG cylinder that may have defects as provided under PNS 03-2:2000 but may still be repaired or re-qualified by a DTI duly-accredited or certified repairer or requalifier;
- j) **“Unserviceable Cylinder”** shall refer to a LPG cylinder that may no longer be repaired and/or re-qualified by a DTI duly-accredited or certified repairer or re-qualifier because of the following defects:
- i) Condemned, rejected and/or completely corroded, dilapidated or scrapped;
 - ii) “Chopped-chopped” or with body compartments made up of steel plating component welded together, and/or with bolts and screws on the collar ring, collar plate and cylinder body;
 - iii) Original embossed marking is covered by another steel plate with embossed marking;
 - iv) Repaired by unauthorized person or entity;
 - v) Uncertified and without PNS and/or global check mark;
 - vi) Illegally manufactured that do not conform with applicable PNS;

- vii) Illegally imported or without Import Commodity Clearance² ; or
- viii) Without permanent markings and does not conform to the PNS on thickness of steel and design.

SECTION 3. Impounding of LPG Cylinders.

Filled LPG cylinders confiscated pursuant to Section 1, Rule X of the IRR of B.P. 33, as amended by P.D. 1865, shall be impounded for the purpose of preserving evidence during the pendency of the administrative and/or criminal case(s).

All impounded filled LPG cylinders shall be accounted quarterly by the OIMB in coordination with the person or entity in charge of the impounding facility and a report thereof shall be submitted to the DOE Secretary.

SECTION 4. Systems and Procedures in the Handling and Storage of Impounded LPG Cylinders. The following procedures shall be observed in the proper handling and storage of filled LPG cylinders:

- a) The impounding facility shall comply with the safety requirements of the Bureau of Fire Protection;
- b) The LPG cylinders shall be stored in a secured and covered impounding facility with sufficient distance from a residential area as classified by the land use / zoning ordinances of the concerned Local Government Unit;
- c) The LPG cylinders shall be grouped and classified for easy identification and retrieval on a per case basis and segregated into serviceable and unserviceable;

- d) The LPG cylinders shall be labelled and properly marked, which label shall be covered with plastic to avoid exposure to the elements and shall bear the following details:

- i) Case Number and Title;
- ii) Violator's name;
- iii) Date of confiscation/impounding; and
- iv) Violations committed;

- e) The custodian of the impounding facility shall record all confiscated / impounded and released filled LPG cylinders in a logbook and shall issue an official receipt (OR) for reasonable fees for storage, handling and security of the cylinders, trucks, multi-cab and other equipment upon presentation of the Release Order from the Director of the Legal Services;

- f) Security services shall be provided in the premises of the impounding facility; and,

- g) Filled LPG cylinders that are determined or found by the OIMB to pose an imminent threat or danger of explosion shall be immediately decanted even in the absence of a Final Decision on the administrative and/or criminal case. The OIMB, in coordination with the custodian of the impounding facility, shall keep a record of such decanted cylinders.

SECTION 5. Rehabilitation of Impounded LPG Cylinders Prior to Release. Upon the finality of the administrative and/or criminal case, impounded filled LPG cylinders that are serviceable shall be sent to a repairer or re-qualifier for testing, decanting, repair and/or requalification prior to release to the brand owner or violator-owner. All expenses in connection therewith shall be for the account of the brand owner or violator-owner as the case may be.

² An illegally imported cylinder or one without Import Commodity Clearance is classified as an unserviceable cylinder under the PNS. For purposes of this Circular, however, the same shall not be considered as a defect.

SECTION 6. *Procedures for the Release of Impounded LPG Cylinders.* Subject to Section 7(a) hereof, impounded LPG cylinders shall be released upon presentation of the Release Order from the Director of the Legal Services, and subject to the following conditions:

- a) In case of dismissal of the administrative and/or criminal case, the Release Order shall be issued upon submission of Certified True Copy of the final order, resolution or decision of the DOE, DOJ or the court, as the case may be; and,
- b) In case of adverse findings, the documents to be submitted by the respondent to the person in charge of the impounding facility are the following:
 - i) Official Receipts representing full payment of the following:
 - i.1) From the DOE Treasury Division or Field Office Cashier for administrative fines;
 - i.2) From the Impounding Facility for impounding / storage fees; and,
 - i.3) From the repairer and/or requalifier for payment of expenses incurred for the rehabilitation of the cylinders in compliance with product standards and specifications;
 - ii) Certified True Copy of the Release Order from the Director of the Legal Services or Certificate of Finality together with the Certified True Copy of the Decision of the proper court in criminal cases; and,
 - iii) Photocopy of the Identification Card of the violator or owner, the original of which shall be presented to the person in charge of the impounding facility.

- c) The violator or owner shall acknowledge in writing his/her receipt of the released cylinder.

SECTION 7. *Procedure for the Forfeiture and Disposal of Abandoned LPG Cylinders.*

Forfeiture and disposal of LPG cylinders shall be made only after finality and/or termination of the administrative and/or criminal case(s) in the following instances:

- a) When the violator or respondent is not the brand owner, the serviceable LPG cylinders shall be identified and returned to the brand owner. All costs incurred for the repair and/or re-qualification of the LPG cylinders shall be charged to and paid by the brand owner before they are released;
- b) When the violator or respondent is the brand owner, the serviceable LPG cylinders shall be forfeited in favor of the government and shall be disposed of only after destruction;
- c) When the LPG cylinders are found to be unserviceable, these cylinders shall be forfeited in favor of the government and disposed of according to Section 9 of this Circular; and,
- d) When abandoned by their owners, the LPG cylinders shall be forfeited and disposed of pursuant to Section 9 of this Circular.

SECTION 8. *Destruction of Unserviceable LPG Cylinders.*

Unserviceable LPG cylinders shall be immediately decanted and scrapped pursuant to applicable PNS, existing rules and regulations and shall be released to the owner upon presentation of the Release Order from the Director of Legal Services subject to the provisions of Sec. 6.b.i. of this Circular.

SECTION 9. *Disposal of Forfeited LPG Cylinders.*

- a) *Creation of the DOE Special Disposal Committee.* Pursuant to Commission on Audit (COA) Circular No. 89-296 dated January 27, 1989 or the 'Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries', the DOE Special Disposal Committee (DSDC) is hereby constituted to undertake the disposal of forfeited LPG cylinders. The DSDC shall be composed of the following:

Chair: The Director of the OIMB;
Members:

The Director of the Legal Services; and,
The Director of the Administrative Services

The DSDC may create its own Secretariat and Technical Working Group to assist it in the performance of its functions under this Circular and issue its own rules of procedure for the conduct of bidding as may be necessary.

- b) *Forfeiture and Appraisal.* All LPG cylinders forfeited pursuant to Sec. 7 shall be appraised by the DSDC to determine the book value and minimum price.
- c) *Modes of Disposal.* Pursuant to COA Circular No. 89-296 dated January 27, 1989, the disposal of forfeited LPG Cylinders shall be undertaken through the following modes:

i) Public Auction

Disposal of forfeited LPG cylinders shall be primarily through public auction observing and adhering to the following established mechanics and procedures in public bidding:

- i.1) the sale shall be through sealed public bidding and the sealed proposals shall be strictly confidential;
- i.2) the sale shall be simultaneously announced and published once in a newspaper of general circulation, for not less than five (5) consecutive days in the DOE website and shall be posted for ten (10) calendar days in a conspicuous place at the DOE Annex Lobby;
- i.3) the date of public bidding shall be indicated in the Invitation to Bid and shall not be held earlier than fifteen (15) days from the date of publication;
- i.4) interested parties shall be afforded the opportunity to inspect the LPG cylinders subject of the public bidding;
- i.5) the representative of the COA and the Office of the Ombudsman shall be invited in writing not later than five (5) days prior to the scheduled date of public bidding to witness the conduct thereof;
- i.6) the sale shall be awarded to the bidder who submitted the highest financial bid; and,
- i.7) the DSDC shall recommend to the Secretary for his approval the award of the sale to the winning bidder not later than ten (10) days from the date of the public auction.

ii) Sale Through Negotiation

For justifiable reasons and as demanded by the exigencies of the

service, disposal though negotiated sale may be resorted to and undertaken by the DSDC taking into consideration the following factors:

ii.1) Failure of public auction arising from any of the following instances:

ii.1.i) If there is only one offeror. In this case, the offer or bid, if sealed, shall not be opened; or

ii.1.ii) If all the offers / tenders are non-complying or unacceptable. A tender is non-complying or unacceptable when it does not comply with the prescribed rules of the bidding and requirements and qualifications for a bidder.

ii.2) The negotiation may be conducted singly or collectively provided that there is due communication between the offerors and the government gets the best price.

ii.2.i) To ensure transparency during the negotiations, a record of the proceedings must be maintained.

ii.2.ii) It is understood that the price agreed upon at the negotiation shall not be lower than the floor price as

fixed by the government or the highest offer submitted at the failed auction whichever is higher.

iii) Destruction or Condemnation shall only be resorted to when the unserviceable LPG cylinder has no commercial value, or is beyond economic repair, or there is no willing receiver and/or the appraised value is less than the administrative cost of sale, subject to prior inspection by the Auditor concerned. The same shall be condemned and destroyed in accordance with applicable PNS. The DSDC shall approve the disposition.

SECTION 10. *Repealing Clause.* - Any Department Orders, Circulars or Issuances inconsistent with this Circular are hereby repealed or modified accordingly.

SECTION 11. *Separability Clause.* - If, for any reason or reasons, any part of this Circular is declared by a court of competent jurisdiction as unconstitutional or invalid, the other parts or provisions hereof not so declared shall not be affected thereby.

SECTION 12. *Effectivity.* - This Circular shall take effect upon publication in two (2) newspapers of general circulation.

Issued in Fort Bonifacio, Taguig City, Metro Manila, this 26th day of August 2011.

Signed by:

JOSE RENE D. ALMENDRAS
Secretary

DEPARTMENT CIRCULAR NO. DC2013-09-0022

DIRECTING ALL LIQUEFIED PETROLEUM GAS INDUSTRY PARTICIPANTS TO OBSERVE MINIMUM SAFETY STANDARDS IN THE TRANSPORTATION AND DISTRIBUTION OF LPG IN CYLINDERS

WHEREAS, Republic Act No. 7638 (“Department of Energy Act of 1992”) vests upon the Department of Energy (“DOE”) the power to formulate rules and regulations for the transportation and distribution of all forms of energy products;

WHEREAS, Republic Act No. 8479 (“Downstream Oil Industry Deregulation Act of 1998”) requires the DOE to monitor the refining, manufacturing and marketing processes of petroleum products to ensure that clean and safe technologies are applied;

WHEREAS, the transportation and distribution of Liquefied Petroleum Gas (“LPG”) in cylinders must be given preferential attention considering that LPG is a highly volatile and flammable product which, if not transported and distributed properly, may result in accidents that can cause loss of life, limb and/or property;

WHEREAS, there is a need to observe the minimum safety standards in the transportation and distribution of LPG in cylinders;

NOW THEREFORE, in consideration of the foregoing premises, the following rules are hereby promulgated:

SECTION 1. Scope and Application. This Circular shall apply to all persons involved in importing, refining, refilling, storing, transporting, marketing, distribution, hauling, retailing, selling and/or trading of LPG in cylinders (“LPG Industry Participants”).

SECTION 2. Vehicle Design. All vehicles used for the transportation and distribution of LPG in cylinders, particularly to and from the refilling plant, shall conform to the following specifications:

2.1 Body.

- a. The main body of the vehicle shall be a metal cage.
- b. The use of closed vehicles in transporting filled or used empty cylinders is strictly prohibited. A vehicle is deemed closed if it has side or back walls, or a roof, subject to Section 4 hereof.
- c. The cargo space of the vehicle must be isolated from the driver’s compartment, engine and its exhaust system, and must have substantially flat floors.
- d. The vehicle shall be equipped with suitable racks and belts to hold the cylinders securely in a position that shall minimize the possibility of movement, tipping and physical damage.

2.2 Electrical System.

- a. All signal, brake, and emergency/hazard lights must be working.
- b. The front and back horns must be working.
- c. Light bulbs and electrical wirings must not be exposed.

- d. A rubberized battery terminal cover shall be used.
- e. The windshield wipers must be working.
- f. The cigarette lighter must be removed from its receptacle.

2.3 Tires.

- a. The tire ply should be intact, with no visible separation, wide tear, holes, or bulges. No recapped tires shall be used.
- b. Wheel chocks must be used.
- c. Thread measurement shall have a minimum of 2 mm for all tires.
- d. All tires shall have complete wheel nuts.

2.4 Brake System.

- a. There must be no visible leaks or excessive pedal movement.
- b. The air pressure gauge (when applicable) shall be operating.
- c. The handbrake should always be operational.

2.5 Required Permanent Signages.

- a. Signages located at the sides of the cargo compartment shall conform to the dimensions prescribed in Annex "1".
- b. The signage located at the back of the cargo compartment shall conform to the dimensions prescribed in Annex "2".
- c. Signages indicating the tank truck operators/haulers/contractor's company name shall be

located at the door on both sides of the cab compartment.

- d. Subject to the rules and regulations of the Land Transportation Office, the signage "LPG Delivery", as mirror image, shall be provided at the front of the vehicle.

2.6 Others.

- a. Pursuant to the PNS/DOE FS 2:2006 "LPG Refilling Plant General Requirements" and its future amendments, the engine of vehicles entering the loading area of refilling plants shall be of the compression ignition (diesel) type.
- b. The vehicle must carry BPS-certified fire extinguishers, with at least 2x10 pounds capacity, dry chemical or CO2 with a B:C rating, placed accessibly near the driver and attendant.
- c. Seat belts shall be functional for both driver and attendants.
- d. The vehicle must be provided with early warning devices.
- e. There should be no engine/radiator leaks.
- f. Cracked windshield, side and rear view mirrors shall not be allowed.

SECTION 3. Personnel Safety. The following minimum requirements shall be complied with by all personnel directly involved in the handling, transport and distribution of LPG in cylinders:

3.1 Drivers and Attendants.

- a. All drivers and attendants shall be trained in the proper handling of LPG in cylinders by Philippine Liquefied

Petroleum Gas Association or the Liquefied Petroleum Gas Industry Association, Inc. Trainors shall secure a Certificate of Competency from the Bureau of Fire Protection. Drivers shall be properly trained on defensive driving, and certified by the LPG company or third party recognized by the LPG company.

- b. Drivers must have a professional driver's license and be qualified to drive the vehicle in accordance with the Restriction Code in the Driver's license.
- c. All personnel shall wear long pants, t-shirts, safety shoes, and carry valid company I.D.s at all times. Safety gloves shall be used when handling the cylinders.

SECTION 4. Stacking, Handling, Transport and Distribution. The method of handling LPG cylinders during transportation and distribution shall conform to the following specifications:

4.1 Cylinder Stacking.

- a. All filled and used empty LPG cylinders shall be loaded in an upright position and tied securely to the vehicle. In no case shall the cylinders be loaded on its side, horizontally nor inverted.
- b. All filled cylinders shall be transported with the required security valve seal intact at all times.
- c. Small cylinders without collar support shall be transported in appropriate crates.

The transport of empty cylinders due for repair and/or requalification or scrapping may be exempted from above requirement. Provided, that such shipment shall be duly covered by a corresponding proof, e.g.

delivery receipt that indicates that indeed the empty LPG cylinders are for delivery or consolidation prior to delivery to a repair or requalification plant or a cylinder scrapping facility.

4.2 Transport to Households.

- a. Two-wheeled or three-wheeled vehicles may be allowed to transport or distribute LPG in cylinders to households, subject to the rules and regulations of pertinent government authorities, e.g. Department of Public Works and Highway (DPWH), Department of Transportation and Communication (DOTC), Local Government Units (LGUs), and the following conditions:

- 1.) The vehicle shall have a cargo space, with crates or special compartments to allow the safe transport of cylinders in upright position;
- 2.) Two-wheeled vehicles shall have a maximum load of 2-11kg cylinders or 4-2.7kg cylinders (Annex "3"). A back signage is required and shall conform to half of the dimensions prescribed in Annex "1" while the name of the company and its other related information will be replaced with the name of dealer, dealer's address and telephone number;
- 3.) Three-wheeled and four-wheeled vehicles (using motorcycles), shall have a maximum 2 stacks load of 12-11kg cylinder or its equivalent for smaller sizes of cylinders (Annexes "4a" and "4b"). A back signage is required and shall conform to half of the dimensions prescribed in Annex

“2”. A side signage is also required and shall conform to half of the dimensions prescribed in Annex “1”. The name of the company and its other related information will be replaced with the name of dealer, dealer’s address and telephone number;

- 4.) Cylinders with sizes higher than 11kg shall not be transported using motorcycles;
- 5.) The driver of the vehicle shall have an unobstructed 360 degree view (Annexes “4a” and “4b”); and
- 6.) The vehicle complies with applicable provisions cited above, including that on fire extinguisher.

SECTION 5. Compliance by LPG Industry Participant. LPG Industry Participants shall not allow any vehicle used for the transport of LPG in cylinders to enter its premises (e.g. refilling plant, depot or warehouse) unless the same has complied with all the requirements prescribed in this Circular. For the transport of LPG in cylinders to households, the LPG Industry Participants shall only use vehicles that meet the requirements prescribed in this Circular, as well as those of DOTC, DPWH and the concerned LGU. As proof of compliance, the Certificate of Road Worthiness from the Land Transportation Office (LTO) or Land Transportation Franchising and Regulatory Board (LTFRB) shall be presented as additional documentary requirement for securing and renewal or for the continuing validity of the

concerned Industry Participant’s Standards Compliance Certificate (SCC).

SECTION 6. Joint Liability. In the event that a vehicle used in the transportation or distribution of LPG in cylinders is apprehended and found in violation of this Circular, the following LPG Industry Participants shall be held jointly liable: (a) the one who contracted the vehicle; (b) the one who allowed such vehicle to withdraw or load LPG cylinders from its facility/premises immediately prior to apprehension; and (c) the truck/vehicle owner/operator.

SECTION 7. Standards Compliance Certificate (SCC) Requirement. All vehicles used in the transport of LPG in cylinders shall have a copy of the SCC or its equivalent issued by the DOE, through the OIMB, to its marketer, hauler, dealer or retail outlet, which includes a list of vehicle plate numbers .

SECTION 8. Penalties. Failure to comply with this Circular shall subject the LPG Industry Participant to the sanctions and penalties pursuant to existing laws and circulars.

SECTION 9. Effectivity. This Department Circular shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

Issued this SEPT. 19, 2013 at Energy Center, Bonifacio Global City, Taguig City.

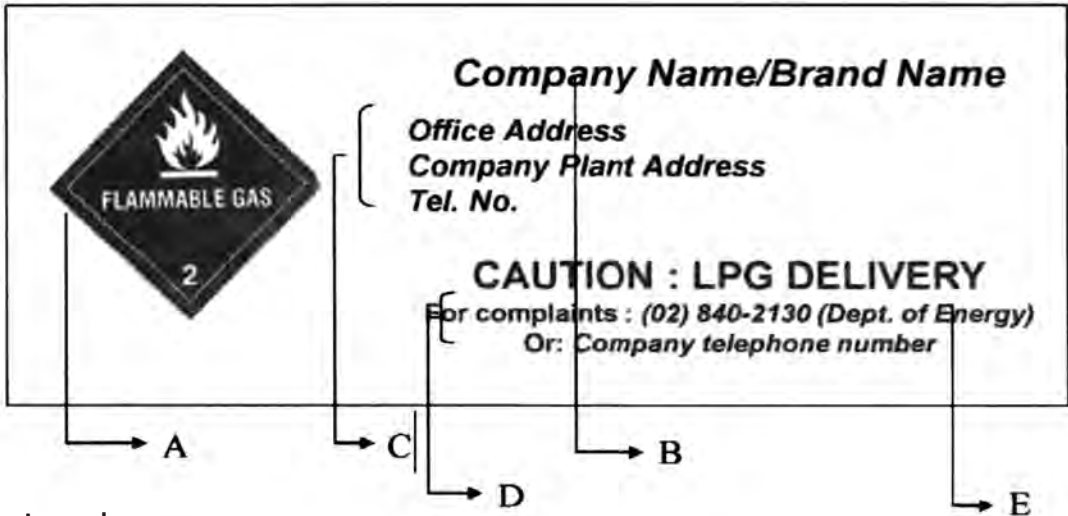
Signed by:

CARLOS JERICHO L. PETILLA
Secretary

ANNEX 1

SIGNAGES AT THE SIDES OF THE CARGO COMPARTMENT

Prescribed signage shall be placed 12 in above floor level in the mid part on both sides of the cargo compartment of the truck and not more than 25% of the wall area where the signage is to be mounted.



Legend:

- A. - Diamond (square-on-point) logo background color, international red.
 - measurement= $10\frac{3}{4}$ in. H x $10\frac{3}{4}$ in. W
 - words "flammable gas", number "2" and "flame" color, white
 - white border distance from tip of logo, 0.5 inch
- B. - Specific LPG brand name I names that it represents/services or sells
 - Font Color, royal blue
- C. - Address and telephone no. of letter "B"
 - Font Color, royal blue
- D. - Caution signage and Department of Energy Hotline Telephone Number
 - Font Color, international red
- E. - Board background color, white

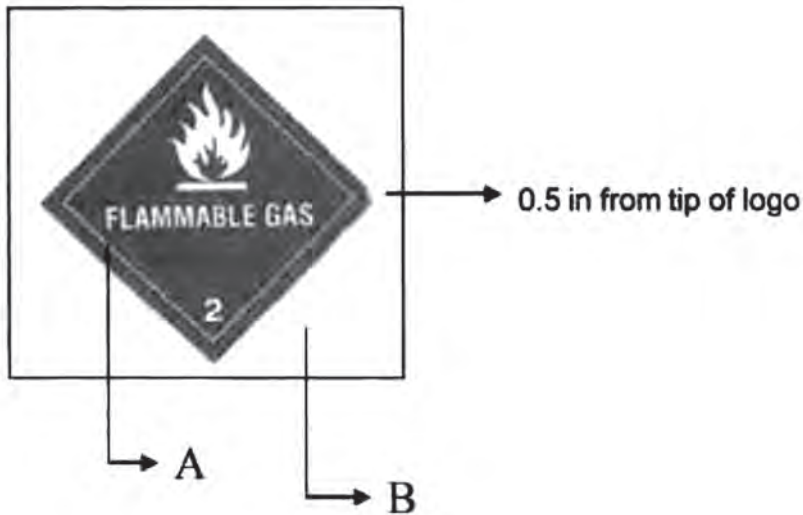
SPECIAL LABEL PROTECTION :

All labels must be resistant to oil, grease, solvent, detergents and water and must be capable of withstanding extreme weather conditions so that all entries are clearly readable at all time

ANNEX 2

SIGNAGE AT THE BACK OF THE CARGO COMPARTMENT

Prescribed signage shall be placed 12 in. above floor level at the back (not to be placed at door opening) of the cargo compartment of the truck



Legend:

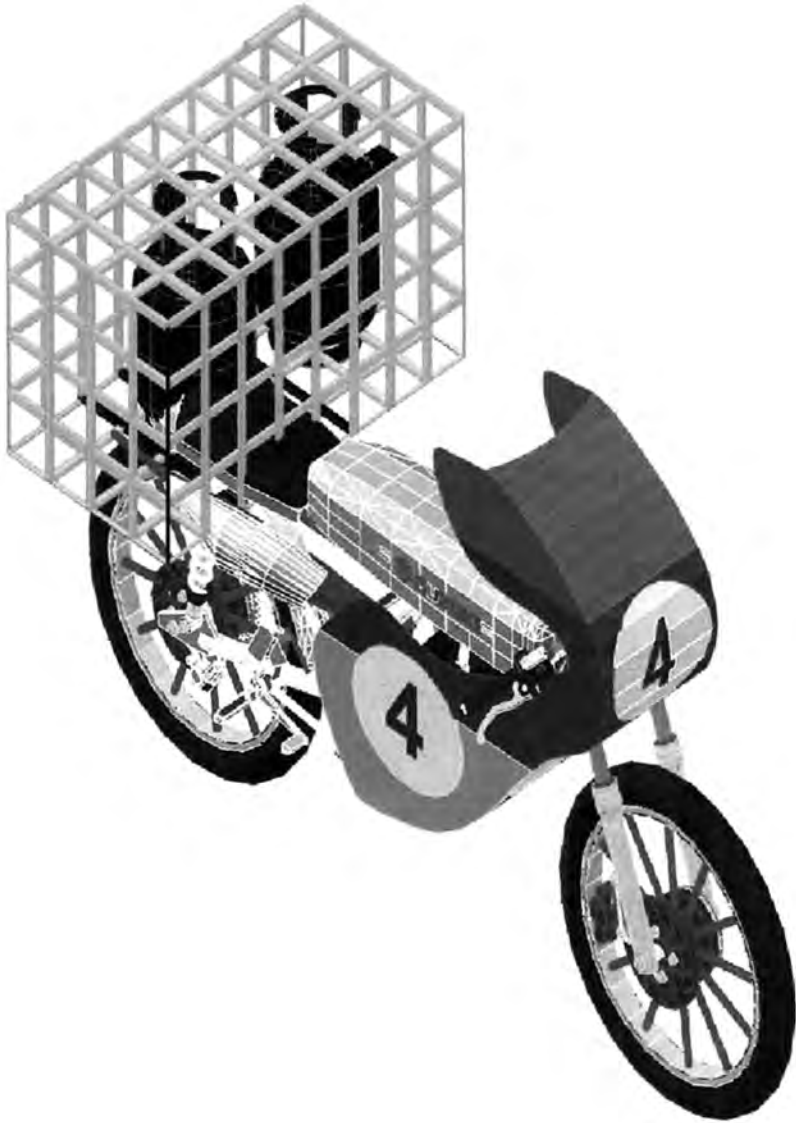
- A - Diamond (square-on-point) logo background color, international red.
 - measurement= $10\frac{3}{4}$ in. H x $10\frac{3}{4}$ in. W
 - words "flammable gas", number "2" and "flame" color, white
 - white border distance from tip of logo, 0.5 inch
- B - Board background color, white

SPECIAL LABEL PROTECTION :

All labels must be resistant to oil, grease, solvent detergents and water and must be capable of withstanding extreme weather conditions so that all entries are clearly readable at all times

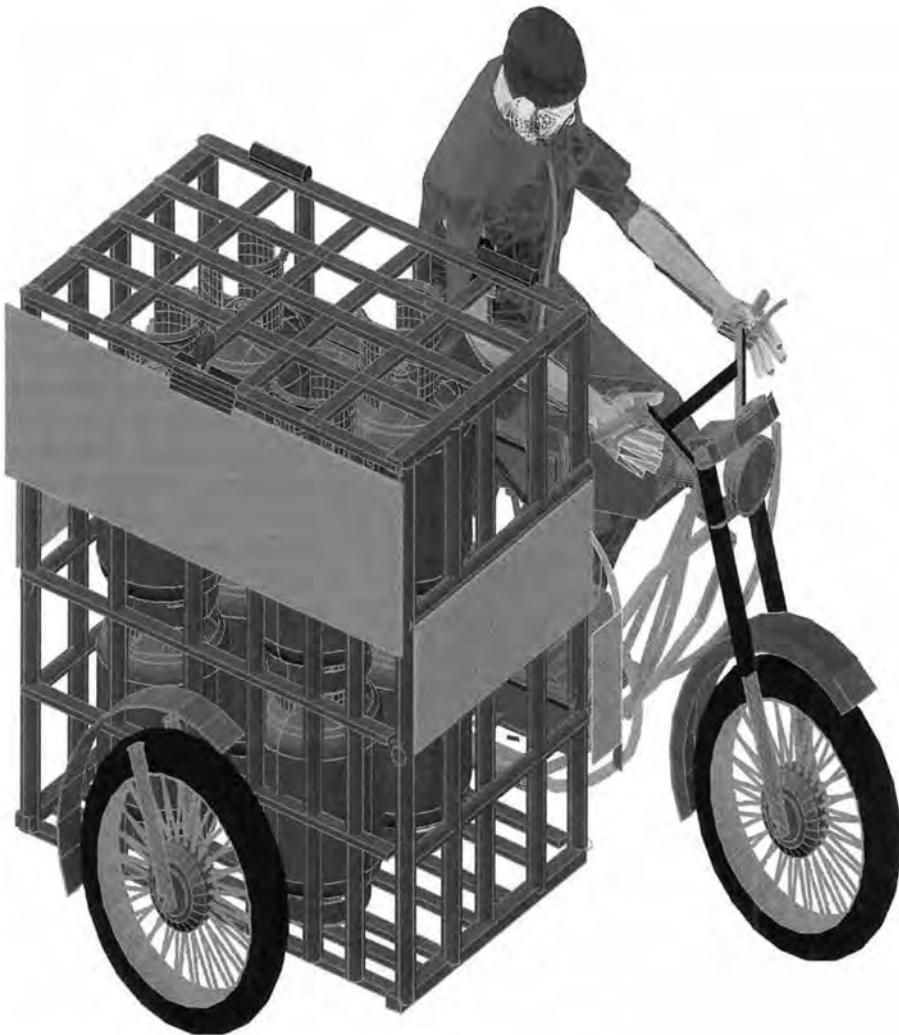
Annex 3

TWO-WHEELED VEHICLE WITH CRATES OR SPECIAL COMPARTMENTS



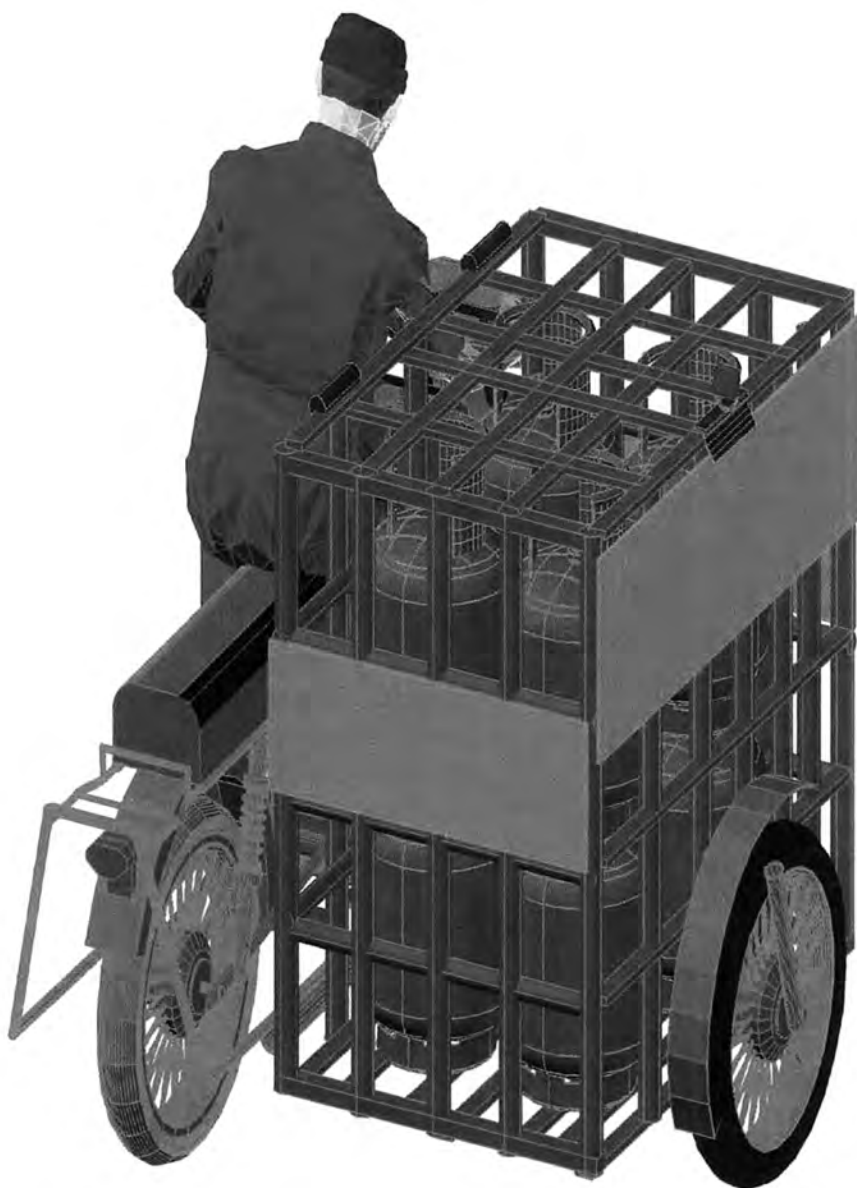
Annex 4a.

THREE-WHEELED VEHICLE WITH MAXIMUM TWO-STACK LOAD



ANNEX 4b.

THREE-WHEELED VEHICLE WITH SIDE AND BACK SIGNAGES



DEPARTMENT CIRCULAR NO. DC2014 -01-0001

PROVIDING FOR THE RULES AND REGULATIONS GOVERNING THE LIQUEFIED PETROLEUM GAS (“LPG”) INDUSTRY

WHEREAS, Republic Act No. (R.A.) 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, applies to all persons or entities engaged in any and all activities of the domestic downstream oil industry and mandates the Department of Energy (DOE) to promote the entry of new industry participants;

WHEREAS, R.A. 8479 also mandates the DOE to promote fair trade practices, monitor marketing processes and the quality of petroleum products, and to stop the operation of businesses involved in the sale of petroleum products not complying with the national standards of quality;

WHEREAS, Batas Pambansa Big. (B.P.) 33, as amended by Presidential Decree No. (P.D.) 1865, and its Implementing Rules and Regulations, define and penalize certain prohibited acts that are considered inimical to the public interest and national security, including illegal trading in the sale and distribution of petroleum and/or petroleum products without license or authority from the DOE, hoarding of petroleum products, adulteration and under delivery, among others;

WHEREAS, the deregulation of the downstream oil industry has seen an increase in the number of LPG industry players;

WHEREAS, there is also an increasing proliferation of unsafe and unlawful practices among the LPG industry players;

WHEREAS, these unsafe and unlawful practices have (i) caused loss of life and property; (ii) exposed the consuming public to fire, safety, health and environmental risks;

(iii) denied the consuming public the proper quality and quantity of the LPG they purchase; (iv) deprived law-abiding LPG industry players a fair and competitive business environment; (v) resulted in lost revenues to the government due to unpaid national and local taxes, fees, and charges; and (v) encouraged existing LPG industry players and new market entrants to similarly engage in these unsafe and unlawful practices and/or to source their LPG requirements from industry players engaged in unlawful and unsafe activities;

WHEREAS, there is a need to further strengthen, clarify, amend, and/or repeal existing rules and regulations governing the LPG industry, such as, but not limited to Department Circular No. 98-03-004, otherwise known as the Rules and Regulations Implementing R. A. 8479, and the Rules and Regulations in the Implementation of B.P. 33, as amended by P.D. 1865;

NOW, THEREFORE, for and in consideration of the foregoing premises, the following rules are hereby promulgated to govern the LPG industry:

RULE 1 GENERAL PROVISIONS

SECTION 1. Title. This Department Circular shall be known and cited as the “LPG Industry Rules.”

SECTION 2. Coverage. This Circular shall apply to and be strictly complied with by all persons engaged or intending to engage in the business of importing, refining, refilling, marketing, distributing, hauling/transporting, handling, storing, retailing, selling and/or trading of LPG.

SECTION 3. Definition of Terms. For purposes of this Circular, the following terms shall have the following meaning:

- a) **“BFP”** shall refer to the Bureau of Fire Protection;
- b) **“BPS”** shall refer to the Bureau of Product Standards;
- c) **“Brand Owner”** shall refer to any person owning the brand, name, logo, color, mark, and/or other distinction appearing on the LPG cylinder;
- d) **“Bulk Supplier”** shall refer to a refiner or importer who engages in the sale of LPG in large quantities or wholesale;
- e) **“Canister or Cartridge”** shall refer to any portable pressure vessel or container designed or intended for LPG, with water capacity of less than that of a LPG cylinder;
- f) **“Consumer”** shall refer to any person who purchases LPG from a marketer, dealer or retail outlet, either in cylinders, through a pipeline system or through other means of distribution for its own consumption;
- g) **“Cylinder”** or **“LPG Cylinder”** shall refer to any portable pressure vessel or container for LPG, with water capacity of one (1) liter to one hundred fifty (150) liters, or as may be prescribed under Philippine National Standards (PNS), and designed for the sale, transportation, storage or household/commercial/ industrial consumption of LPG;
- h) **“Dealer”** shall refer to any person engaged in the business of selling or trading of LPG in cylinders to consumers or retail outlets;
- i) **“Defective Cylinder”** shall refer to an uncertified, damaged, unsafe or dilapidated cylinder due to corrosion or pitting, dents, cuts, gouges, digs, bulges, leaks or other similar defects that render the cylinder unsafe, unfit or otherwise not allowed for distribution in accordance with the guidelines set by the DTI;
- j) **“DENR”** shall refer to the Department of Environment and Natural Resources, created under Executive Order No. 192;
- k) **“DILG”** shall refer to the Department of the Interior and Local Government, created under Republic Act No. 6975;
- l) **“DOE”** or **“Department”** shall refer to the Department of Energy created under Republic Act No. 7638, as amended;
- m) **“DTI”** shall refer to the Department of Trade and Industry, reorganized under Executive Order No. 292;
- n) **“Hauler”** shall refer to any person involved in the transport and delivery of LPG in bulk, or in cylinders from one place to another;
- o) **“Importer”** shall refer to any person engaged in the importation of LPG whether for processing, sale or own use;
- p) **“Industry Participant”** shall refer to any person engaged in any Industry Activity;
- q) **“Industry Activity”** shall refer to the business of importing, exporting, refining, refilling, marketing, distributing, hauling/ transporting, handling, storing, retailing, selling and/or trading of LPG;

- r) **“IPO”** shall refer to the Intellectual Property Office established under Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines”;
- s) **“LGU”** and **“LGUs”** shall refer to local government unit or local government units, respectively;
- t) **“LPG”** shall refer to liquefied petroleum gas, which consists of commercial propane gas or commercial butane gas, or a mixture of the two gases, with properties conforming to the standards set forth under Philippine National Standards (PNS), distributed or sold to consumers either in LPG cylinders through a pipeline system, bulk storage tanks, or other means of distribution;
- u) **“Marketer”** shall refer to any person engaged in the business of selling or trading of LPG, whether in bulk or retail, under its own brand name. A marketer may or may not manufacture or process the products sold;
- v) **“OIMB”** shall refer to the Oil Industry Management Bureau of the DOE;
- w) **“Pipeline System”** shall refer to a network of pipes or similar conduits used for the conveyance of LPG from the piped LPG provider to consumers;
- x) **“PNP”** shall refer to the Philippine National Police, created under Republic Act No. 6975;
- y) **“PNS”** shall refer to the Philippine National Standards;
- z) **“Qualified LPG Serviceman”** shall refer to an individual who has been trained, qualified and certified by the DOE or any deputized agency thereof, or to an individual who has successfully completed an approved training course for LPG servicemen in a training school duly recognized and accredited by the Philippine government;
- aa) **“Refiller”** shall refer to any person who is engaged in the business of refilling LPG into cylinders;
- bb) **“Refilling Plant”** shall refer to any installation that is used for refilling LPG into cylinders and has LPG bulk storage and refilling facilities;
- cc) **“Refiner”** shall refer to any person who refines crude oil and other naturally occurring petroleum hydrocarbons through distillation, cracking, conversion and treatment;
- dd) **“Repair”** shall refer to the removal and replacement of parts or attachments of LPG cylinders or the performance of any other necessary corrective measures to restore the fitness of LPG cylinders for refilling and distribution;
- ee) **“Repairer”** shall refer to any person engaged in the business of repairing LPG cylinders;
- ff) **“Requalification”** shall refer to the method or procedure by which a cylinder is subjected to inspection and testing in accordance with the specifications set forth in the PNS to determine its acceptability for distribution and continuous use and subsequent repair or scrapping, where appropriate;
- gg) **“Requalifier”** shall refer to any person engaged in the business of requalification of LPG cylinders;

- hh) **“Retail Outlet”** shall refer to any person engaged in the business of selling or trading directly to consumers LPG in cylinders supplied by a dealer or marketer;
- ii) **“SCC”** shall refer to Standards Compliance Certificate issued by the DOE to the Industry Participants;
- jj) **“Scrappage”** shall refer to the destruction of defective LPG cylinders declared by a Requalifier/Repairer or the DTI to be unfit for use;
- kk) **“Seal”** shall refer to the protective cover placed in the gas outlet of an LPG cylinder of the type that must be broken or destroyed before the LPG can flow out of the cylinder;
- ll) **“Tare Weight”** shall refer to the net weight of the LPG cylinder excluding its contents, as engraved in the collar and painted in the body thereof and shall be expressed in kilograms in accordance with the specifications as may be prescribed by the DOE and DTI;
- mm) **“Uncertified Cylinder”** shall refer to a LPG cylinder that does not comply with Philippine National Standards.

RULE II

STANDARDS COMPLIANCE CERTIFICATE

SECTION 4. Requirement to Secure a Standards Compliance Certificate (SCC). No person shall engage in any Industry Activity without a valid Standards Compliance Certificate.

The DOE, through the Oil Industry Management Bureau (OIMB), shall issue a Standards Compliance Certificate (SCC) upon the complete submission of and full compliance with the requirements provided in Section 6 of this Circular. The OIMB

shall have the authority to verify, validate, authenticate and inspect all documents and information required from, given by or obtained from such person for compliance with all applicable laws, rules and regulations.

A provisional SCC may be issued to a new LPG Industry Participant solely for the purpose of obtaining a mayor’s/business permit: Provided, That an authenticated copy of the mayor’s/business permit is submitted to the OIMB within 30 days from issuance of the provisional SCC; otherwise, the latter shall be deemed automatically revoked.

SECTION 5. Terms of the SCC. The following shall be the terms of each SCC:

- a) The SCC shall have a validity for a maximum period of three calendar (3) years from the date of its issuance and shall be renewed not later than the end of March of the third year;
- b) The SCC shall be site/plant/outlet specific; and
- c) A holder of a valid SCC shall transact business only with a LPG Industry Participant who is likewise the holder of a valid SCC.

SECTION 6. Documentary Requirements. The following are documentary requirements:

- a) **Application.** No person shall engage in any Industry Activity without first applying for and being issued by the OIMB with a SCC. Applications in the Visayas and Mindanao shall be filed with the appropriate field office of the DOE in these regions or in the DOE Central Office as the convenience of the applicant may dictate. The application shall be accomplished by the applicant under oath and shall contain the following information and the required supporting documents which shall be submitted in their original forms, or if not possible or

warranted either in duly certified true copies by the issuing agency.

- 1) The particular industry Activity/ies to be engaged in;
- 2) Business name, address, telephone/ fax number of the business office;
- 3) Location and complete address of LPG establishment/s;
- 4) Name of owner in case of single proprietorship, or partners in case of partnership, or authorized representative in case of corporation; and
- 5) Such other requirements as may be required by the DOE.

b) **Supporting documents.** The following documents shall be submitted along with new/first time applications. Only applications with complete and valid supporting documents shall be accepted and processed. Mayor's Permit from the LGU concerned and the Fire Safety Inspection Certificate shall be submitted annually not later than March 15th of each year, and upon renewal of the SCC.

1) **For refiners, importers and refillers:**

- a. Registration of Business from DTI or Securities and Exchange Commission;
- b. Zoning/Locational Clearance from the LGU concerned;
- c. Barangay Business Clearance from the barangay concerned;
- d. Building Permit from the LGU concerned;
- e. Environmental Compliance Certificate from the DENR;

- f. Mayor's/Business Permit;
- g. Discharge permit from the Laguna Lake Development Authority if applicable;
- h. Fire Safety Inspection Certificate;
- i. Permit to Operate Unfired Pressure Vessel from the Department of Labor and Employment;
- j. Product Liability Insurance Certificate;
- k. For refiners and importers: Reference standards/codes and notarized compliant statement for design and operation;
- l. For refillers: notarized Certification from a licensed registered engineer on compliance with the PNS for refilling plant;
- m. Plant layout;
- n. Supply contract/agreement (for refillers);
- o. List of vehicles (model, make, plate number and capacity); and
- p. For refiners and importers: Permit to Import from Bureau of Customs/ Bureau of Internal Revenue.

2) **For marketers:**

- a. Registration of Business from DTI or Securities and Exchange Commission;
- b. Registration of Brand;
- c. Barangay Business Clearance from the barangay concerned;

- d. Building Permit from the LGU concerned; or lease agreement for building;
- e. Mayor's/Business Permit;
- f. Fire Safety Inspection Certificate;
- g. Product Liability Insurance Certificate; and
- h. List (name and address) of authorized dealers/retail outlets;
- i. Supply Contract; and
- j. List of vehicles (model, make, plate number and capacity).

3) For dealers:

- a. Registration of Business from DTI or Securities and Exchange Commission;
- b. Barangay Business Clearance from the barangay concerned;
- c. Building Permit from the LGU concerned; or lease agreement for building;
- d. Mayor's/Business Permit;
- e. Fire Safety Inspection Certificate;
- f. Supply agreement with or certification from brand-owner;
- g. List (name and address) of authorized retail outlets; and
- h. List of vehicles (model, make, plate number and capacity)

4) For retail outlets:

- a. Registration of Business from DTI or Securities and Exchange Commission;

- b. Barangay Business Clearance from the barangay concerned
- c. Building Permit from the LGU concerned; or lease agreement for building;
- d. Mayor's/Business Permit;
- e. Fire Safety Inspection Certificate;
- f. Supply agreement with or certification from dealer or marketer; and
- g. List of vehicles (model, make, plate number and capacity).

5) For haulers:

- a. Registration of Business from DTI or Securities and Exchange Commission;
- b. Barangay Business Clearance from the barangay concerned;
- c. Mayor's/Business Permit;
- d. Conveyance Permit from the BFP;
- e. Listing of tank truck/lorries for the transport of bulk LPG -make/model, capacity and plate number;
- f. Listing of delivery trucks/vehicles for the transport of LPG in cylinders - make/model, capacity and plate number; and
- g. Product Liability Insurance Certificate.

SECTION 7. Reportorial Requirements.

All Industry Participants shall submit the following reports or such other reports or documents as may be required by the OIMB,

at a time and format the latter shall specify and require, respectively:

a) **Annual Reports**

- 1) List of facilities and capacities, including transport vehicles with plate numbers;
- 2) List of suppliers and customers, and volumes;
- 3) List of supply contracts and refilling arrangements;
- 4) List of qualified personnel/attendant;
- 5) Inventory of LPG cylinders;
- 6) Schedule of LPG cylinder acquisition, requalification, repair, scrapping; and
- 7) Applicable permits for any new, additional, renovated or refurbished facilities and/or changes in their respective operation.

b) **Monthly Reports**

- 1) Supply;
- 2) Demand/sales/consumption/throughput or refilling volume; and
- 3) Inventory,

c) **Special Reports**

SECTION 8. Non-issuance, Non-Renewal or Revocation or Suspension of SCC. The OIMB shall have the right or authority to deny the issuance or renewal of an SCC or to revoke or suspend the same based on any of the following grounds:

- a) Failure to comply with the requirements under Rule II;

- b) Refusal to allow inspection by OIMB and its Field Office inspectors;

- c) Failure to pay fines imposed by the DOE; or

- d) Transacting business with other Industry Participants who have no valid SCC.

SECTION 9. Posting of SCC. The SCC shall be prominently displayed by the Industry Participant in a strategic and appropriate location within the business premises in order that it can easily be seen by its customers and the public. In the case of haulers, a copy of the SCC shall be carried at all times in the transport vehicle.

**RULE III
MINIMUM STANDARDS AND
REQUIREMENTS**

SECTION 10. Refilling. In addition to the pertinent provisions provided for in this Circular, any person engaged or intending to engage as a Refiller of LPG shall likewise strictly comply with the minimum standard requirements set by the DTI/DOE and/or any subsequent issuance or amendment thereto.

SECTION 11. Transportation. In addition to the pertinent provisions provided for in this Circular, the following shall be the minimum standards and requirements in the transport of LPG.

- a) **In Bulk.** Any person engaged or intending to engage in the transport of LPG in bulk shall comply with the latest edition of the following minimum standards:

- 1) Fire Code of the Philippines/National Fire Protection Association, Pamphlet 58 (Liquefied Petroleum Gas Code);
- 2) Philippine Liquefied Petroleum Gas Association Safety Code; and
- 3) Applicable DOE issuances.

- b) **In Cylinders.** Any person engaged or intending to engage in the transport of LPG in cylinders shall comply with the pertinent DOE issuances on the subject.

SECTION 12. Dispensing Auto-LPG. In addition to the pertinent provisions provided for in this Circular, any person engaged or intending to engage in the business of selling, supplying, hauling, storage, handling, marketing and distribution of LPG for automotive use shall comply with DOE DC No. 2007-02-0002 and its future amendments.

SECTION 13. LPG Participants Engaged in Several Activities. LPG Participants simultaneously engaged in several activities covered by this Circular shall comply with all the requirements for each and every activity as provided for herein.

RULE IV QUALIFICATIONS, DUTIES AND RESPONSIBILITIES OF LPG INDUSTRY PARTICIPANTS

SECTION 14. Qualifications of LPG Industry Participants. The following shall be the qualifications of LPG Industry Participants, to wit:

- a) **Bulk Suppliers.** This covers oil companies/refiners, importers and marketers. A Bulk Supplier shall possess the following qualifications:

- 1) Bulk LPG storage and loading facilities for tanker/barge or tank truck trailer; and
- 2) The necessary resources, including adequate, qualified and duly licensed personnel, equipment, and fixed facilities (leased or owned) to effectively conduct the operation of the business and to carry out the responsibility of rendering efficient service to its clientele.

- b) **Refillers.** A refiller shall possess at least the following qualifications:

- 1) Refilling plant that conforms with the applicable PNS;
- 2) Appropriate weighing devices duly inspected, calibrated and sealed;
- 3) Trained and qualified personnel proportionate to the size of its operation;
- 4) At least one (1) licensed engineer with at least 3 years experience with the primary function of ensuring safety of the operation and facilities; and
- 5) Qualified servicemen.

- c) **Marketers.** A marketer shall possess personnel, facilities and equipment to effectively carry out its responsibility of rendering efficient service to its clientele, and must at least conform with the following:

- 1) A fixed store space and storage facilities in conformity with the safety standards prescribed herein;
- 2) Cylinders conforming with the PNS and permanently marked with its brand;
- 3) Appropriate weighing devices duly inspected, calibrated and sealed by the authorized government agency;
- 4) Qualified servicemen in its employ; and
- 5) Delivery vehicles used for its LPG business that conform with the appropriate DOE Circular.

- d) **Dealers.** A dealer shall possess personnel, facilities and equipment to effectively

carry out its responsibility of rendering efficient service to his clientele, and at least possess and conform with the following:

- 1) A fixed store space and storage facilities in conformity with the safety standards prescribed herein;
- 2) Cylinders conforming with the PNS and permanently marked with its brand;
- 3) Appropriate weighing devices duly inspected, calibrated and sealed by the authorized government agency;
- 4) Qualified servicemen in its employ; and
- 5) Delivery vehicles used for its LPG business that conform with the appropriate DOE Circular.

e) **Retail Outlets.** A retail outlet shall at least possess and conform with the following:

- 1) A fixed store space and storage facilities in conformity with the safety standards prescribed herein;
- 2) Appropriate weighing devices duly inspected, calibrated and sealed by the authorized government agency; and
- 3) Delivery vehicles used for its LPG business that conform with the appropriate DOE Circular (if applicable).

SECTION 15. Responsibilities of LPG Industry Participants. The following shall be the responsibilities of LPG Industry Participants, to wit:

a) **Bulk Suppliers.** This covers oil companies/refiners, importers and marketers. Bulk Supplier shall have the following responsibilities:

- 1) Ensure adequate and stable supply of LPG in bulk; and
- 2) Ensure that production, storage, receiving and loading equipment and facilities are in safe operating conditions at all times.

b) **Refillers.** A refiller shall have the following responsibilities:

- 1) Fill LPG cylinders accurately as to the required exact net content of the LPG cylinders as prescribed herein. Test weigh and conduct leak test every cylinder before each one leaves the refilling plant premises;
- 2) Ensure that all cylinders are properly sealed before leaving the refilling plant premises to guarantee correctness of product content;
- 3) Refill only cylinders that comply with the PNS;
- 4) Not to re-fill single-trip and/or tin canister and cartridge;
- 5) Fill cylinders under their own brand and/or other brands, provided, that the latter is done with prior written authorization from or agreement with the brand owners; and
- 6) Conform with safe LPG handling practices as prescribed by this Circular.

c) **Marketers.** A marketer/brand owner shall have the following responsibilities:

- 1) Carry its own brand of LPG;
- 2) Ensure adequate and timely supply of LPG for its dealer or consumer;
- 3) Ensure the correct weight of LPG filled cylinders delivered to its dealers and retail outlets;

- 4) Procure new LPG cylinders only from reputable and duly licensed cylinder manufacturers and use only LPG cylinders with appropriate markings prescribed by the Bureau of Product Standards i.e. Globe Checkmarks for locally procured cylinders, or the Import Commodity Clearance (ICC) for imported cylinders;
 - 5) Have all new cylinders embossed with its registered brand name;
 - 6) Register with the OIMB and exclusively use a distinguishing color and marking scheme for all its cylinders;
 - 7) Register its seal and seal manufacturer/supplier with the OIMB;
 - 8) Maintain and repair all LPG cylinders under its own brand name through accredited Requalifiers and Repairers, in conformity with the PNS;
 - 9) Provide servicing, delivery, and technical assistance for its dealers;
 - 10) Conform with safe LPG handling practices as prescribed by this Circular;
 - 11) Register with OIMB all vehicles used for the transport of LPG;
 - 12) Notify the OIMB of any adjustment in the price of LPG at least twenty-four (24) hours, before its effectivity, even through text message to the Director and Chief of the Oil Industry Competition Monitoring Division, and in writing on the first working day after its effectivity; and
 - 13) Issue official receipts for every transaction, sale, or delivery of LPG.
- d) **Dealers.** A dealer shall have the following responsibilities:
- 1) Have a contract or agreement with either the brand owner or marketer;
 - 2) Carry only the brand of LPG of its refiller or marketer;
 - 3) Sell only LPG in cylinders with DOE-registered seals of its refiller or marketer;
 - 4) Have appropriate weighing devices which shall accurately measure LPG cylinders up to one-tenth (0.1) of one kilogram duly calibrated and sealed by the authorized government agency;
 - 5) Ensure the correct weight of LPG filled cylinders delivered to its retail outlets and consumers;
 - 6) Put up display and storage facilities within its area of operations;
 - 7) Provide servicing, delivery, and technical assistance for its clientele;
 - 8) Conform with safe LPG handling practices as prescribed under provisions on safety herein;
 - 9) Register with OIMB all vehicles used for the transport of LPG;
 - 10) Issue official receipt after every transaction, sale, or delivery of LPG;
 - 11) Ensure that an official receipt is issued by its supplier after every transaction, sale, or delivery of LPG; and
 - 12) Ensure that each LPG filled cylinder conforms with the minimum standards prior to acceptance from its suppliers.

e) **Retail Outlets.** A Retail Outlet shall have the following responsibilities:

- 1) Sell the brands of LPG filled cylinders it is authorized to carry by virtue of its agreement with the appointing dealers;
- 2) Sell only LPG in cylinders with DOE-registered seals of refillers and marketers;
- 3) Have weighing devices which shall accurately measure LPG cylinders up to one-tenth (0.1) of one kilogram duly calibrated and sealed by the authorized government agency;
- 4) Request the dealer for a qualified LPG Serviceman to render services to its end-users;
- 5) Install and provide in its respective establishment fire extinguishers, printed materials/ posters showing procedures on how to prevent and react to LPG-related accidents;
- 6) Conform with safe LPG handling practices as prescribed under provisions on safety herein;
- 7) Issue official receipt for every transaction, sale, or delivery of LPG;
- 8) Ensure that an official receipt is issued by its supplier after every transaction, sale, or delivery of LPG; and
- 9) Ensure that each LPG filled cylinder conforms with the minimum standards prior to acceptance from its suppliers.

SECTION 16. Other Responsibilities of LPG Industry Participants.

a) **Checking by Refillers, Marketers and**

Dealers. All refillers, marketers and dealers shall periodically check the LPG sold by their respective dealers and/or retail outlets to verify compliance with the LPG content requirement at least once every ninety (90) days. They shall likewise check whether dealers and/or retail outlets' weighing devices are calibrated and sealed in accordance with this Circular. The result of such test shall be recorded and be made available to the DOE inspectors upon demand.

b) **Issuance of Receipts.**

1) **Transactions in Bulk.** All transactions involving the sale or transfer of LPG in bulk must be covered by an official receipt bearing, in addition to other requirements under applicable laws, the following information:

- a. Registered name of the seller;
- b. Address of the seller;
- c. Date of the transaction;
- d. Quantity or volume of the product;
- e. Plate number of transporting trucks or registered name of transporting barge;
- f. Total price of the transaction; and
- g. Such other information as may be prescribed by the DOE.

2) **Transactions in Cylinders.** All transactions involving the sale or transfer of LPG in cylinders to consumers must be covered by an official receipt bearing, in addition to other requirements under applicable laws, the following information:

- a. Registered name of the seller;
 - b. Address of the seller;
 - c. Date of the transaction;
 - d. Brand of LPG;
 - e. Cylinder serial number;
 - f. Net weight or weight of the LPG contained in the cylinder;
 - g. Unit price per cylinder;
 - h. Total price of the transaction; and
 - i. Such other information as may be required by the DOE.
- 3) All other transactions involving the sale or transfer of possession or ownership of LPG from one Industry Participant to another must likewise be covered by an official receipt or other written instrument with the above information, as applicable. Duplicate copies of official receipts shall be made available for verification by OIMB inspectors.

RULE V DUTY OF CYLINDER OWNERS

SECTION 17. Cylinder Ownership. The brand owner whose permanent mark appears on the LPG cylinder shall be presumed the owner thereof, irrespective of the party in custody or possession of the cylinder, and regardless of whether such cylinder is or continues to be properly marked, stamped or identified to contain its LPG brand, or whether such cylinder is in compliance or continues to comply with any other product or quality standard prescribed under law or by the DTI pursuant to this Circular, absent any unequivocal proof.

The brand owner/cylinder owner shall have the obligation to ensure that its cylinders comply with all required quality and safety standards and specifications before the cylinders are released for sale and distribution: Provided, That receipt by the DOE of a verified notice or report from the cylinder owner regarding any lost, stolen or missing LPG cylinders shall serve as prima facie evidence to relieve the cylinder owner of the obligation to ensure the quality and safety of such LPG cylinders: Provided further, That such report may be rebutted by contrary evidence.

SECTION 18. Cylinder Maintenance. All LPG cylinder owners/brand owners shall keep their own cylinders in safe, clean and serviceable condition and shall maintain them in a manner consistent with the provisions of the safety codes adopted in the industry. All LPG cylinders shall conform with PNS 03.

SECTION 19. Product Liability Insurance. All brand owners shall carry a product liability insurance from insurance companies duly licensed and authorized by the Insurance Commission, to answer for whatever damage or liability may result from an unsafe condition of LPG cylinders.

SECTION 20. Cylinder Return. The LPG brand owner shall, through its authorized dealer or retail outlet, replace or refund returned cylinders pursuant to guidelines that may be set by DOE in coordination with the DTI.

RULE VI MONITORING AND INSPECTION

SECTION 21. Compliance Monitoring. The OIMB and DOE Field Office inspectors shall monitor and inspect on a regular basis LPG Industry Participants to, among others, ensure their compliance with existing and applicable DOE rules and regulations.

SECTION 22. Assistance of Other Government Agencies. The OIMB and DOE Field Offices may, in the course of monitoring

and inspection, take custody or impound, for purposes of public welfare and evidence, LPG cylinders which are found to be in violation of applicable DOE laws, rules and regulations until such time that their disposition is finally determined in accordance with the law or through the applicable administrative, civil and/or criminal proceedings.

The conduct of monitoring and inspections operations by the OIMB and DOE Field Offices may be done with the assistance of other concerned government agencies such as the Philippine National Police, National Bureau of Investigation or any other similar enforcement agencies, to ensure and provide security to life and property, during the conduct thereof but not limited to, during the confiscation of cylinders found to be in violation of the provisions of DOE laws, rules and regulations, and during the transport of the confiscated cylinders to the impounding area

RULE VII

CONSUMER SAFETY AND INFORMATIONAL SIGNS

SECTION 23. Posting of Safety and Informational Signs. For the awareness and information of the buying public the following signs shall be prominently displayed by the owner and/or operator of the LPG establishments/outlets in strategic and appropriate locations within the premises of the said establishment/outlet:

- a) Price Display Board with updated prices for each LPG brand and cylinder size being sold or offered for sale pursuant to this Circular. It shall have numeric entries of at least six (6) inches in height;
- b) “No Smoking” signs;
- c) “No open flame within three(3) meter radius” sign; and
- d) Other safety signs as may be required by the DOE, other government agencies, and relevant LGUs.

RULE VIII

PROHIBITED ACTS

SECTION 24. Illegal Trading. The following shaU constitute Illegal Trading:

- a) **Engaging in Business without SCC**, where an LPG Industry Participant engages in business without securing a SCC from the DOE;
- b) **Failure to Post SCC**, where an LPG Industry Participant fails or refuses to post its SCC in its LPG establishments;
- c) **Transacting Business with other LPG Industry Participant without a Valid SCC**, where a LPG Industry Participant sells or distributes LPG to persons or entities without SCC or whose SCC has expired or is suspended or revoked;
- d) **Refusal/Obstruction of Inspection**, where an LPG Industry Participant refuses, prevents or obstructs the inspection of its premises and records;
- e) **Sale of LPG in cylinders that do not conform with the PNS on manufacture, requalification and repair of LPG cylinders**, such as:
 - 1) Without required markings;
 - 2) Cylinders considered substandard as defined by the PNS;
 - 3) Cylinders stamped with wrong or misleading information such as the tare weight; and
 - 4) LPG in inappropriate containers.
- f) **Failure to Comply with Standards**, where an LPG Industry Participant, by act or omission, fails to comply with standards required by the DOE with respect to its specific activity, including non-compliance with DOE mandatory

requirements on safety designs for refilling plants, equipment, depots, centralized LPG distribution systems and similar facilities;

- g) **Failure to Comply with Weighing Device Requirements**, where an LPG Industry Participant fails to comply with the requirements pertaining to weighing devices;
- h) **Illegal Possession of anchor Use of Unregistered and/or Inappropriate LPG Cylinder Seal**, where a person other than the brand owner and its authorized refiller/s possesses and/or installs LPG cylinder seals;
- i) **Illegal Possession of LPG Cylinder Seal**, where a person is found in possession of LPG cylinder seals, including the seals already used in the LPG cylinders, without authority from the LPG cylinder owner or its authorized refiller;
- j) **Sale or Distribution of LPG-filled Cylinders without Seals**, Tampered Seals or Inappropriate seals, where the provisions of this Circular notwithstanding, any person, brand owner, its authorized refiller, dealer or retail outlet who sells or distributes LPG-filled cylinders without seal, with tampered or broken seals, or with seal not belonging to the brand owner;
- k) **Sale of LPG in single-trip (non-refillable) container/canister** which has been previously filled with butane, or not designed or intended for refilling of LPG due to non-compliance with PNS or not certified or allowed by the DTI;
- l) **Illegal Storage**, where an LPG Industry Participant stores LPG in bulk without obtaining a SCC;
- m) **Pilferage of LPG**, where a person pilfers LPG;

- n) **Tampering of LPG Cylinders and Similar Acts**, where an LPG Industry Participant, other than the LPG cylinder owner, destroys, tampers, alters, modifies or stamps or labels wrong or misleading information or marks on LPG cylinders through any means such as, but not limited to, changing the LPG cylinder valve, repainting and re-labeling;
- o) **Overloading**, where a hauler or transporter loads and transports, or permits the loading and transportation of LPG cylinders quantities greater than the rated capacity of the vehicle or in such a manner that endangers the life and safety of its passengers or the public;
- p) **Hoarding**, where an LPG Industry Participant, before a price increase or in times of tight supply, unduly accumulates LPG products beyond its normal inventory levels and unreasonably limits or refuses to dispose of, sell, or distribute LPG products to the general public, even if the buyer or consumer has the ability to pay in cash for the LPG products.

The determination of said Participant's usual inventory shall be reckoned from the third (3rd) month immediately preceding the discovery of the stocks in case said participant has been engaged in the business for at least three (3) months; otherwise, it shall be reckoned from the time he started his business.

The following shall be considered as prima facie evidence of hoarding:

- 1) Said Participant has stocks of LPG products fifty percent (50%) higher than his usual inventory; and
- 2) Said Participant unreasonably limits, refuses, or fails to sell the same to the general public at the time of discovery of the stocks.

SECTION 25. Illegal Refilling, which is committed under any of the following circumstances:

- a) Refilling of LPG cylinder by a person or entity other than the brand owner thereof, unless an expressed permission is granted by the owner for such refilling as evidenced by a written contract or similar instrument;
- b) Refilling of LPG cylinder with a brand, trademark, trade name, or registered business name other than that of the brand owner indicated on the LPG cylinder tank, otherwise called “pirate filling” or “cross-filling”;
- c) Refilling of LPG cylinder without the embossed markings or other indication of the brand or trade name thereof, or bearing defaced, tampered or illegible markings contrary to the mandatory labeling and stamping requirements under this Act;
- d) Refilling of LPG cylinder which is due for repair, re-qualification or scrappage as provided in this Act, or is subject to the recall or prohibition order of the DOE;
- e) Filling of LPG cylinder directly from LPG tank trucks without the use of approved filling machines;
- f) Refilling LPG from one LPG cylinder to another without using the prescribed equipment;
- g) “Backyard refilling” or the refilling of LPG cylinders other than in properly designed LPG refilling plants;
- h) Filling LPG cylinder with products or substances other than LPG in an effort to achieve the correct net weight;
- i) Refilling of LPG cylinders for household or commercial use by Auto-LPG Dispensing Stations;

- j) Refilling of LPG into single-trip and/or tin canister or cartridge not designed or intended for LPG or not in compliance with existing PNS or, in the absence of a PNS, without the express consent/approval/conformity of the DTI;
- k) Any other refilling of LPG cylinders in violation of the mandatory requirements or prescribed standards; and
- l) Unauthorized loading of bulk LPG tanks in industrial accounts.

SECTION 26. Underfilling, where the net quantity of LPG contained in LPG cylinders offered for sale, sold, transferred, delivered or filled by refillers is less than the LPG cylinder content required by the DOE and/or the net content marked in the cylinder.

The following shall be considered as *prima facie* evidence of underfilling:

- a) A broken, tampered, absent or removed seal; or
- b) An LPG cylinder containing less than the required LPG quantity which is not so identified and set apart or taken out from the sales area by dealers or retail outlets is presumed to be for sale.

For purpose of the Rules, the net LPG content sold in LPG cylinders with water capacity of twenty-one (21) liters to twenty-nine (29) liters shall not be less than 11.0 kilograms when measured at the refilling plants. The net quantity contained when sold to the consumer shall not be more than three tenths (0.3) of one kilogram less than 11.0 kilograms. A shortage of more than three tenths (0.3) of one kilogram per cylinder shall constitute an act of underfilling. Moreover, the allowable deviation in the contents of other cylinder sizes shall not exceed three tenths (0.3) of one kilogram from the indicated net weight.

SECTION 27. Adulteration, where LPG is found to be mixed with another finished or unfinished petroleum product or stock or with any non-petroleum substance or material that will result in product quality change or in the failure of the LPG to meet the required product specifications of the DOE.

SECTION 28. Other Prohibited Acts. To ensure compliance with the provisions of this Circular, the refusal or failure to comply with any of the following shall likewise be prohibited:

- a) Submission of any reportorial requirements; where an LPG Industry Participant fails to submit periodic reports as may be required by the DOE, within the period and in the manner prescribed by the DOE;
- b) Use of clean and safe (environment and worker-benign) technologies;
- c) Compliance with issuances of the DOE pertaining to the transport of LPG in cylinders;
- d) Any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of RA 8479 including the maintenance of minimum inventory.

SECTION 29. Presumption of Liability for Prohibited Acts. LPG-filled cylinders with seals, whether these are authorized or unauthorized, or inappropriate, are presumed to be for delivery and/or sale. In the case of dealers or retail outlets, LPG-filled cylinders displayed in their establishments are presumed to be for sale. Any LPG Industry Participant found to be in possession of LPG filled cylinders containing, or with violations described as prohibited acts, shall be presumed liable for such acts. LPG filled cylinders found, intercepted or apprehended with violations described as prohibited acts shall be presumed to be for sale, delivery or

distribution, and the liability is on the owner of such LPG product in cylinders.

RULE IX ADMINISTRATIVE FINES AND SANCTIONS

SECTION 30. Fines/Sanctions Against Prohibited Acts.

- a) Administrative fines and sanctions shall be imposed for every prohibited act for each cylinder pursuant to existing DOE circulars, rules and regulations.
- b) Any LPG Industry Participant engaging in any LPG industry activity without a valid SCC shall be penalized with an administrative fine of P60,000.
- c) Any person or entity transacting with any LPG Industry Participant without a valid SCC shall be penalized with an administrative fine of P60,000.
- d) An LPG Industry Participant who supplies LPG directly to other Industry Participants in the LPG cylinders found in violation of the prohibited acts of this Circular shall also be liable of the same sanction/(s) imposed on the latter who are found in possession of the LPG cylinders with violations.
- e) Any person or entity who violates any provision of this Circular not covered by DOE Circular No. 2000-06-010 shall be penalized by a fine of P10,000 for every prohibited act or P5,000, per cylinder, whichever is higher.
- f) Notwithstanding the immediately preceding paragraph, any LPG Industry Participant who refuses, prevents or obstructs the inspection of its premises and records shall be penalized by a fine of P50,000.

SECTION 31. Initiation of Administrative Proceedings. The DOE may **motu proprio**

or upon complaint of any person, natural or juridical, initiate administrative proceedings against persons committing any of the prohibited acts defined or provided in this Circular.

SECTION 32. Initiation of Criminal Action. The initiation of an administrative action and/or the imposition of any fine against any person who violates or does not comply with this Circular shall be without prejudice to the filing of any criminal action against such person pursuant to B.P. 33, as amended and/or R.A. 8479, and their respective Implementing Rules and Regulations, as amended.

**RULE X
FINAL PROVISIONS**

SECTION 33. Transition Period. All existing LPG establishments shall be given three (3) months from the effectivity of this Circular to fully comply with the provisions hereof.

SECTION 34. Separability Clause. If, for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such part or parts not affected thereby shall continue to remain in full force and effect.

SECTION 35. Repealing Clause. All DOE circulars, issuances, and rules & regulations inconsistent with this Circular or any part hereof, are hereby deemed repealed or modified accordingly.

SECTION 36. Effectivity. This Department Circular shall take effect fifteen (15) days from the date of its complete publication in two (2) newspapers of general circulation.

Done this January 7, 2014, Energy Center,
Bonifacio Global City, Taguig City.

Signed by:

CARLOS JERICHO L. PETILLA
Secretary

Chapter II

REPUBLIC ACT NO. 8479

AN ACT DEREGULATING THE DOWNSTREAM OIL INDUSTRY AND FOR OTHER PURPOSES

CHAPTER I GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “Downstream Oil Industry Deregulation Act of 1998.”

SECTION 2. *Declaration of Policy.* – It shall be the policy of the State to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality petroleum products. To this end, the State shall promote and encourage the entry of new participants in the downstream oil industry, and introduce adequate measures to ensure the attainment of these goals.

SECTION 3. *Coverage.* – This Act shall apply to all persons or entities engaged in any and all activities of the domestic downstream oil industry, as well as persons or companies directly importing refined petroleum products for their own use.

SECTION 4. *Definition of Terms.* – For purposes of this Act, the following terms are hereinbelow defined:

(a) *Basel Convention* shall refer to the international accord which governs the trade or movement of hazardous and

toxic wastes across borders;

- (b) *Board* shall refer to the Energy Regulatory Board;
- (c) *BOI* shall refer to the Board of Investments;
- (d) *Crude Oil* shall refer to oil in its natural state before the same has been refined or otherwise treated, but excluding water, bottoms, sediments and foreign substances;
- (e) *Dealer* shall refer to any person, whether natural or juridical, who is engaged in the marketing and direct selling of petroleum products to motorists, end users, and other consumers;
- (f) *DOE* shall refer to the Department of Energy;
- (g) *DOJ* shall refer to the Department of Justice;
- (h) *Downstream Oil Industry (DOI) or Industry* shall refer to the business of importing; exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum products;

- (i) *Hauler* shall refer to any person, whether natural or juridical, engaged in the transport, distribution, hauling, and carriage of petroleum products, whether in bulk or packed form, from the oil companies and independent marketers to the petroleum dealers and other consumers;
- (j) *LPG Distributor* shall refer to any person or entity, whether natural or juridical, engaged in exporting, refilling, transporting, marketing, and/or selling of LPG to end users and other consumers;
- (k) *New Industry Participants* shall refer to new participants in a particular sub-sector of the downstream oil industry with investments and initial business operations commencing after January 1, 1994;
- (l) *Person* shall refer to any person, whether natural or juridical, who is engaged in any activity of the downstream oil industry;
- (m) *Petroleum* shall refer to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits;
- (n) *Petroleum Products* shall refer to products formed in the case of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvents, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or other such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products;
- (o) *Singapore Import Parity (SIP)* shall refer to the deemed landed cost of a petroleum product imported from Singapore at a free-on-board price equal to the average Singapore Posting for that product at the time of loading;
- (p) *Singapore Posting* shall refer to the price of petroleum products periodically posted by oil refineries in Singapore and reported by independent international publications; and
- (q) *Wholesale Posted Price (WPP)* shall refer to the ceiling price of petroleum products set by the Board based on its duly approved automatic pricing formula.

CHAPTER II

LIBERALIZATION OF THE DOWNSTREAM OIL INDUSTRY AND PROMOTION OF FREE COMPETITION

SECTION 5. *Liberalization of the Industry.*

– Any law to the contrary notwithstanding, any person or entity may import or purchase any quantity of crude oil and petroleum products from a foreign or domestic source, lease or own and operate refineries and other downstream oil facilities and market such crude oil and petroleum products either in a generic name or his or its own trade name, or use the same for his or its own requirement: *Provided*, That any person who shall engage in any such activity shall give prior notice thereof to the DOE for monitoring purposes: *Provided, further*, That such notice shall not exempt such person or entity from securing certificates of quality, health and safety and environmental clearance from the

proper governmental agencies: *Provided, furthermore,* That such person or entity shall, for monitoring purposes, report to the DOE his or its every importation/exportation: *Provided, finally,* That all oil importations shall be in accordance with the Basel Convention.

SECTION 6. *Tariff Treatment.* – (a) Any law to the contrary notwithstanding and starting with the effectivity of this Act, a single and uniform tariff duty shall be imposed and collected both on imported crude oil and imported refined petroleum products at the rate of three percent (3%): *Provided, however,* That the President of the Philippines may, in the exercise of his powers, reduce such tariff rate when in his judgment such reduction is warranted, pursuant to Republic Act No. 1937, as amended, otherwise known as the *Tariff and Customs Code*: *Provided, further,* That beginning January 1, 2004 or upon implementation of the Uniform Tariff Program under the World Trade Organization and ASEAN Free Trade Area commitments, the tariff rate shall be automatically adjusted to the appropriate level notwithstanding the provisions under this Section.

(b) For as long as the National Power Corporation (NPC) enjoys exemptions from taxes and duties on petroleum products used for power generation, the exemption shall apply to purchases through the local refineries and to the importation of fuel oil and diesel.

SECTION 7. *Promotion of Fair Trade Practices.* – The Department of Trade and Industry (DTI) and DOE shall take all measures to promote fair trade and prevent cartelization, monopolies, combinations in restraint of trade, and any unfair competition in the Industry as defined in Article 186 of the Revised Penal Code, and Articles 168 and 169 of Republic Act No. 8293, otherwise known as the “Intellectual Property Law”. The DOE shall continue to encourage certain practices in the industry which continue to encourage certain practices in the Industry which serve the public interest and are intended to

achieve efficiency and cost reduction, ensure continuous supply of petroleum products, and enhance environmental protection. These practices may include borrow-and-loan agreements, rationalized depot and manufacturing operations, hospitality agreements, joint tanker and pipeline utilization, and joint actions on spill control and fire prevention.

The DOE shall monitor the relationship between the oil companies (refiners and importers) and their dealers, haulers and LPG distributors to help ensure the observance of fair and equitable practices and to ensure the enforcement of existing contracts: *Provided,* That the DOE shall conciliate and arbitrate any dispute that may arise with respect to the contractual relationship between the oil companies and the dealers, haulers and LPG distributors involving the dealers’ mark-up, the freight rate in transporting petroleum products and the margins of LPG distributors for the protection of the public and to prevent ruinous competition: *Provided, further,* That the arbitration award of the DOE shall be subject to judicial review under existing law.

SECTION 8. *Program to Encourage the Entry of New Participants in the Industry.* – The DOE, the Department of Foreign Affairs (DFA) and the DTI shall jointly formulate and establish a program that will promote the entry of new participants in the Industry. Such program shall, among others, include a strategic international information campaign to be implemented through selected embassies and consular offices of the Philippines. This program shall commence implementation after three (3) months from the effectivity of this Act.

In this regard, the DOE shall provide a “Philippine Downstream Oil Industry Investment Guide” to new industry participants and prospective participants. This guide, shall, among others, contain:

(a) An introduction to the Philippine Downstream Oil Industry and the

government's unwavering commitment to deregulation;

- (b) The entry requirements;
- (c) Information on the benefits and incentives for new industry participants which shall specify: (i) all the incentives and benefits they can enjoy, and (ii) the procedural and substantive requirements needed for entitlement; and
- (d) Such other information the DOE may deem necessary to promote the entry of new participants.

SECTION 9. *Incentives for New Investments.*

– To the extent applicable, persons with new investments as determined by the DOE and registered with the BOI in refining, storage, marketing and distribution of petroleum products, shall be extended the same incentives granted to BOI-registered enterprises engaged in a preferred area of investments pursuant to Executive Order No. 226, otherwise known as the “Omnibus Investments Code of 1987”.

Such incentives shall include:

- (1) Income tax holiday;
- (2) Additional deduction for labor expenses;
- (3) Minimum tax and duty of three percent (3%) and value-added tax (VAT) on imported capital equipment;
- (4) Tax credit on domestic capital equipment;
- (5) Exemption from contractor's tax;
- (6) Unrestricted use of consigned equipment;
- (7) Exemption from the real property tax on production equipment or machineries;
- (8) Exemption from taxes and duties on imported spare parts; and

- (9) Such other applicable incentives under Article 39 of Executive Order No. 226.

Any provision of the law to the contrary notwithstanding, the said incentives may be availed by persons with new investments for a period of five (5) years from registration with the BOI: *Provided, however,* That in the storage, marketing and distribution of petroleum products, only the investments of new industry participants shall be entitled to incentives provided in the said Code. As used herein, “marketing of petroleum products” shall include the establishment of gasoline stations.

For this purpose, the industry shall be included in the annual Investment Priorities Plan (IPP): *Provided,* That nothing in herein contained shall preclude qualified persons or entities as provided under the “Omnibus Investments Code” from applying from or continue enjoying incentives and benefits under the said Code.

SECTION 10. *Promotion of Retail Competition.*

– To achieve the social and policy objective of fair prices, facilitate the attainment of a truly competitive product market in the retail level, the DOE shall promote and encourage by way of information dissemination, networking, and management/skills training, the active and direct participation of the private sector and cooperatives in the retailing of petroleum products through joint venture/supply agreements with new industry participants for the establishment and operation of gasoline stations: *Provided,* That the training herein shall include LPG retailing.

To this end, the DOE shall, in accordance with the Technology and Livelihood Resource Center (TLRC) and Technical Education and Skills Development Authority (TESDA), coordinate with new industry participants and existing petroleum dealers' associations in the formulation and implementation of a two-fold program on management and skills training for the establishment, operation, and maintenance of gasoline stations.

Persons who successfully complete the two-fold program shall be entitled to government assistance being extended by government lending agencies, in the form of medium- to long-term loans with low interest rates and to the gasoline training station training and loan fund provided hereunder, to serve as capital for the establishment and operation of gasoline stations.

For these purposes, there is hereby established a gasoline station and loan fund with the initial amount of Three hundred million pesos (P 300,000,000.00) to be provided by the Philippine Amusement and Gaming Corporation (PAGCOR) and administered by the DOE under a separate account.

Of this amount, two percent (2%) plus any additional funding shall be allocated for the two-fold program; one percent (1%) plus any additional funding shall be set aside for administrative, maintenance, and other operating expenses; ninety-four percent (94%) shall be used exclusively for lending and financial assistance; the remaining three percent (3%) shall be utilized in accordance with the provisions of Section 26 of this Act: *Provided, That* the loans to be awarded herein shall be from short- to medium-term with low interest rates; *Provided, further, That* these loans shall be awarded to qualified persons who are able to comply with the conditions set forth in the next two (2) preceding paragraphs.

CHAPTER III

ANTI-TRUST SAFEGUARDS, OTHER PROHIBITED ACTS AND REMEDIES

SECTION 11. *Anti-Trust Safeguards.* – To ensure fair competition and prevent cartels and monopolies in the Industry, the following acts are hereby prohibited:

(a) *Cartelization* which means any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix

prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;

(b) *Predatory pricing* which means selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: *Provided, however, That* pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this provision, "variable cost" as distinguished from "fixed cost", refers to costs such as utilities or raw materials, which vary as the output increases or decreases and "average variable cost" refers to the sum of all variable costs divided by the number of units of outputs.

Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of three (3) to seven (7) years imprisonment, and a fine ranging from One million pesos (P 1,000,000.00) to Two million pesos (P 2,000,000.00).

SECTION 12. *Other Prohibited Acts.* – To ensure compliance with the provisions of this Act, the refusal to comply with any of the following shall likewise be prohibited:

(a) submission of any reportorial requirements;

(b) use of clean and safe (environment and worker-benign) technologies;

- (c) any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of this Act; and
- (d) registration of any fuel additive with the DOE prior to its use as an additive.

Any person, including but not limited to the chief operating officer or chief executive officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and a fine ranging from Two hundred fifty thousand pesos (P 250,000.00) to Five hundred thousand pesos (P 500,000.00).

SECTION 13. Remedies. – (a) Government Action. – Whenever it is determined by the Joint Task Force created under Section 14 (d) of this Act, there is a threatened or imminent or actual violation of Section 11 of this Act, it shall direct the provincial or city prosecutors having jurisdiction to institute an action to prevent or restrain such violation with the Regional Trial Court of the place where the defendants reside or has his place of business. Pending hearing of the complaint and before final judgment, the court may at any time issue a temporary restraining order or an injunction as shall be deemed just within the premises, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

Whenever it is determined by the Joint Task Force that the Government or any of its instrumentalities or agencies, including government-owned or –controlled corporations, shall suffer loss or damage in its business or property by reason of violation of Section 11 of this Act, such instrumentality, agency or corporation may file an action to recover damages and the costs of the suit with the Regional Trial Court which has jurisdiction as provided above.

(b) Private Complaint. – Any person or entity shall report any violation of Section 11 of this Act to the Joint Task Force. The Joint Task Force shall investigate such reports in aid of which the DOE Secretary may exercise the powers under Section 15 of this Act. The Joint Task Force shall prepare a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public at the discretion of the Joint Task Force. In the event that the Joint Task Force determines that there has been a violation of Section 11 of this Act, the private person or entity shall be entitled to sue for and obtain injunctive relief, as well as damages, in the Regional Trial Court having jurisdiction over any of the parties, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

CHAPTER IV POWERS AND FUNCTIONS OF THE DOE AND DOE SECRETARY

SECTION 14. Monitoring. – (a) The DOE shall monitor and publish daily international crude oil prices, as well as follow the movements of domestic oil prices. It shall likewise monitor the quality of petroleum products and stop the operation of businesses involved in the sale of petroleum products which do not comply with the national standards of quality that are aligned with the national standards/protocols of quality. The Bureau of Product Standards of the DTI, together with the Department of Environment and Natural Resources (DENR), the DOE, the Department of Science and Technology (DOST), representatives of the fuel and automotive industries and the consumers, shall set the specifications for all types of fuel and fuel-related products to improve fuel composition for increased efficiency and reduced emissions. The BPS shall also specify the allowable content of additives in all types of fuels and fuel-related products.

(b) The DOE shall monitor the refining and manufacturing processes of local

petroleum products to ensure that clean and safe (environment and worker-benign) technologies are applied. This shall also apply to the process of marketing local and imported petroleum products.

(c) The DOE shall maintain a periodic schedule of present and future total industry inventory of petroleum products for the purpose of determining the level of supply. To implement this, the importers, refiners, and marketers are hereby required to submit monthly to the DOE their actual importations, local purchases, sales and/or consumption, and inventory on a per crude/product basis.

(d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, the creation of the DOE-DOJ Task Force is hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance: *Provided*, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency *motu proprio*.

Upon the effectivity of this Act, the Secretaries of Energy and Justice shall jointly appoint the members of a committee who shall be tasked with the drafting of the rules and guidelines to be adopted by the Task Force in the performance of its duty. These guidelines shall ensure the efficiency, promptness, and effectiveness in the handling of its cases. The Task Force shall be organized and its members appointed within one (1) month from the effectivity of this Act.

(e) In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the Industry.

SECTION 15. *Additional Powers of the DOE Secretary.* – In connection with the enforcement of this Act, the DOE Secretary shall have the following powers:

(a) To gather and compile appropriate information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person or entity in the Industry;

(b) To require, by general or special orders, persons or entities engaged in a particular activity of the industry: (i) to file an annual or special report, or both in such form as the Secretary may prescribe; or (ii) to answer specific questions in writing, furnishing to the Secretary such information as he may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons or entities filing such reports or answer. Such reports and/or answer shall be filed with the Secretary under oath and within such reasonable time as the Secretary may prescribe;

(c) Upon the direction of the President or either House of Congress, to investigate and report the facts relating to any alleged violation of this Act by any person or corporation;

(d) Upon the application of the Secretary of Justice, to investigate and make recommendations for the readjustment of the business of any person or entity alleged to be violating this Act in order that such person or entity may thereafter maintain his or its organization, management, and conduct of business in accordance with law;

(e) To recommend to the proper government agency the suspension or revocation and termination of the business permit of an offender;

(f) Concomitant with the policy of ensuring a continuous, adequate and economic supply

of energy to exercise his powers and functions provided under Section 5 (c) of Republic Act No. 7638;

(g) To make public from time to time such portions of the information obtained by him hereunder as are in the public interest; and to make annual and special reports to Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of his reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Secretary shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person or entity which is privileged or confidential, except that the Secretary may disclose such information to officers and employees of appropriate law enforcement agencies or to any officer or employee of any such law enforcement agency upon the prior certification by an officer of any such law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes; and

(h) Whenever a final order has been entered against any defendant in any suit brought by the government to prevent and restrain any violation of the anti-trust provisions of this Act to make investigation, upon his initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Secretary of Justice, it shall be his duty to make such investigation. He shall transmit to the Secretary of Justice a report embodying his findings and recommendations as a result of any such investigation, and the report shall be made public at the discretion of the Secretary.

CHAPTER V

TRANSITION PHASE

SECTION 16. *Phases of Deregulation.* – In order to provide a smooth implementation of deregulation, the policy shift shall be done

in two (2) phases: Phase I (Transition Phase) and Phase II (Full Deregulation Phase).

SECTION 17. *Buffer Fund.* – The President may, when the interest of the consumers so requires, taking into account the rise in the domestic prices of petroleum products, use the “Reserve Control Account” as a buffer fund in an amount not exceeding Two billion nine hundred million pesos (P 2,900,000,000.00) to cover increases in the prices of petroleum products, except premium gasoline, during the Transition Phase over the prices prevailing as of the date of the effectivity of this Act. The “Reserve Control Account” refers to a lump sum collation of reserve impositions deducted from the appropriations approved by Congress for the operation of the government and the implementation of projects and programs.

SECTION 18. *Automatic Oil Pricing Mechanism.* – To enable the domestic price of petroleum products to approximate and promptly reflect the prices of oil in the international market, an automatic pricing mechanism shall be established. To this end, the following laws are hereby amended:

(a) Paragraph (a), Section 8 of Republic Act No. 6173, as amended by Section 3 of Executive Order No. 172, to read as follows:

“SEC. 8. Powers of the Board Upon Notice and Hearing. – The Board shall have the power:

“(a) To set the wholesale posted price of petroleum products during the Transition Phase.

“For this purpose and for the protection of the public interest, the Board shall, after due notice and hearing, at which any consumer of petroleum products and other parties who may be affected may appear and be heard, and within one (1) month after the effectivity of

this Act, approve a market-oriented formula to determine the WPP of petroleum products based solely on the changes of either the Singapore Posting of refined petroleum products, the SIP or the crude landed cost.

“Thereafter, the Board shall at the proper times automatically adjust the WPP of petroleum products based on the approved formula, through appropriate orders, without the need for notice and hearing.

“The Board shall, on the dates of effectivity of the automatic oil pricing formula, the initial WPP or the adjusted WPP, publish the same, together with the corresponding computation in two (2) national newspapers of general circulation.”

- (b) Paragraph 1 of Letter of Instructions No. 1441, to read as follows:

“1. To review and reset the prices of domestic petroleum products up or down as necessary on or before the third Monday of each month to reflect the new WPP of refined petroleum products based on the approved automatic pricing formula.”

- (c) Paragraph 2 of Letter of Instructions No. 1441 is hereby deleted. In lieu thereof a new paragraph is inserted to read as follows:

“2. The price adjustment shall be reflected automatically in the approved WPP of each petroleum product.”

- (d) The provisions of Section 3 (a) and (c) and Section 5 of Executive Order No. 172 to the contrary notwithstanding, the Board shall, during the Transition

Phase, maintain the current margin of dealers and rates charged by water transport operators, haulers and pipeline concessionaires. Depending on the basis of the APM, the Board shall, within one (1) month after the effectivity of this Act and after proper notice and full public hearing, prescribe a formula which will automatically set the margins of marketers and dealers, and the rates charged by water transport operators, haulers and pipeline concessionaires: *Provided*, That such formula shall take effect simultaneously with the effectivity of the automatic oil pricing formula. Thereafter, the Board shall set the said margins and rates based on the approved formula without the necessity for public notice and hearing.

The Board shall, on the day of the effectivity of the aforesaid formula, publish in at least two (2) newspapers of general circulation the mechanics of the formula for the information of the public.

CHAPTER VI

FULL DEREGULATION PHASE

SECTION 19. *Start of Full Deregulation.* – Full deregulation of the Industry shall start five (5) months following the effectivity of this Act: *Provided, however*, That when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the DOE and the Department of Finance when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account the relevant trends and prospects: *Provided, further*, That the foregoing provisions notwithstanding, the five (5)-month Transition Phase shall continue to apply to LPG, regular gasoline, and kerosene as socially-sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period.

Upon the implementation of full deregulation as provided herein, the Transition Phase is deemed terminated and the following laws are repealed:

- (a) Republic Act No. 6173, as amended;
- (b) Section 5 of Executive Order No. 172, as amended;
- (c) Letter of Instruction No. 1431, dated October 15, 1984;
- (d) Letter of Instruction No. 1441, dated November 15, 1984;
- (e) Letter of Instruction No. 1460, dated May 9, 1985;
- (f) Presidential Decree No. 1889; and
- (g) Presidential Decree No. 1956, as amended by Executive Order No. 137:

Provided, however, That in case full deregulation is started by the President in exercise of the authority provided in this Section, the foregoing laws shall continue to be in force and effect with respect to LPG, regular gasoline and kerosene for the rest of the five (5)-month period.

SECTION 20. Jurisdiction on Pricing of Piped Gas. – Section 3 of Executive Order No. 172, is hereby amended to read as follows:

“SEC. 3. Jurisdiction, Powers and Functions of the Board. – The Board shall, upon proper notice and hearing, fix and regulate the rate of schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system.”

CHAPTER VII FINAL PROVISIONS

SECTION 21. OPSF Balance. – All outstanding claims against OPSF as of the effectivity of

this Act, subject to the existing auditing rules and regulations of the Commission on Audit (COA), shall be considered as accounts payable of the National Government. For this purpose, and any law to the contrary notwithstanding, the reimbursement certificates issued by the DOE covering the said outstanding claims shall be honored and accepted by the Bureau of Customs and the Bureau of Internal Revenue as payment to the extent of ten percent (10%) per payment of the tariff duties and specific taxes from the creditor-claimants against the OPSF until such claims are settled in full: Provided, That the reimbursement certificates shall not be transferable.

SECTION 22. Initial Public Offering. – In compliance with the constitutional mandate to encourage private enterprises to broaden their base of ownership and in recognition of the vital role of oil in the national economy, any person or entity engaged in the oil refinery business shall make a public offering through the stock exchange of at least ten percent (10%) of its common stock within a period of three (3) years from the effectivity of this Act or the commencement of its refinery operations: Provided, That no single person or entity shall be allowed to own more than five percent (5%) of the stock offering: Provided, further, That any crude oil refining company and any stockholder thereof shall not acquire, directly or indirectly, any share of stock offered by any other crude oil refining company pursuant to his Section: Provided, finally, That any such company which made the requisite public offering before the effectivity of this Act shall be exempted from the requirement.

SECTION 23. Implementing Rules and Regulations. – The DOE, in coordination with the Board, the DENR, DFA, Department of Labor and Employment (DOLE), Department of Health (DOH), DOF, DTI, National Economic and Development Authority (NEDA) and TLRC, shall formulate and issue the necessary implementing rules and regulations within

sixty (60) days after the effectivity of this Act.

Section 24. Penal Sanction. – Any person who violates any of the provisions of this Act shall suffer the penalty of three (3) months to one (1) year imprisonment and a fine ranging from Fifty thousand pesos (P 50,000.00) to Three hundred thousand pesos (P 300,000.00).

SECTION 24. *Penal Sanction.* – Any person who violates any of the provisions of this act.

SECTION 25. *Public Information Campaign.*
– The DOE, in coordination with the Board and the Philippine Information Agency (PIA), shall undertake an information campaign to educate the public on the deregulation program of the Industry.

SECTION 26. *Budgetary Appropriations.*
– Such amount as may be necessary to effectively implement this Act shall be taken by the DOE from its annual appropriations, the DOE’ Special Fund created under Section 8 of Presidential Decree No. 910, as amended, and such amount allocated under Section 10 of this Act.

SECTION 27. *Separability Clause.* – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, such parts not affected thereby shall remain in full force and effect.

SECTION 28. *Repealing Clause.* – All laws, Presidential decrees, executive orders,

issuances, rules and regulations or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or immediately modified accordingly.

SECTION 29. *Effectivity.* – This Act shall take effect upon its complete publication in at least two (2) national newspapers of general circulation.

Approved,

(Sgd.) JOSE DE VENECIA, JR.
Speaker of the House of Representatives

(Sgd.) NEPTALI A. GONZALES
President of the Senate

This Act, which is a consolidation of the Senate Bill No. 2388 and House Bill No. 10363 was finally passed by the Senate and the House of Representatives on February 6, 1998.

(Sgd.) ROBERTO P. NAZARENO
Secretary General

(Sgd.) REZEL P. GACUTAN
Secretary of the Senate
House of Representatives

Approved:
10 February 1998

FIDEL V. RAMOS
President of the Philippines

RELATED CASES:

Case No. 1:

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 96266 July 18, 1991

ERNESTO M. MACEDA,
petitioner,
vs.

ENERGY REGULATORY BOARD, ET.AL.,
Respondents.

G.R. No. 96349 July 18, 1991

EUGENIO O. ORIGINAL, ET. AL., Petitioners,
vs.

ENERGY REGULATORY BOARD, ET. AL.,
Respondents.

G.R. No. 96284 July 18, 1991

CEFERINO S. PAREDES, JR.,
Petitioner,
vs.

ENERGY REGULATORY BOARD, ET. AL.,
Respondents.

RESOLUTION

MEDIALDEA, J.:*p*

In G.R. No. 96266, petitioner Maceda seeks nullification of the Energy Regulatory Board (ERB) Orders dated December 5 and 6, 1990 on the ground that the hearings conducted on the second provisional increase in oil prices did not allow him substantial cross-examination, in effect, allegedly, a denial of due process.

The facts of the case are as follows:

Upon the outbreak of the Persian Gulf conflict on August 2, 1990, private respondents oil companies filed with the ERB their respective applications on oil price increases (docketed as ERB Case Nos. 90-106, 90-382 and 90-384, respectively).

On September 21, 1990, the ERB issued an order granting a provisional increase of P1.42 per liter. Petitioner Maceda filed a petition for Prohibition on September 26, 1990 (E. Maceda v. ERB, et al., G.R. No. 95203), seeking to nullify the provisional increase. We dismissed the petition on December 18, 1990, reaffirming ERB's authority to grant provisional increase even without prior hearing, pursuant to Sec. 8 of E.O. No. 172, clarifying as follows:

What must be stressed is that while under Executive Order No. 172, a hearing is indispensable, it does not preclude the Board from ordering, *ex-parte*, a provisional increase, as it did here, subject to its final disposition of whether or not: (1) to make it permanent; (2) to reduce or increase it further; or (3) to deny the application. Section 3, paragraph (e) is akin to a temporary restraining order or a writ of preliminary attachment issued by the courts, which are given *ex-parte* and which are subject to the resolution of the main case.

Section 3, paragraph (e) and Section 8 do not negate each other, or otherwise, operate exclusively of the other, in that the Board may resort to one but not to both at the same time. Section 3(e) outlines the jurisdiction of the Board and the grounds for which it may decree a price adjustment, subject to the requirements of notice and hearing. Pending that, however, it may order, under Section 8, an authority to increase *provisionally*, without need of a hearing, subject to the final outcome of the proceeding.

The Board, of course, is not prevented from conducting a hearing on the grant of provisional authority-which is of course, the better procedure — however, it cannot be stigmatized later if it failed to conduct one. (pp. 129-130, *Rollo*) (Emphasis supplied)

In the same order of September 21, 1990, authorizing provisional increase, the ERB set the applications for hearing with due notice to all interested parties on October 16, 1990. Petitioner Maceda failed to appear at said hearing as well as on the second hearing on October 17, 1990.

To afford registered oppositors the opportunity to cross-examine the witnesses, the ERB set the continuation of the hearing to October 24, 1990. This was postponed to November 5, 1990, on written notice of petitioner Maceda.

On November 5, 1990, the three oil companies filed their respective motions for leave to file or admit amended/supplemental applications to further increase the prices of petroleum products.

The ERB admitted the respective supplemental/amended petitions on November 6, 1990 at the same time requiring applicants to publish the corresponding Notices of Public Hearing in two newspapers of general circulation (p. 4, *Rollo* and Annexes “F” and “G,” pp. 60 and 62, *Rollo*).

Hearing for the presentation of the evidence-in-chief commenced on November 21, 1990 with ERB ruling that testimonies of witnesses were to be in the form of Affidavits (p. 6, *Rollo*). ERB subsequently outlined the procedure to be observed in the reception of evidence, as follows:

CHAIRMAN FERNANDO:

Well, at the last hearing, applicant Caltex presented its evidence-in-chief and there is an understanding or it is

the Board’s wish that for purposes of good order in the presentation of the evidence considering that these are being heard together, we will defer the cross-examination of applicant Caltex’s witness and ask the other applicants to present their evidence-in-chief so that the oppositors will have a better idea of what all of these will lead to because as I mentioned earlier, it has been traditional and it is the intention of the Board to act on these applications on an industry-wide basis, whether to accept, reject, modify or whatever, the Board will do it on an industry wide basis, so, the best way to have (*sic*) the oppositors and the Board a clear picture of what the applicants are asking for is to have all the evidence-in-chief to be placed on record first and then the examination will come later, the cross-examination will come later. . . . (pp. 5-6, *tsn.*, November 23, 1990, ERB Cases Nos. 90-106, 90382 and 90-384). (p. 162, *Rollo*)

Petitioner Maceda maintains that this order of proof deprived him of his right to finish his cross-examination of Petron’s witnesses and denied him his right to cross-examine each of the witnesses of Caltex and Shell. He points out that this relaxed procedure resulted in the denial of due process.

We disagree. The Solicitor General has pointed out:

. . . The order of testimony both with respect to the examination of the particular witness and to the general course of the trial *is within the discretion* of the court and the exercise of this discretion in permitting to be introduced out of the order prescribed by the rules *is not improper* (88 C.J.S. 206-207).

Such a relaxed procedure is especially true in administrative bodies, such as the ERB which *in matters of rate or price fixing is considered as exercising*

a quasi-legislative, not quasi-judicial, function. As such administrative agency, it is not bound by the strict or technical rules of evidence governing court proceedings (Sec. 29, Public Service Act; Dickenson v. United States, 346, U.S. 389, 98 L. ed. 132, 74 S. St. 152). (Emphasis supplied)

In fact, Section 2, Rule I of the Rules of Practice and Procedure Governing Hearings Before the ERB provides that:
—

These Rules shall govern pleadings, practice and procedure before the Energy Regulatory Board in all matters of inquiry, study, hearing, investigation and/or any other proceedings within the jurisdiction of the Board. *However, in the broader interest of justice, the Board may, in any particular matter, except itself from these rules and apply such suitable procedure as shall promote the objectives of the Order.* (pp. 163-164, *Rollo*)

Petitioner Maceda also claims that there is no substantial evidence on record to support the provisional relief.

We have, in G.R. Nos. 95203-05, previously taken judicial notice of matters and events related to the oil industry, as follows:

. . . (1) as of June 30, 1990, the OPSF has incurred a deficit of P6.1 Billion; (2) the exchange rate has fallen to P28.00 to \$1.00; (3) the country's balance of payments is expected to reach \$1 Billion; (4) our trade deficit is at P2.855 Billion as of the first nine months of the year.

. . . (p. 150, *Rollo*)

The Solicitor General likewise commented:

Among the pieces of evidence considered by ERB in the grant of the contested provisional relief were:

(1) certified copies of bills of lading issued by crude oil suppliers to the private respondents; (2) reports of the Bankers Association of the Philippines on the peso-dollar exchange rate at the BAP oil pit; and (3) OPSF status reports of the Office of Energy Affairs. The ERB was likewise guided in the determination of international crude oil prices by traditional authoritative sources of information on crude oil and petroleum products, such as Platt's Oilgram and Petroleum Intelligence Weekly. (p. 158, *Rollo*)

Thus, We concede ERB's authority to grant the provisional increase in oil price, as We note that the Order of December 5, 1990 explicitly stated:

In the light, therefore, of the rise in crude oil importation costs, which as earlier mentioned, reached an average of \$30.3318 per barrel at \$25.551/US \$ in September-October 1990; the huge OPSF deficit which, as reported by the Office of Energy Affairs, has amounted to P5.7 Billion (based on filed claims only and net of the P5 Billion OPSF) as of September 30, 1990, and is estimated to further increase to over P10 Billion by end December 1990; the decision of the government to discontinue subsidizing oil prices in view of inflationary pressures; the apparent inadequacy of the proposed additional P5.1 Billion government appropriation for the OPSF and the sharp drop in the value of the peso in relation to the US dollar to P28/US \$, this Board is left with no other recourse but to grant applicants oil companies further relief by increasing the prices of petroleum products sold by them. (p. 161, *Rollo*)

Petitioner Maceda together with petitioner Original (G.R. No. 96349) also claim that the provisional increase involved amounts over and above that sought by the petitioning oil companies.

The Solicitor General has pointed out that *aside from the increase in crude oil prices*, all the applications of the respondent oil companies filed with the ERB *covered claims from the OPSF*.

We shall thus respect the ERB’s Order of December 5, 1990 granting a provisional price increase on petroleum products premised on the oil companies’ OPSF claims, crude cost peso differentials, forex risk for a subsidy on sale to NPC (p. 167, *Rollo*), since the oil companies are “entitled to as much relief as the fact alleged constituting the course of action may warrant,” (*Javellana v. D.O. Plaza Enterprises, Inc.*, G.R. No. L-28297, March 30, 1970, 32 SCRA 261 *citing* *Rosales v. Reyes*, 25 Phil. 495; *Aguilar v. Rubiato*, 40 Phil. 470) as follows:

<i>Per Liter</i>			
<i>Weighted</i>			
<i>Petron Shell Caltex Average</i>			
Crude Cost	P3.11	P3.6047	P2.9248 P3.1523
Peso Cost			
Diffn'l	2.1747	1.5203	1.5669 1.8123
Forex Risk			
Fee	-0.1089	-0.0719	-0.0790 -0.0896
Subsidy on			
Sales to NPC	0.1955	0.0685	0.0590 0.1203
Total Price			
Increase			
Applied for	P59.3713	P5.1216	P4.4717
	P4.9954		
Less: September 21 Price			
Relief			
Actual Price Increase	P1.42		
Actual Tax Reduction:			
Ad Valorem Tax			
(per Sept. 1, 1990			
price build-up)	P1.3333		
Specific Tax (per			
Oct. 5, 1990 price			
build-up)	.6264	.7069	2.1269
<i>Net Price Increase</i>			
<i>Applied for</i>	2.8685		

Nonetheless, it is relevant to point out that on December 10, 1990, the ERB, in response to the President’s appeal, brought back the

increases in Premium and Regular gasoline to the levels mandated by the December 5, 1990 Order (P6.9600 and P6.3900, respectively), as follows:

<i>Product In Pesos Per Liter</i>	
<i>OPSF</i>	
Premium Gasoline	6.9600
Regular Gasoline	6.3900
Avturbo	4.9950
Kerosene	1.4100
Diesel Oil	1.4100
Fuel Oil/Feedstock	0.2405
LPG	1.2200
Asphalt	2.5000
Thinner	2.5000

In G.R. No. 96349, petitioner Original additionally claims that if the price increase will be used to augment the OPSF this will constitute illegal taxation. In the *Maceda* case, (G.R. Nos. 95203-05, *supra*) this Court has already ruled that “the Board Order authorizing the proceeds generated by the increase to be deposited to the OPSF is not an act of taxation but is authorized by Presidential Decree No. 1956, as amended by Executive Order No. 137.

The petitions of E.O. Original et al. (G.R. No. 96349) and C.S. Povedas, Jr. (G.R. No. 96284), insofar as they question the ERB’s authority under Sec. 8 of E.O. 172, have become moot and academic.

We lament Our helplessness over this second provisional increase in oil price. We have stated that this “is a question best judged by the political leadership” (G.R. Nos. 95203-05, G.R. Nos. 95119-21, *supra*). We wish to reiterate Our previous pronouncements therein that while the government is able to justify a provisional increase, these findings “are not final, and it is up to petitioners to demonstrate that the present economic picture does not warrant a permanent increase.”

In this regard, We also note the Solicitor General’s comments that “the ERB is not

averse to the idea of a presidential review of its decision,” except that there is no law at present authorizing the same. Perhaps, as pointed out by Justice Padilla, our lawmakers may see the wisdom of allowing presidential review of the decisions of the ERB since, despite its being a quasi-judicial body, it is still “an administrative body under the Office of the President whose decisions should be appealed to the President under the established principle of exhaustion of administrative remedies,” especially on a matter as transcendental as oil price increases which affect the lives of almost all Filipinos.

ACCORDINGLY, the petitions are hereby DISMISSED.

SO ORDERED.

Narvasa, Melencio-Herrera, Feliciano, Gancayco, Bidin, Griño-Aquino and Regalado, JJ., concur.

Davide, J., concurs in the result.

Fernan, C.J., took no part.

Separate Opinions

PARAS, J., dissenting:

I dissent. As I have long previously indicated, the ERB has absolutely no power to tax which is solely the prerogative of Congress. This is what the ERB is precisely doing by getting money from the people to *ultimately* subsidize the ravenous oil companies. Additionally, the stubborn refusal of the ERB to effectively rollback oil prices is a continuing bestial insult to the intelligence of our countrymen, and a gross abandonment of the people in their hour of economic misery. I therefore vote for a complete and effective rollback of all oil prices.

Cruz, J., concurs.

PADILLA, J., dissenting:

I regret that I cannot concur in the majority opinion.

In the matter of price increases of oil products, which vitally affect the people, especially those in the middle and low income groups, any increase, *provisional or otherwise*, should be allowed only after the Energy Regulatory Board (ERB) shall have fully determined, through *bona fide* and full-dress hearings, that it is absolutely necessary and by how much it shall be effected. The people, represented by reputable oppositors, deserve to be given full opportunity to be heard in their opposition to any increase in the prices of fuel. The right to be heard includes not only the right to present one’s case and submit evidence in support thereof, but also the right to confront and cross-examine the witnesses of the adverse parties.

Because of the procedure adopted by the ERB in the reception of evidence leading to the price increases of 5 and 6 December 1990, petitioner Maceda was not able to finish his cross-examination of Petron’s sole witness. And, even before each of the witnesses of Shell and Caltex could be cross-examined by petitioners and before they could present evidence in support of their opposition to the increase, the ERB had already issued its 5 December 1990 order allowing a “provisional increase” sought by the oil companies in their respective supplemental applications.

That there were postponements of scheduled hearings before the ERB, at the instance of oppositor Maceda, did not justify a denial of the right of oppositors to be heard. The postponements were not intended to delay the proceedings. In fact, the resetting of the scheduled hearings on November 14, 15 and 16 to a later date, upon motion of petitioner Maceda, was to enable him to file a written opposition to the supplemental applications filed by the oil companies.

The ERB acted hastily in granting the provisional increases sought by the oil

companies even before the oppositors could submit evidence in support of their opposition. The fact that the questioned orders merely allowed a provisional increase is beside the point, for past experiences have shown that so-called provisional increases" allowed by the ERB ultimately became permanent.

ERB's claim that the second provisional increase was duly supported by evidence, is belied by its own act of modifying said order (of provisional increase) not only once but twice, upon the "request" of the President. First, the ERB rolled back the prices of fuel just a day after it issued the questioned order, altering the allocation of the increase. Second, on 10 December 1990, the ERB further modified the price of petroleum products resulting in reduction of the weighted average provisional increase from P2.82 to P2.05 per liter, but only after the President had announced that she would meet with the leaders of both Houses of Congress, to discuss the creation of a special fund to be raised from additional taxes, to subsidize the prices of petroleum products.¹

These acts of the ERB ostensibly sparked by "presidential requests" clearly demonstrate that the evidence did not, in the first place, justify the price increases it had ordered on 5 and 6 December 1990. Furthermore, the ERB never came out with a categorical and official declaration of how much was the so-called deficit of the Oil Price Stabilization Fund (OPSF) and how much of the oil price increases was intended to cover such deficit.

In the midst of a national crisis related to oil price increases, each and every one is called upon to assume his/its share of continuing sacrifices. The public, the government, as well as the oil companies should work hand in hand in solving the present problem that confronts us. We are not unmindful of the fact that the oil companies are profit-oriented. However, profits should not be their only concern in times of deepening inability of the people to

cope with their prices with "built-in-margins". A reduction of profits during these crucial and trying times, is certainly in order considering that in the past, the oil companies had unquestionably made tremendous profits.

In view of the foregoing, I vote to GRANT the petition for the nullification of the 5 and 6 December 1990 orders of the ERB and for a roll-back of the prices of oil products to levels existing before 5 and 6 December 1990 until hearings before the ERB are finally concluded.

Before closing, I also would like to submit for congressional consideration two (2) proposals in the public interest. They are:

- (1) to do away with the present scheme of allowing provisional price increases of oil products. This scheme, to my mind, is misleading and serves as an excuse for unilateral and arbitrary ERB-action. As already noted, these provisional price increases are, to all intents and purposes, permanent when fixed. To that extent, the scheme is a fraud on the people.
- (2) all decisions and orders of the ERB should be *expressly* made appealable by statute to the President of the Philippines whose decisions shall be final, except in cases involving questions of law or grave abuse of discretion which may be elevated to the Supreme Court in a special civil action for *certiorari* under Rule 65 of the Rules of Court.

While at present, decisions and orders of the ERB are, in my considered opinion, appealable to the President under the principle of "exhaustion of administrative remedies", it is nevertheless desirable that the appealability of ERB decisions and orders to the President be placed beyond any and all doubts. In this way, the President of the Philippines has to assume full responsibility for all price increases in oil products, which should be the case because the matter involved is not only one of national interest but profoundly one of people's survival.

Gutierrez, Jr. and Cruz, JJ., concur.

SARMIENTO, J., separate opinion:

I would like to point out a few things in view of the majority's reliance on the first *Maceda* case.¹

The first *Maceda* case was a challenge on provisional oil price increases decreed by the Energy Regulatory Board (ERB). This Court sustained the Board, as it is sustaining the Board in this case, on a few economic outputs, namely, the Oil Price Stabilization Fund (OPSF) deficit, the deteriorating exchange rate, and the balance of payments and trade gaps.

As I held in my dissent in yet another *Maceda* case, *Maceda v. Macaraig*,² the current oil price increases were (are) also the result of the devaluation of the currency, since a devalued peso forced oil companies to pay more pesos for oil worth in dollars.

I simply wish to state what has apparently been left unstated in the course of debate and perhaps, the real score behind recurring oil price hikes and why the ERB has been very quick in granting them.

The truth is that petroleum prices have been dictated by the Government's economic maneuvers, and not rather the vagaries of the world market. The truth is that the recent oil hikes have nothing to do with Saddam Hussein or the Gulf crisis (during which oil prices in fact dropped) and are, rather, the natural consequences of calculated moves by the Government in its effort to meet so-called International Monetary Fund (IMF) targets.

In 1989, the Government of the Republic of the Philippines submitted its letter of intent to the IMF outlining the country's economic program from 1989 through 1992. In its paragraph 19, it states that:

Padilla Dissenting

1 Comment by Public Respondent ERB, *Rollo*, p. 152. Sarmiento Separate Opinion

1 G.R. Nos. 95203-05, December 18, 1990.

2 G.R. No. 88291, May 31, 1991.

The Government intends to continue with the floating exchange rate system established in October 1984 . . .³

Since exchange control was abolished and the floating rate system was established, the Philippine peso has seen a series of devaluations that have progressively pushed up prices, significantly, prices of petroleum. According to one authority, devaluation has been a "standard prescription" to correct balance of payments (BOP) deficits.⁴ It makes dollars expensive, discourages import and encourages exports, and forces dollars conservation.⁵

It is a matter of opinion whether or not devaluation has been good for the country and whether or not it has realized these objectives. The truth is that, whatever it has accomplished, oil — which is imported — has been subject to the effects of devaluation.

Early this year, Governor Jose Cuisia of the Central Bank, Secretary Jesus Estanislao of the Department of Finance, and Secretary Guillermo Carague of the Budget and Management Department, wrote Mr. Michael Camdessus of the International Monetary Fund (the letter of intent) and informed him of the country's "Economic Stabilization Plan, 1991-92". The Plan recognized certain economic imbalances that have supposedly inhibited growth, in particular, inflation and an increasing balance of payments deficit, and drew a program centered on "a strong effort to bring down the overall fiscal deficit "through, among other things, "the gradual elimination of the deficit of the Oil Price Stabilization Fund." ⁶ It spelled out, among other things, a "[r]estoration of a sustainable external position requir[ing] the continuation of a flexible exchange rate policy . . . " ⁷ and

3 Memorandum on Economic Policy of the Government of the Phils, March 6, 1989, *Bulletin Today*, March 15, 1989, p. 35, col. 5.

4 Henares, Hilarion, "Devaluation, the last resort," *Bulletin Today*, June 1, 1984.

5 *Id.*

6 Memorandum on Philippine Economic Stabilization Plan; 1991-92, February, 1991, *Daily Globe* February 4, 1991, p. 10.

7 *Id.*, emphasis supplied.

described in detail an “Oil Price and Energy Policy” focused on wiping out the OPSF deficit, to wit:

xxx xxx xxx

A substantial erosion in the overall fiscal position occurred in 1989 and 1990 as a result of official price support for oil products provided through the OPSF. Despite a lowering of the excise tax on oil in September 1990 and average domestic oil price increases of about 30 percent in September and 32 percent in December 1990, the fund continued to incur a deficit during the second half of 1990. The cumulative OPSF deficit (excluding unfiled claims) at end December 1990 is estimated at P8.8 billion, and this deficit will rise in the first part of 1991. However the cumulative OPSF deficit is to be eliminated by the end of the third quarter of 1991. To this end, the Government intends to follow a pricing policy that ensures attainment of zero balance within the specific time. In particular, the Government will maintain present price levels despite projected world price declines. In addition, a budgetary transfer of P5 billion will be provided in 1991 to settle outstanding claim of the OPSF.

15. Full deregulation of oil prices continues to be an important objective of the Government once calm has been restored to world oil markets. Meanwhile the technical and legal groundwork is being laid with a view to full deregulation as soon as practicable.

16. The principal objectives of the Government’s policy in the energy sector are: (i) the development of economically viable indigenous energy resources, mainly thermal, geothermal and hydro-electric power, together with ensuring adequate maintenance of existing facilities; (ii) promoting more efficient use of energy resources through various energy conservation

measures; and (ii) the elimination of distortions in every resource allocation through appropriate pricing policies.⁸

xxx xxx xxx

As I said, Philippine oil prices today have nothing to do with the law on supply and demand, if they had anything to do with it in recent years. (I also gather that the Government is intending to re-adjust the prices of gasoline and diesel fuel soon since apparently, low diesel prices have reduced the demand for gasoline resulting in “distortions”).

As the Court held in the first *Maceda v. Energy Regulatory Board*,⁹ oil pricing “is a question best judged by the political leadership” and oil prices are (and have been apparently), political, rather than economic, decisions.

I am not to be mistaken as accepting the “letter of intent” as a correct prescription — much less a necessary medicine — although I will be lacking in candor if I did not say that it is a bitter pill to swallow. What I must be understood as saying is that “oil” is a political card to be played on a political board rather than the courts, so long, of course, as nobody has done anything illegal.

The “politics of oil” as spelled out in the Government’s letter of intent likewise bring to light the true nature of the ERB Under the Memorandum on Philippine Economic Stabilization Plan:

xxx xxx xxx

In the past, energy prices had been set to broadly reflect the average cost of supply. However, the lack of transparency of the pricing mechanism and subsidization of consumption have increasingly become a cause for concern. To alleviate some of these problems, in mid-1987, the

⁸ *Id.*, emphasis supplied.

⁹ *Supra*, see fn. 1.

Government established the Energy Regulatory Board (ERB) a quasi-judicial body empowered with the setting and regulation of the pricing of petroleum products and electricity tariffs, the regulation of additions to oil refining capacity, and the regulation of importing, transporting, processing and distributing all energy resources. (Petroleum pricing policy is described in paragraphs 14 and 15.) In addition to the full pass-through of changes in oil prices to power tariffs, the Government is committed to the adoption of longrun marginal cost pricing for electricity. To this end, NPC intends to introduce a marginal cost imported-has tariff structure to ensure that it meets its target of achieving a rate of return of eight percent on its rate base.¹⁰

It is apparent that the Board, in spite of its “independence” (from the Office of the President), is bound by the terms of the program and that it has, after all, no genuine discretion to deny requests for price adjustments by oil companies. I seriously doubt whether or not it is possessed of that discretion judging, first, from its performance since 1987 (in which it has not overruled the Government on “oil cases”) and the fact that the exchange rate, the balance of payment deficit, and the OPSF deficiency are matters of simple arithmetic.

And certainly, the Board cannot possibly overrule the Government’s “letter of intent.”

The first *Maceda* case sustained the grant of provisional price increases *ex parte* not only because Section 8 of Executive Order No. 172 authorized the grant of provisional relief without a hearing but because fluctuations in the foreign exchange rates, for instance, were, and are, a matter of judicial notice, and

a hearing thereafter was necessary only to see whether or not the ERB determined the rates correctly.

This likewise brings to light the necessity for an ERB to fix rates since it does not, after all, fix (meaning decide) rates but merely announces their imminence on demonstrable figures of higher rates. The Court, however, cannot question the wisdom of a statute and after all, I suppose the Government can make use of an accountant.

I agree with Justice Padilla insofar as he refers to the “present scheme of allowing provisional price increase” as a “scheme [to defraud] the people.” I would like to go further. As I indicated the ERB does no more than to punch calculators for the Government-which decides oil price increases. The comedy of December, 1990, when the Board adjusted prices in a matter of days, is a confirmation of this point. As Justice Padilla noted, the re-adjustment of December 10, 1990 was in fact prompted by “presidential requests” which does not speak well of the Board’s independence and which in fact bares the truth as to who really makes the decision. (The readjustment, consisting in the reduction in diesel fuel and a corresponding increase in gasoline, sought to mollify the indignation of the public.)

I agree with Justice Padilla that it amounts to fraud on the people to make them believe that the ERB can give them a fair hearing, indeed, if it can do anything at all.

I agree, finally, with Justice Padilla that the nation is one in crisis, and evidently, the “ravenous” oil companies Justice Paras refers to, have not helped any. I submit, however, that we have not succeeded in fingering the real villain the letter of intent. Saddam’s Middle East folly has nothing to do with that.

10 Memorandum on Philippine Economic Stabilization Plan, *Id.*

Case No. 2:

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION
G.R. No. 113079

April 20, 2001

ENERGY REGULATORY BOARD, *petitioner*,
vs. COURT OF APPEALS and PETROLEUM
DISTRIBUTORS AND SERVICES CORPORATION,
respondents.

G.R. No. 114923

April 20, 2001

PILIPINAS SHELL PETROLEUM CORPORATION,
petitioner, vs. COURT OF APPEALS and
PETROLEUM DISTRIBUTORS AND SERVICES
CORPORATION, *respondents*.

DECISION

YNARES-SANTIAGO, J.:

The propriety of building a state-of-the-art gasoline service station along Benigno Aquino, Jr. Avenue in Parañaque, Metro Manila is the bone of contention in these consolidated petitions for *certiorari* under Rule 45 of the *Rules of Court*. Petitioners assert that the construction of such a modern edifice is a necessity dictated by the “emerging economic landscapes.” Respondents say otherwise.

The factual antecedents of the case are matters of record or are otherwise uncontroverted.

Petitioner Pilipinas Shell Petroleum Corporation (Shell) is engaged in the business of importing crude oil, refining the same and selling various petroleum products through a network of service stations throughout the country.

Private respondent Petroleum Distributors and Service Corporation (PDSC) owns and operates a Caltex service station at the corner of the MIA and Domestic Roads in Pasay City.

On June 30, 1983, Shell filed with the quondam Bureau of Energy Utilization (BEU) an application for authority to relocate its Shell Service Station at Tambo, Parañaque, Metro Manila, to Imelda Marcos Avenue of the same municipality. The application, which was docketed as BEU Case No. 83-09-1319, was initially rejected by the BEU because Shell’s old site had been closed for five (5) years such that the relocation of the same to a new site would amount to a new construction of a gasoline outlet, which construction was then the subject of a moratorium. Subsequently, however, BEU relaxed its position and gave due course to the application.

PDSC filed an opposition to the application on the grounds that: (1) there are adequate service stations attending to the motorists’ requirements in the trading area covered by the application; (2) ruinous competition will result from the establishment of the proposed new service station; and (3) there is a decline not an increase in the volume of sales in the area. Two other companies, namely Petrophil and Caltex, also opposed the application on the ground that Shell failed to comply with the jurisdictional requirements.

In a Resolution dated March 6, 1984, the BEU dismissed the application on jurisdictional grounds and for lack of “full title” of the lessor over the proposed site. However, on May 7, 1984, the BEU reinstated the same application and thereafter conducted a hearing thereon.

On June 3, 1986, the BEU rendered a decision denying Shell’s application on a finding that there was “no necessity for an additional petroleum products retail outlet in Imelda Marcos Avenue, Parañaque.” Dissatisfied, Shell appealed to the Office of Energy Affairs (OEA).

Meanwhile, on May 8, 1987, Executive Order No. 172 was issued creating the Energy Regulatory Board (ERB) and transferring to it the regulatory and adjudicatory functions of the BEU.

On May 9, 1988, the OEA rendered a decision denying the appeal of Shell and affirming the BEU decision. Shell moved for reconsideration and prayed for a new hearing or the remand of the case for further proceedings. In a supplement to said motion, Shell submitted a new feasibility study to justify its application.

The OEA issued an order on July 11, 1988, remanding the case to the ERB for further evaluation and consideration, noting therein that the “updated survey conducted by Shell” cited new developments such as the accessibility of Imelda Marcos Avenue, now Benigno Aquino, Jr. Avenue, to Parañaque residents along Sucat Road and the population growth in the trading area.

After the records of BEU Case No. 83-09-1319 was remanded to the ERB, Shell filed on March 3, 1989 an amended application, intended for the same purpose as its original application, which was docketed as ERB Case No. 89-57. This amended application was likewise opposed by PDSC.

On September 17, 1991, the ERB rendered a Decision allowing Shell to establish the service station in Benigno Aquino, Jr. Avenue. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the application for authority to relocate a Shell service station from Tambo to Benigno Aquino Avenue, Parañaque, Metro Manila is hereby approved.

Applicant is hereby directed to:

- (1) Start the construction and operation of the retail outlet at the actual approved site

appearing in the vicinity map previously submitted to the Board within one (1) year, from the finality of this Decision and thereafter submit a sworn document of compliance therewith;

- (2) Submit photographs showing the left side, right side and front view of the retail outlet within fifteen (15) days from completion of the construction work;
- (3) Submit to the Board a report on the total volume of petroleum products sold each month during the first six (6) months of the operation of the station. The report shall be submitted in the form of an affidavit within ten (10) days after the end of the six-month period;
- (4) Inform the Board in writing and the general public through a notice posted conspicuously within the premises of the station of the (a) intention of applicant or its dealer to stop operation of the retail outlet for a period longer than ninety (90) days; or (b) notice of shutdown of operation of the retail outlet that will likely extend beyond thirty (30) days. Such notice must be given fifteen (15) days before the actual cessation of operations in the case of (a) and in the case of (b) within the first five (5) days of an unplanned stoppage of operations.

SO ORDERED.

PDSC filed a motion for reconsideration of the foregoing Decision. The motion was, however, denied by ERB in an Order dated February 14, 1992.

Aggrieved, PDSC elevated its cause on April 1, 1992 to the Court of Appeals, where the same was docketed as CA-G.R. SP No. 27661.

Thereafter, in a Decision dated November 8, 1993,^{[i][1]} the appellate court's Tenth Division reversed the ERB judgment thus:

WHEREFORE, the challenged Decision dated September 17, 1991, as well as the Order dated February 14, 1992, both of the respondent Energy Regulatory Board in ERB Case No. 89-57, are hereby REVERSED and SET ASIDE. Correspondingly, the application of respondent Pilipinas Shell Petroleum Corporation to construct and operate the petroleum retail outlet in question is DENIED.

SO ORDERED.

A motion for reconsideration was denied by the Court of Appeals in a Resolution dated 6 April 1994.^{[ii][2]} Dissatisfied, both Shell and ERB elevated the matter to this Court by way of these petitions, which were ordered consolidated by the Court in a Resolution dated July 25, 1994.^{[iii][3]}

It appears, however, from the record that even as the proceedings in CA-G.R. SP No. 27661 were pending in the appellate court, Caltex filed on January 24, 1992 a similar application for the construction of a service station in the same area with the ERB, docketed as ERB Case No. 87-393. This application was likewise opposed by respondent PDSC, citing the same grounds it raised in opposing Shell's application in ERB Case No. 89-57.

In the aforesaid case, petitioner ERB thereafter rendered a Decision dated June 19, 1992 approving the application of Caltex. This ERB Decision was challenged by PDSC, again on the same grounds it raised in CA-G.R. SP

No. 27661, in a petition for review filed with the Court of Appeals, where the same was docketed as CA-G.R. SP No. 29099.

Subsequently, the appellate court's Sixteenth Division dismissed PDSC's petition in a Decision dated May 14, 1993.^{[iv][4]}

As grounds for the petition in the instant case, ERB asserts that –

- (1) THE EVIDENCE UPON WHICH THE ERB BASED ITS DECISION IS NEITHER STALE NOR IRRELEVANT AND THE SAME JUSTIFIES THE ESTABLISHMENT OF THE PROPOSED PETROLEUM OUTLET.
- (2) THE EVIDENCE PRESENTED BY APPLICANT SHELL REGARDING VEHICLE VOLUME AND FUEL DEMAND SUPPORTS THE CONSTRUCTION OF THE PROPOSED OUTLET.
- (3) THE ESTABLISHMENT OF THE SERVICE STATION WILL NOT LEAD TO RUINOUS COMPETITION.

For its part, Shell avers that –

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN MAKING FINDINGS OF FACTS CONTRARY TO THOSE OF THE ENERGY REGULATORY BOARD WHOSE FINDINGS WERE BASED ON SUBSTANTIAL EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE FEASIBILITY STUDY SUPPORTING PETITIONER'S APPLICATION TO CONSTRUCT A SERVICE STATION BEFORE THE ENERGY REGULATORY BOARD HAS BECOME "IRRELEVANT" FOR HAVING BEEN PRESENTED IN EVIDENCE ABOUT TWO (2) YEARS AFTER IT WAS PREPARED.

^{[i][1]} G.R. No. 114923 *Rollo*, pp. 37-46.

^{[ii][2]} *Ibid.*, pp. 48-50.

^{[iii][3]} G.R. No. 113079 *Rollo*, p. 75.

^{[iv][4]} *Ibid.*, p. 21.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN PASSING JUDGMENT AND MAKING PRONOUNCEMENTS ON PURELY ECONOMIC AND POLICY ISSUES ON PETROLEUM BUSINESS WHICH ARE WITHIN THE REALM OF THE ENERGY REGULATORY BOARD WHICH HAS A RECOGNIZED EXPERTISE IN OIL ECONOMICS.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROPOSED SERVICE STATION OF PETITIONER WOULD POSE RUINOUS COMPETITION TO PRIVATE RESPONDENT'S SERVICE STATION BASED MAINLY ON EVIDENCE SUBMITTED FOR THE FIRST TIME WITH THE SAID COURT AND WITHOUT CONDUCTING A HEARING THEREON.

V.

ASSUMING THE HONORABLE COURT OF APPEALS HAS THE POWER TO CONSIDER NEW EVIDENCE PRESENTED FOR THE FIRST TIME BEFORE SAID COURT, IT SHOULD HAVE REFERRED SUCH MATTER TO THE ENERGY REGULATORY BOARD UNDER THE DOCTRINE OF PRIOR RESORT OR PRIMARY JURISDICTION.

The issues raised by the parties in these consolidated cases bring to the fore the necessity of rationalizing or reconciling two apparently conflicting decisions of the appellate court on the propriety of building gasoline service stations along Benigno Aquino, Jr. Avenue in Parañaque, Metro Manila. Considering that the questions raised concern within the oil industry, whose impact on the nation's economy is pervasive and far-reaching, the Court is constrained to look into the policy and purposes of its governing statutes to resolve this dilemma.

The policy of the government in this regard has been to allow a free interplay of market forces with minimal government supervision. The purpose of governing legislation is to liberalize the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply, environmentally clean and high-quality petroleum products.^[v]

^[5] Indeed, exclusivity of any franchise has not been favored by the Court,^[vi]^[6] which is keen on promoting free competition and the development of a free market consistent with the legislative policy of deregulation as an answer to the problems of the oil industry.^[vii]^[7]

The Court finds the petitions impressed with merit.

The interpretation of an administrative government agency like the ERB, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.^[viii]^[8] A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.^[ix]^[9] More explicitly –

Generally, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.^[x]^[10] The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals*,^[xi]^[11] in this wise:

^[v]^[5] *Garcia vs. Corona*, 321 SCRA 218 [1999], Concurring Opinion of Mr. Justice Quisumbing, p. 263.

^[vi]^[6] *NPC vs. CA*, 279 SCRA 506 [1997].

^[vii]^[7] *Garcia vs. Corona*, *supra*, pp. 229, 231.

^[viii]^[8] *Republic vs. Sandiganbayan*, 293 SCRA 440 [1998]

^[ix]^[9] *First Lepanto Ceramics, Inc. vs. Court of Appeals*, 253 SCRA 552 [1996], citing *Ysmael, Jr. & Co. vs. Deputy Executive Secretary*, 190 SCRA 673 [1990].

^[x]^[10] *Nestle Philippines, Inc. vs. Court of Appeals*, 203 SCRA 504 [1991], citing *In re Allen*, 2 Phil. 630 [1903].

^[xi]^[11] *Ibid.*, pp. 510-511.

“The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*,^[xii]^[12] the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.”

As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws,^[xiii]^[13] especially those involving specific terms having technical meanings.

However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule,^[xiv]^[14] or when the language or words used are clear and plain or readily understandable to any ordinary reader.^[xv]^[15]

Stated differently, when an administrative agency renders an opinion or issues a

statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means.^[xvi]^[16] Thus, an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.^[xvii]^[17]

However, there is no cogent reason to depart from the general rule because the findings of the ERB conform to, rather than conflict with, the governing statutes and controlling case law on the matter.

Prior to Republic Act No. 8479, the downstream oil industry was regulated by the ERB and from 1993 onwards, the Energy Industry Regulation Board. These regulatory bodies were empowered, among others, to entertain and act on applications for the establishment of gasoline stations in the Philippines. The ERB, which used to be the Board of Energy (BOE), is tasked with the following powers and functions by Executive Order No. 172, which took effect immediately after its issuance on May 8, 1987:

SEC. 3. *Jurisdiction, Powers and Functions of the Board.* – When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Xxx

The Board shall, upon prior notice and hearing, exercise the following, among other powers and functions:

- (a) Fix and regulate the prices of petroleum products;

^[xii]^[12] 29 SCRA 617 [1969].
^[xiii]^[13] *Lim Hoa Ting vs. Central Bank of the Philippines*, 104 Phil. 573 [1958], citing Erwin N. Griswold of Harvard Law School.
^[xiv]^[14] *Divinagracia, Jr. vs. Sto. Tomas*, 244 SCRA 595 [1995].
^[xv]^[15] *Melendres, Jr. vs. Comelec*, 319 SCRA 262 [1999], citing *Leveriza vs. IAC*, 153 SCRA 282 [1988].

^[xvi]^[16] *Peralta vs. Civil Service Commission*, 212 SCRA 425 [1992], citing *Victorias Milling Co., Inc. vs. SSS*, 114 Phil. 555 [1962].
^[xvii]^[17] *Ibid.*, citing *Sagun vs. PHHC*, 162 SCRA 411 [1988].

- (b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe systems;
- (c) Fix and regulate the rates of pipeline concessionaires under the provisions of Republic Act No. 387, as amended, otherwise know as the ‘Petroleum Act of 1949,’ as amended by Presidential Decree No. 1700;
- (d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;
- (e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its costs of importation.^{xviii}[18]

A distinct worldwide trend towards economic deregulation has been evident in the past decade. Both developed and developing

countries have seriously considered and extensively adopted various measures for this purpose. The country has been no exception. Indeed, the buzzwords of the third millennium are “deregulation”, “globalization” and “liberalization.”^[xix][19] It need not be overemphasized that this trend is reflected in our policy considerations, statutes and jurisprudence. Thus, in *Garcia v. Corona*,^[xx][20] the Court said:

R.A. 8479, the present deregulation law, was enacted to implement Article XII, Section 19 of the Constitution which provides:

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

This is so because the Government believes that deregulation will eventually prevent monopoly. The simplest form of monopoly exists when there is only one seller or producer of a product or service for which there are no substitutes. In its more complex form, monopoly is defined as the joint acquisition or maintenance by members of a conspiracy, formed for that purpose, of the power to control and dominate trade and commerce in a commodity to such an extent that they are able, as a group, to exclude actual or potential competitors from the field, accompanied with the intention and purpose to exercise such power.^[xxi][21]

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It bears reiterating at the outset that deregulation of the oil industry is policy determination of the highest

^[xviii][18] R.A. No. 7638 has since transferred the non-price regulatory jurisdiction, powers and functions of the ERB to the Department of Energy.

^[xix][19] *Garcia vs. Corona, supra*; See Separate Opinion of Mr. Justice Panganiban.
^[xx][20] *Ibid.*
^[xxi][21] *American Tobacco Co. vs. U.S.*, 328 U.S. 781; 90 L Ed. 1575.

order. It is unquestionably a priority program of Government. The *Department of Energy Act of 1992*^[xxii]^[22] expressly mandates that the development and updating of the existing Philippine energy program “shall include a policy direction towards deregulation of the power and energy industry.”

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Our ruling in *Tatad*^[xxiii]^[23] is categorical that the Constitution’s Article XII, Section 19, is anti-trust in history and spirit. **It espouses competition. We have stated that only competition which is fair can release the creative forces of the market. We ruled that the principle which underlies the constitutional provision is competition.** Thus:

Section 19, Article XII of our Constitution is anti-trust in history and spirit. *It espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for regulation of unmitigated monopolies. Competition is thus the underlying principle of Section 19, Article XII of our Constitution* which cannot be violated by R.A. No. 8180. We subscribe to the observation of Prof. Gellhorn that the objective of anti-trust law is “to assure a competitive economy based upon the belief that *through competition producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services and, thus matches their desires with society’s opportunity costs.*” He adds

with appropriateness that there is a reliance upon “the operation of the ‘market’ system (free enterprise) to decide what shall be produced, how resources shall be allocated in the production process, and to whom various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers who will manufacture it.”^[xxiv]^[24]

Tested against the foregoing legal yardsticks, it becomes readily apparent that the reasons relied upon by the appellate court in rejecting petitioner’s application to set up a gasoline service station becomes tenuous. This is especially clear in the face of such recent developments in the oil industry, in relation to controlling case law on the matter recently promulgated to address the legal issues spawned by these events. In other words, recent developments in the oil industry as well as legislative enactments and jurisprudential pronouncements have overtaken and rendered stale the view espoused by the appellate court in denying Shell’s application to put up the gasoline station.

In reversing the ERB, the Court of Appeals first avers in sum that there is no substantial evidence to support ERB’s finding of public necessity to warrant approval of Shell’s application.

The Court disagrees.

On the contrary, the record discloses that the ERB Decision approving Shell’s application in ERB Case No. 89-57 was based on hard economic data on developmental projects, residential subdivision listings, population count, public conveyances, commercial establishments, traffic count, fuel demand, growth of private cars, public utility vehicles and commercial vehicles, etc.,^[xxv]^[25] rather

^[xxii]^[22] R.A. No. 7638.
^[xxiii]^[23] *Tatad vs. Secretary of the Department of Energy*, 281 SCRA 330 [1997].

^[xxiv]^[24] *Id.*, p. 358, citing Gellhorn, *Anti Trust Law and Economics in a Nutshell*, 1986 ed. p. 45.
^[xxv]^[25] G.R. No. 114923 *Rollo*, pp. 122-147.

than empirical evidence to support its conclusions. In approving Shell's application, the ERB made the following factual findings and, on the basis thereof, justified its ruling thus:

In evaluating the merits of the application, the first question that comes to mind is whether there is indeed an increase in market potential from the time this very same application was disapproved by the then Bureau of Energy Utilization up to the present time that would warrant a reversal of the former decision. The history of this case serves to justify applicant Shell's position on the matter. After a little over a year from vigorously opposing the original application, Caltex and Petron filed their respective applications to construct their own service station within the same vicinity.

The figures in the applicant's feasibility study projects a scenario of growth well up to the year 1994. Where the applicant listed only thirty-five commercial establishments, oppositor is servicing sixty-five. The development of subdivisions along the area provides for a buffer of market potential that could readily be tapped by the applicant service.

Although the applicant's witness could have done better in accentuating this fact, the oppositor did not do well either in downplaying the potentials of the area. The main gist of PDSC's contention is premised on the rising overhead cost of (increase in salaries and rent) in relation to the establishment of new competition. The proposed station expects to target a total volume of 460,151 liters per month with a projected increase of 2.6% per

annum and presumably expects to make a corresponding profit thereof. Oppositor PDSC, on the other hand, with its lone Caltex Service Station, expects to suffer income loss even with a projected volume of 600,000 to 800,000 liters per month (Exhibit 5).

Considering this premise, it should be noted that the Board is tasked to protect existing petroleum stations from ruinous competition and not to protect existing establishments from its own ghost. The Board does not exist for the benefit of any individual station but for the interest of the public and the industry as a whole.

In its first application, the applicant's projection was to realize only 255,000 liters per month or some 20 percent of the total potential demand. With its amended application, the 460,151 liters it hopes to realize is almost twice the former volume representing a smaller percentage of the present overall potential demand.

With further growth and development of the businesses in the area, the fuel potential will tremendously increase and the presence of strategically located service stations will greatly benefit the local community as well as the transient motoring public.

The Board believes that the construction and operation of the Shell Station will not lead to ruinous competition since [the] additional retail outlet is necessary.

Time and again this Court has ruled that in reviewing administrative decisions, the findings of fact made therein must be respected as long as they are supported by substantial evidence, even if not

overwhelming or preponderant; that it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence; that the administrative decision in matters within the executive jurisdiction can only be set aside on proof of grave abuse of discretion, fraud or error of law.^{[xxvii][26]} Petitioner ERB is in a better position to resolve petitioner Shell's application, being primarily the agency possessing the necessary expertise on the matter. The power to determine whether the building of a gasoline retail outlet in a trading area would benefit public interest and the oil industry lies with the ERB not the appellate courts.

In the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order.^{[xxvii][27]} A litany of cases has consistently held that substantial evidence is all that is needed to support an administrative finding of fact.^{[xxviii][28]} It means such relevant evidence as a reasonable mind might accept to support a conclusion.^{[xxix][29]}

Suffice it to state in this regard that the factual landscape, measured within the context of such an evidentiary matrix, is strewn with well-nigh overwhelming proof of the necessity to build such a gasoline retail outlet in the vicinity subject of the application.

^{[xxvi][26]} Lo vs. CA, G.R. No. 128667, 17 December 1999, 321 SCRA 190, citing *Timbancaya vs. Vicente*, 9 SCRA 854 [1963]; *Itogan-Suyoc Mines vs. Office of the President*, 270 SCRA 63 [1997].

^{[xxvii][27]} *Manalo vs. Roldan-Confesor*, 215 SCRA 808 [1992].
^{[xxviii][28]} *Atlas Consolidated Mining & Development Corporation vs. Factoran*, 154 SCRA 49 [1987]; *Naval vs. Panday*, 321 SCRA 290 [1999], citing *Lachica vs. Flordeliza*, 254 SCRA 278 [1996], citing *Santos vs. CA*, 229 SCRA 524 [1994]; *Trans-Asia, Phils. Employee's Association vs. NLRC*, 320 SCRA 547 [1999]; *Benguet Corporation vs. NLRC*, 318 SCRA 106 [1999]; *Phil. Veteran's Bank vs. NLRC*, 317 SCRA 510 [1999]; *Consolidated Food Corp. vs. NLRC*, 315 SCRA 129 [1999]; *GSIS vs. Gabriel*, 308 SCRA 705 [1999]; *Pimentel vs. CA*, 307 SCRA 38 [1999].

^{[xxix][29]} *Gonzales vs. NLRC*, 313 SCRA 169 [1999], citing *Ang Tibay vs. CIR*, 69 Phil. 635 [1940]; *Audion Electric Co., Inc. vs. NLRC*, 308 SCRA 340 [1999]; *Association of Independent Unions in the Phils. vs. NLRC*, 305 SCRA 219 [1999].

In denying Shell's application, the Court of Appeals next pointed to the alleged 'staleness' of Shell's feasibility study because it was submitted in evidence about two (2) years after it was prepared in early 1988.^{[xxx][30]}

Again, this Court is not persuaded.

The record shows that the feasibility study^{[xxxi][31]} is accompanied by the following data, namely: (1) Annual Projection of Estimated Fuel Demand, Base Area; (2) Projected Volume of the Proposed Shell Station; (3) Projected Fuel Volume Derived From Base Area; (4) Estimated Fuel Demand Base Projection – 1993; (5) Estimated Fuel Demand Base Projection – 1994; (6) Annual Projection of Population; (7) Annual Projection Growth of Private Cars in the Area; (8) Annual Projection Growth of Public Utilities in the Area; and (9) Annual Projected Growth of Commercial Vehicles in the Area^{[xxxii][32]} – projects a market scenario from 1989 to 1994.

While the Court of Appeals was initially unconvinced that Shell's feasibility study was up-to-date and proceeded to render the assailed judgment, its attention was subsequently called, in Shell's motion for reconsideration, to the ERB's Decision dated June 19, 1992^{[xxxiii][33]} approving a similar application by Caltex to build a gasoline retail outlet in the same vicinity. Said decision was appealed by PDSC to the Court of Appeals (CA-G.R. SP No. 29099), and was affirmed by the latter in a Decision dated May 14, 1993.^{[xxxiv][34]} The Decision in Caltex's application, where PDSC was the lone oppositor, was challenged before the appellate court on the very same grounds it proffered in opposing Shell's application.^{[xxxv][35]} In rejecting PDSC's contentions in CA-G.R. SP No. 29099, the Court of Appeals' Sixteenth Division ruled:

^{[xxx][30]} CA Decision, p. 5, par. 4.
^{[xxxi][31]} G.R. No. 114923 *Rollo*, pp. 122-124.
^{[xxxii][32]} *Ibid.*, pp. 125-147 *passim*.
^{[xxxiii][33]} *Id.*, pp. 253-259.
^{[xxxiv][34]} *Id.*, pp. 244-252.
^{[xxxv][35]} *Id.*, p. 247.

As to the first ground –

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The petitioner had assumed that the entire Sucat Road (starting from as far away as its intersection with the South Expressway going towards Alabang and further South), Quirino Avenue, Domestic Road (which passes in front of the Domestic Terminal), MIA Road, and Ninoy Aquino Avenue, constitute what it refers to as the “trading area.” Thus, the herein petitioner invites attention to the fact that in Sucat Road there are five existing gasoline stations; two along Quirino Avenue (from Sucat Road); four along Domestic Road; and two along MIA Road, one of which is the Caltex-Nayong Pilipino station at the corner of MIA Road and Benigno Aquino Avenue. Except for the gas station at one end of Benigno Aquino Avenue (located in front of the Nayong Filipino), **the petitioner admits that there has been as yet no gasoline station existing along the entire stretch of the said Benigno Aquino Avenue, although the ERB had recently approved Shell’s application to put up one therein.**

This court is of the view that the aforementioned assumption adopted by petitioner is fallacious or incorrect considering the conclusion of ERB’s Manuel Alvarez in his “Ocular Inspection Report and In-Depth Analysis of Feasibility Study” **that no outlet presently exists along the whole stretch of the Ninoy Aquino Avenue (Rollo, p. 126) and that the outlets along Sucat Road are “far from the proposed site, a distant several kilometers away along Dr. A. Santos Avenue in Sucat which can already be considered a different trading area” (ibid., – underscoring supplied)**

Assuming *in gratia argumenti* that the entirety of the above-specified road/avenues may be considered as a single trading area, the **petitioner had failed to show why Caltex’s 9.7% share of the total market potential, as found in Alvarez’s Market Study, is not attainable or that it would result in ruinous competition.** As pointed by the respondents (citing *MD Transit & Taxi Co., Inc. vs. Pepito*, 6 SCRA 140 and *Raymundo Trans. Co. vs. Cervo*, 91 Phil. 313), **even if a new station would bring about a decline in the sales of the existing outlets, it need not necessarily result in ruinous competition, absent adequate proof to that effect.**

As to the second and third grounds –

Concerning the averment that the evidence of Caltex is stale, this Court notes that the said evidence refers principally to a revalidation study conducted by ERB’s Alvarez who undertook an ocular inspection of the proposed site on November 23 to 27, 1987. The hearings of the instant case continued up to early 1992 (ERB Decision, p. 4). The Decision was rendered on June 19, 1992 (*Rollo*, p. 36). It may be conceded that substantial time had elapsed since the time of the aforementioned revalidation study. **However, it is this court’s view that unless the petitioner is able to prove by competent evidence that significant changes have occurred sufficient to invalidate the afore-stated study, the presumption is that the said study remains valid, as found by the ERB in its decision. Bare and self-serving manifestations cannot be accepted by Us as proof; especially if We take into account that hearings (as in the case at bar) would take time and it would be quite absurd if what was once**

applicable and acceptable evidence would be *ipso facto* rendered stale through mere lapse of time absent any controverting evidence. Sound procedural policy requires that the burden of proof relative to the present invalidity of the Alvarez report rests not with Caltex but on the herein petitioner.

The petitioner had attempted to make comparisons between the figures specified in the 1987 study and those of the Bureau of Energy Utilization or BEU (which were given earlier in 1986). Thus, the petitioner points out that while the BEU’s decision indicated that 9,034 cars on the average passed by going in both directions along Ninoy Aquino Avenue, the Alvarez revalidation study gave an average car traffic of only 8,395 resulting in a decline of 639 cars. The petitioner, however, conveniently ignored or failed to note that the 9,034 figure was that given by applicant Shell and not by the government agency itself. The BEU refers to the said figure as the applicant’s estimated potential demand. It is natural to expect that an applicant would try to give up as high an estimated potential demand as possible to support its application.

The contention of the petitioner that the Alvarez study/report is hearsay on the ground *inter alia* that Alvarez was not presented as a witness deserves scant consideration by this Court. In the first place, the ERB is not bound by technical rules of procedure as contained in the *Rules of Court*, the latter being made applicable to ERB only “in a supplementary character” (Rule 16 of the *Rules of Practice and Procedure Governing Hearings Before the ERB*). More importantly, Section 2, paragraph 2 and Section 7,

paragraph 2 of the above-mentioned *ERB Rules* provides as follows:

The Board may, in the disposition of cases, before it, take judicial notice of any data or information existing in its judicial records, that may be relevant, pertinent or material to the issues involved,

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The Board may also, on its own initiative or upon a motion of a party, conduct such investigation or studies on any matter pertinent, related or material to the issues involved in a case the results of which may be sued by the Board as bases for the proper evaluation of the said issues. (*Rollo*, pp. 205-207 – underscoring supplied)

The petitioner asserts that the island divider along Benigno Aquino Avenue in front of the proposed site was not taken into consideration in the 1987 survey. It could not be denied that the construction of such divider could have an effect on the matter of potential demand. Neither can it be denied however that the gas station that would be affected would be Caltex itself. It is not alleged that there exists a divider along the whole of Sucat Road for example. Hence, the existing outlets have no reason to complain about the divider.

The contention that when construction is completed (connecting Sucat Road to the coastal road), a good number of vehicles would pass through the coastal road instead of along Benigno Aquino [Avenue] appears to Us as speculative. There is no need for the petitioner, which it failed to do, to show qualitatively and convincingly

that the effect would be such as to make the sales level go down to such an extent that the viability of the existing outlets would be seriously endangered or threatened.

The foregoing pronouncement of the Court of Appeals' Sixteenth Division is more in keeping with the policy of the State and the rationale of the statutes enacted to govern the industry.

In denying Shell's application, the Court of Appeals finally states that the proposed service station would cause ruinous competition to respondent PDSC's outlet in the subject vicinity.

We remain unconvinced.

It must be pointed out that in determining the allowance or disallowance of an application for the construction of a service station, the appellate court confined the factors thereof within the rigid standards governing *public utility regulation*, where exclusivity, upon the satisfaction of certain requirements, is allowed. However, exclusivity is more the exception rather than the rule in the gasoline service station business. Thus, Rule V, Section 1, of the *Rules and Regulations Governing the Establishment, Construction, Operation, Remodeling and/or Refurbishing of Petroleum Products Retail Outlets issued by the Oil Industry Commission*,^{[xxxvi][36]} and adopted by the ERB, enumerates the following factors determining the allowance or disallowance of an application for outlet construction, to wit:

- (a) The operation of the proposed petroleum products retail outlet will promote public interest in a proper and suitable manner considering the need and convenience of the end-users.
- (b) Reasonable expectation of a commercially viable operation.

^{[xxxvi][36]} *Id.*, pp. 260-266.

- (c) The establishment and operation thereof will not result in a monopoly, combination in restraint of trade and ruinous competition.
- (d) The requirements of public safety and sanitation are properly observed.
- (e) Generally, the establishment and operation thereof will help promote and achieve the purposes of Republic Act No. 6173.^{[xxxvii][37]}

While it is probable that the operation of the proposed Shell outlet may, to a certain extent, affect PDSC's business, private respondent nevertheless failed to show that its business would not have sufficient profit to have a fair return of its investment. The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition.^{[xxxviii][38]} Indeed –

In order that the opposition based on ruinous competition may prosper, it must be shown that the opponent would be deprived of fair profits on the capital invested in its business. **The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital investment.**^{[xxxix][39]} Mere allegations by the oppositor that its business would be ruined by the establishment of the ice plants proposed by the applicants are not sufficient to warrant this Court to revoke the order of the Public Service Commission.^{[xl][40]}

^{[xxxvii][37]} *Id.*, p. 263.
^{[xxxviii][38]} *Meralco vs. Pasay Transportation Co.*, 66 Phil. 36 [1938].
^{[xxxix][39]} *Ibid.*
^{[xl][40]} *Ice and Cold Storage vs. Valero*, 85 Phil. 10 [1949], citing *Santos Vda. de Pilares vs. Arranze*, G.R. No. 45462, 28 July 1938.

It would not be remiss to point out that Caltex, PDSC’s principal, whose products are being retailed by private respondent in the service outlet it operates along the MIA/Domestic Road in Pasay City, *never* filed any opposition to Shell’s application. All told, a climate of fear and pessimism generated by unsubstantiated claims of ruinous competition already rejected in the past should not be made to retard free competition, consistently with legislative policy of deregulating and liberalizing the oil industry to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply, environmentally clean and high-quality petroleum products.

WHEREFORE, in view of all the foregoing, the challenged Decision of the Court of Appeals dated November 8, 1993, as well as the subsequent Resolution dated April 6, 1994, in CA-G.R. SP No. 27661, is REVERSED and SET ASIDE, and another one rendered REINSTATING the Order dated September 17, 1991 of the Energy Regulatory Board in ERB Case No. 89-57, granting the amended application of Pilipinas Shell Petroleum Corporation to relocate its service station to Benigno Aquino Jr., Avenue, Paranaque, Metro Manila.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

Case No. 3:

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

PETRON CORPORATION, <i>Petitioner</i>	G.R. No. 158881 Present:
- versus -	QUISUMBING, J., <i>Chairperson</i>

MAYOR TOBIAS M. TIANGCO, ET. AL., <i>Respondents</i>	CARPIO MORALES, TIÑGA, VELASCO, JR, and BRION, JJ.

Promulgated:
April 16, 2008

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DECISION

TINGA, J.:

The novel but important issue before us is whether a local government unit is empowered under the *Local Government Code* (the LGC) to impose business taxes on persons or entities engaged in the sale of petroleum products.

I.

The present Petition for Review on Certiorari under Rule 45 filed by petitioner Petron Corporation (Petron) directly assails the Decision of the Regional Trial Court (RTC) of Malabon, Branch 74, which dismissed petitioner’s complaint for cancellation of assessment made by the then municipality (now City) of Navotas (Navotas) for deficiency taxes, and ordering the payment of ₱ 10,204,916.17 pesos in business taxes to Navotas. As the issues raised are pure

questions of law, we need not dwell on the facts at length.

Petron maintains a depot or bulk plant at the Navotas Fishport Complex in Navotas. Through that depot, it has engaged in the selling of diesel fuels to vessels used in commercial fishing in and around Manila Bay.^{[1][1]} On 1 March 2002, Petron received a letter from the office of Navotas Mayor, respondent Toby Tiangco, wherein the corporation was assessed taxes “relative to the figures covering sale of diesel declared by your Navotas Terminal from 1997 to 2001.”^{[2][2]} The stated total amount due was ₱ 6,259,087.62, a figure derived from the gross sales of the depot during the years in question. The computation sheets^{[3][3]} that were attached to the letter made reference to Ordinance 92-03, or the New Navotas Revenue Code (*Navotas Revenue Code*), though such enactment was not cited in the letter itself.

Petron duly filed with Navotas a letter-protest to the notice of assessment pursuant to Section 195 of the Code. It argued that it was exempt from local business taxes in view of Art. 232 (h) of the Implementing Rules (IRR) of the Code, as well as a ruling of the Bureau of Local Government Finance of the Department of Finance dated 31 July 1995, the latter stating that sales of petroleum fuels are not subject to local taxation. The letter-protest was denied by the Navotas Municipal Treasurer, respondent Manuel T. Enriquez, in a letter dated 8 May 2002.^{[4][4]} This was followed by a letter from the Mayor dated 15 May 2002, captioned “Final Demand to Pay,” requiring that Petron pay the assessed amount within five (5) days from receipt thereof, with a threat of closure of Petron’s operations within Navotas should there be no payment.^{[5][5]} Petron, through counsel, replied to the Mayor by another letter posing objections to the threat of closure. The Mayor did not respond to this last letter.^{[6][6]}

^{[1][1]} *Rollo*, p. 60.

^{[2][2]} *Id.* at 200.

^{[3][3]} *Id.* at 201-205.

^{[4][4]} See *Rollo*, p. 26.

^{[5][5]} *Id.* at 210.

^{[6][6]} *Id.* at 27.

Thus, on 20 May 2002, Petron filed with the Malabon RTC a Complaint for Cancellation of Assessment for Deficiency Taxes with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction. The requested TRO was not issued by the Malabon RTC upon manifestation of respondents that they would not proceed with the closure of Petron’s Navotas bulk plant until after the RTC shall have decided the case on the merits.^{[7][7]} However, while the case was pending decision, respondents refused to issue a business permit to Petron, thus prompting Petron to file a Supplemental Complaint with Prayer for Preliminary Mandatory Injunction against respondents.^{[8][8]}

On 5 May 2003, the Malabon RTC rendered its Decision dismissing Petron’s complaint and ordering the payment of the assessed amount.^{[9][9]} Eleven days later, Petron received a Closure Order from the Mayor, directing Petron to cease and desist from operating the bulk plant. Petron sought a TRO from the Malabon RTC, but this was denied.^{[10][10]} Petron also filed a motion for reconsideration of the order of denial, but this was likewise denied.^{[11][11]}

On 4 August 2003, this Court issued a TRO, enjoining the respondents from closing Petron’s Navotas bulk plant or otherwise interfering in its operations.^{[12][12]}

II.

As earlier stated, Petron has opted to assail the RTC Decision directly before this Court since the matter at hand involves pure questions of law, a characterization conceded by the RTC Decision itself. Particularly, the controversy hinges on the correct interpretation of Section 133 (h) of the LGC, and the applicability of Article 232 (h) of the IRR.

^{[7][7]} *Id.* at 19.

^{[8][8]} *Id.* at 158-164.

^{[9][9]} *Id.* at 60-69.

^{[10][10]} In an Order dated 19 June 2003.

^{[11][11]} In an Order dated 2 July 2003.

^{[12][12]} *Rollo*, p. 213-215.

Section 133 (h) of the LGC reads as follows:

SECTION 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:

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(h) Excise taxes on articles enumerated under the *National Internal Revenue Code*, as amended, and taxes, fees or charges on petroleum products;

Evidently, Section 133 prescribes the limitations on the capacity of local government units to exercise their taxing powers otherwise granted to them under the LGC. Apparently, paragraph (h) of the Section mentions two kinds of taxes which cannot be imposed by local government units, namely: “excise taxes on articles enumerated under the *National Internal Revenue Code* [(NIRC)], as amended;” and “taxes, fees or charges on petroleum products.”

The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter.

Nonetheless, Article 232 of the IRR defines with more particularity the capacity of a municipality to impose taxes on businesses. The enumeration that follows is generally a positive list of businesses which may be subjected to business taxes, and paragraph (h) of Article 232 does allow the imposition

of local business taxes “[o]n any business not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax,” but subject to this important qualification, thus:

“xxx provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article.

Notably, the Malabon RTC declared Art. 232 (h) of the IRR void because the Code purportedly does not contain a provision prohibiting the imposition of business taxes on petroleum products.^{[13][13]} This submission warrants close examination as well.

With all the relevant provisions of law laid out, we address the core issues submitted by Petron, namely: first, is the challenged tax on sale of the diesel fuels an excise tax on an article enumerated under the NIRC, thusly prohibited under Section 133 (h) of the Code?; second, is the challenged tax prohibited by Section 133 (h) under the *proviso*, “taxes, fees or charges on petroleum products”?; and third, does Art. 232 (h) of the IRR similarly prohibit the imposition of the challenged tax?

III.

As earlier observed, Section 133 (h) provides two kinds of taxes which cannot be imposed by local government units: “excise taxes on articles enumerated” under the NIRC, as amended; and “taxes, fees or charges on petroleum products.” There is no doubt that among the excise taxes on articles enumerated under the NIRC are those levied on petroleum products, per Section 148 of the NIRC.

^{[13][13]} Id. at 66.

We first consider Petron’s argument that the “business taxes” on its sale of diesel fuels partakes of an excise tax, which if true, could invalidate the challenged tax solely on the basis of the phrase “excise taxes on articles enumerated under the [NIRC].” To support this argument, it cites *Cordero v. Conda*,^[14] ^[14] *Allied Thread Co. Inc. v. City Mayor of Manila*,^{[15][15]} and *Iloilo Bottlers, Inc. vs. City of Iloilo*,^{[16][16]} as having explained that “an excise tax is a tax upon the performance, carrying on, or the exercise of an activity.”^{[17][17]} Respondents, on the other hand, argue that what the provision prohibits is the imposition of excise taxes on petroleum products, but not the imposition of business taxes on the same. They cite *Philippine Petroleum Corporation vs. Municipality of Pililia*,^{[18][18]} where the Court had noted, “[a] tax on business is distinct from a tax on the article itself.”^{[19][19]}

Petron’s argument is fraught with far-reaching implications, for if it were sustained, it would mean that local government units are barred from imposing business taxes on any of the articles subject to excise taxes under the NIRC. These would include alcohol products,^{[20][20]} tobacco products,^{[21][21]} mineral products^{[22][22]} automobiles,^{[23][23]} and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports.^{[24][24]}

Admittedly, the proffered definition of an excise tax as “a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation” derives from the compendium *American Jurisprudence*, popularly referred to as *Am Jur*,^{[25][25]} and has been cited in previous decisions of this Court,

^{[14][14]} 124 Phil 926 (1966).

^{[15][15]} 218 Phil 308 (1984).

^{[16][16]} G.R. No. L-52019, 19 August 1988, 164 SCRA 607.

^{[17][17]} *Rollo*, p. 31.

^{[18][18]} G.R. No. 90776, 3 June 1991, 198 SCRA 82.

^{[19][19]} *Id.*, at 89.

^{[20][20]} See Sections 141-143, NIRC.

^{[21][21]} See Sections 144-147, NIRC.

^{[22][22]} See Section 151, NIRC.

^{[23][23]} See Section 149, NIRC.

^{[24][24]} See Section 150, NIRC.

^{[25][25]} See Footnote No. 27, *Cordero vs. Conda*, 124 Phil 926, 937 (1966); citing 51 *Am. Jur.*, p. 1068-1069.

including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our *Tax Code*, such as the *NIRC of 1939*,^{[26][26]} as amended, or the *NIRC of 1977*^{[27][27]} because in those laws the term “excise tax” was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was “specific tax.”^{[28][28]} Yet beginning with the *National Internal Revenue Code of 1986*, as amended, the term “excise taxes” was used and defined as applicable “to goods manufactured or produced in the Philippines...and to things imported.”^[29] This definition was carried over into the present *NIRC of 1997*.^{[30][30]} Further, these two latest codes categorize two different kinds of excise taxes: “specific tax” which is imposed and based on weight or volume capacity or any other physical unit of measurement; and “*ad valorem* tax” which is imposed and based on the selling price or other specified value of the goods. In other words, the meaning of “excise tax” has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.

The change in perspective brought forth by the use of the term “excise tax” in a different connotation was not lost on the departed author Jose Nollado as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of “excise tax,” Nollado observed:

Are specific taxes, taxes on property or excise taxes –

In the case of *Meralco vs. Trinidad* ([G.R.] 16738, 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous.

^{[26][26]} *COMMONWEALTH ACT NO. 466*, as amended.

^{[27][27]} Pres. Decree No. 1158.

^{[28][28]} See Title IV, *COMMONWEALTH ACT NO. 466*; Title IV, Pres. Decree No. 1158.

^{[29][29]} See Sec. 126, Pres. Decree No. 1994, establishing *National Internal Revenue Code of 1986*.

^{[30][30]} See Sec. 129, *National Internal Revenue Code of 1997*.

Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.^{[31][31]}

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nollado, in his 1994 commentaries, wrote:

1. *Excise taxes*, as used in the *Tax Code*, refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. They are either *specific* or *ad valorem*.
2. *Nature of excise taxes*. – They are imposed directly on certain specified goods. (*infra*) They are, therefore, taxes on property. (See *Medina vs. City of Baguio*, 91 Phil 854.)

A tax is not excise where it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.^{[32][32]}

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is “synonymous with ‘privilege tax’ and [both terms] are often used interchangeably.”^[33] At the same time, they offer a caveat

that “[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, ‘for domestic sale or consumption or for any other disposition.’”^[34]
[34]

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one “upon the performance, carrying on, or the exercise of an activity.” This current definition was already in place when the Code was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose “excise taxes on articles enumerated under the [NIRC].” This prohibition must pertain to the same kind of excise taxes as imposed by the *NIRC*, and not those previously defined “excise taxes” which were not integrated or denominated as such in our present tax law.

It is quite apparent, therefore, that our current body of taxation law does not explicitly accommodate the traditional definition of excise tax offered by Petron. In fact, absent any statutory adoption of the traditional definition, it may be said that starting in 1986 excise taxes in this jurisdiction refer exclusively to specific or *ad valorem* taxes imposed under the *NIRC*. At the very least, it is this concept of excise tax which we can reasonably assume that Congress had in mind and actually adopted when it crafted the Code. The palpable absurdity that ensues should the alternative interpretation prevail all but strengthens this position.

Thus, Petron’s argument concerning excise taxes is founded not on what the *NIRC* or the Code actually provides, but on a non-statutory definition sourced from a legal paradigm that is no longer applicable in this jurisdiction. That such definition was referred to again in our 1998 decision in *Province of Bulacan vs. Court of Appeals*^{[35][35]} is ultimately of little

[31][31] J. NOLLEDO, NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES (1973 ed.), at 678-679.

[32][32] J. NOLLEDO, THE NATIONAL INTERNAL REVENUE CODE ANNOTATED (5th ed., 1994), at 471-472.

[33][33] H. DE LEON & H. DE LEON, JR., THE FUNDAMENTALS OF TAXATION (14th ed., 2004), at 12-13.

[34][34] *Id.* at 13.

[35][35] 359 Phil 779 (1998).

consequence, and so is Petron’s reliance on such ruling. The Court therein had correctly nullified, on the basis of Section 133 (h) of the Code, a province-imposed tax “of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources xxx extracted from public lands,” because it noted that under Section 151 of the *NIRC*, all nonmetallic minerals and quarry resources were assessed with excise taxes of “two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced”.^{[36][36]} Additionally, the Court also observed that the case had emanated from an attempt to impose the said tax on quarry resources from private lands, despite the clear language of the tax ordinance limiting the tax to such resources extracted from public lands.^{[37][37]} On that score alone, the case could have been correctly decided.

It is true that the Court had additionally reasoned in *Province of Bulacan* that “[t]he tax imposed by the Province of Bulacan is an excise tax, being a tax upon the performance, carrying on, or exercise of an activity.” As earlier noted, such definition of excise tax however was not explicitly carried over into the *NIRC* and was even superseded beginning with the 1986 amendments thereto. To insist on utilizing this definition simply because it had been reiterated in *Province of Bulacan*, unnecessary as such reiteration may have been to the resolution of that case, would have the unfortunate effect of infusing life into a concept that is diametrically inconsistent with the present state of the law.

We thus can assert with clear comfort that excise taxes, as imposed under the *NIRC*, do not pertain to “the performance, carrying on, or exercise of an activity,” at least not to the extent of equating excise with business taxes.

^{[36][36]} Id. at 794-795.
^{[37][37]} Id. at 795.

IV.

We next consider whether the clause “taxes, fees or charges on petroleum products” in Section 133 (h) precludes local government units from imposing business taxes based on the sale of petroleum products.

The power of a municipality to impose business taxes derives from Section 143 of the Code that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature;^[38] those engaged in the export or commerce of essential commodities;^{[39][39]} retailers;^[40] contractors and other independent contractors;^{[41][41]} banks and financial institutions;^{[42][42]} and peddlers engaged in the sale of any merchandise or article of commerce.^{[43][43]} This obviously broad power is further supplemented by paragraph (h) of Section 143 which authorizes the *sanggunian* to impose taxes on any other businesses not otherwise specified under Section 143 which the *sanggunian* concerned may deem proper to tax.^{[44][44]}

This ability of local government units to impose business or other local taxes is ultimately rooted in the 1987 Constitution. Section 5, Article X assures that “[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges,” though the power is “subject to such guidelines and limitations as the Congress may provide.” There is no doubt that following the 1987 Constitution and the Code, the fiscal autonomy of local government units has received greater affirmation than ever. Previous decisions that have been skeptical of the viability, if not the

^{[38][38]} See Section 143 (a) & (b), *Local Government Code*.

^{[39][39]} See Section 143(c), *Local Government Code*.

^{[40][40]} See Section 143(d), *Local Government Code*.

^{[41][41]} See Section 143(e), *Local Government Code*.

^{[42][42]} See Section 143(f), *Local Government Code*.

^{[43][43]} See Section 143(g), *Local Government Code*.

^{[44][44]} See *Yamane vs. BA Lepanto*, G.R. No. 154993, 25 October 2005, 474 SCRA 258, 272-273.

wisdom of reposing fiscal autonomy to local government units have fallen by the wayside.

Respondents cite our declaration in *City Government of San Pablo vs. Reyes*^{[45][45]} that following the 1987 Constitution the rule thenceforth “in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.”^{[46][46]} Such policy is also echoed in Section 5 (a) of the Code, which states that “[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit.” But somewhat conversely, Section 5 (b) then proceeds to assert that “[i]n case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer.”^{[47][47]} And this latter qualification has to be respected as a constitutionally authorized limitation which Congress has seen fit to provide. Evidently, local fiscal autonomy should not necessarily translate into abject deference to the power of local government units to impose taxes.

Congress has the constitutional authority to impose limitations on the power to tax of local government units, and Section 133 of the Code is one such limitation. Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power. To cite one example, under Section 133 (g), local government units are disallowed from levying business taxes on “business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a

period of six (6) and (4) four years, respectively from the date of registration.”

Section 133 (h) states that local government units “shall not extend to the levy of xxx taxes, fees or charges on petroleum products.” Respondents assert that the phrase “taxes, fees or charges on petroleum products” pertains to the imposition of direct or excise taxes on petroleum products, and not business taxes. If the phrase actually pertains to excise taxes, then it would be an exercise in utter redundancy, since the preceding phrase already prohibits the imposition of excise taxes on articles already subject to such taxes under the *NIRC*, such as petroleum products. There would be no sense on the part of the legislature to twice emphasize in the same sentence that excise taxes on petroleum products are beyond the pale of local government taxation.

It appears that this argument of respondents was fashioned on the basis of the pronouncement of the Court in *Philippine Petroleum Corporation vs. Municipality of Pililla*, thus:^{[48][48]}

xxx [W]hile Section 2 of P.D. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19 (a) of P.D. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature. **A tax on business is distinct from a tax on the article itself.** Thus, if the imposition of tax on business of manufacturers, etc. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436.

^{[45][45]} 364 Phil 842 (1999).

^{[46][46]} *Id.* at 857.

^{[47][47]} Section 5(b) also provides, “Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it; xxx” This proviso should find no application to this case, since the tax exemption invoked by Petron was not granted or legislated by Navotas, but bestowed by the Congress through the *Local Government Code*.

^{[48][48]} *Supra* note 18 at 89.

The *dicta* that “[a] tax on a business is distinct from a tax on the article itself” might at first blush somehow lend support to respondents’ position, yet that *dicta* has not since been reprised by this Court. It is likewise worth observing that *Pililla* did involve a tax ordinance that imposed business taxes on an enterprise engaged in the manufacture and storage of petroleum products.

Significantly, the legal milieu governing *Pililla* is vastly different from that existing at bar, to the extent that the earlier case could not be presently controlling.

At the time the taxes sought to be collected in *Pililla* were imposed, there was no national law in place similar to Section 133 (h) of the Code that barred local “taxes, fees or charges on petroleum products.” There were circulars to that effect issued by the Finance Department, yet the Court could not validate such issuances since under the tax laws then in place “no exemptions were given to manufacturers, wholesalers, retailers, or dealers in petroleum products.”^{[49][49]} In fact, the Court tellingly observed that “if the imposition of tax on business of manufacturers, etc. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436.”^{[50][50]} Such expression conspicuously missing in P.D. No. 436 is now found in Section 133 (h).

In view of the difference in statutory paradigm between this case and *Pililla*, the latter case is severely diminished as applicable precedent at bar. The Court then was correct in observing that a mere administrative circular could not prohibit a local tax that is not otherwise barred under a national statute, yet in this case that conflict is not present since the Code explicitly prohibits the imposition of several classes of local taxes, including those on petroleum products. The final and

only straw *Pililla* provides that respondents can still grasp at is the bare statement that “[a] tax on a business is distinct from a tax on the article itself,”^{[51][51]} a sentence which could have been omitted from that decision without any effect.

We can concede that a tax on a business is distinct from a tax on the article itself, or for that matter, that a business tax is distinct from an excise tax. However, such distinction is immaterial insofar as the latter part of Section 133 (h) is concerned, for the phrase “taxes, fees or charges on petroleum products” does not qualify the kind of taxes, fees or charges that could withstand the absolute prohibition imposed by the provision. It would have been a different matter had Congress, in crafting Section 133 (h), barred “excise taxes” or “direct taxes,” or any category of taxes only, for then it would be understood that only such specified taxes on petroleum products could not be imposed under the prohibition. The absence of such a qualification leads to the conclusion that all sorts of taxes on petroleum products, including business taxes, are prohibited by Section 133 (h). Where the law does not distinguish, we should not distinguish.

The language of Section 133 (h) makes plain that the prohibition with respect to petroleum products extends not only to excise taxes thereon, but all “taxes, fees and charges.” The earlier reference in paragraph (h) to excise taxes comprehends a wider range of subjects of taxation: all articles already covered by excise taxation under the NIRC, such as alcohol products, tobacco products, mineral products, automobiles, and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports. In contrast, the later reference to “taxes, fees and charges” pertains only to one class of articles of the many subjects of excise taxes, specifically, “petroleum products”.

^{[49][49]} Id. at 89.

^{[50][50]} Id.

^{[51][51]} Supra note 19.

While local government units are authorized to burden all such other class of goods with “taxes, fees and charges,” excepting excise taxes, a specific prohibition is imposed barring the levying of any other type of taxes with respect to petroleum products.

V.

We no longer need to dwell on the arguments centering on Article 232 of the IRR. As earlier stated, the provision explicitly stipulates that “in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article [on business taxes].” The RTC went as far as to declare Article 232 as “invalid” on the premise that the prohibition was not similarly warranted under the Code.

Assuming that the Code does not, in fact, prohibit the imposition of business taxes on petroleum products, we would agree that the IRR could not impose such a prohibition. With our ruling that Section 133 (h) does indeed prohibit the imposition of local business taxes on petroleum products, however, the RTC declaration that Article 232 was invalid is, in turn, itself invalid. Even absent Article 232, local government units cannot impose business taxes on petroleum products. If anything, Article 232 merely reiterates what the Code itself already provides, with the additional explanation that such prohibition was “in line with existing national policy.”

VI.

We have said all that need be said for the resolution of this case, but there is one more line of argument raised by respondents that deserves a remark. Respondents argue, “assuming...that the Oversight Committee [that drafted the IRR] can legislate, that the “existing national policy” referred to in Article 232 had been superseded by Republic Act No. 8479, or the *Oil Deregulation Law*. Boiled

down to its essence, the argument is that since the oil industry is presently deregulated the basis for exempting petroleum products from business taxes no longer exists.

Of course, the starting premise for this argument, that the IRR can establish a tax or an exemption, is false and has been flatly rejected by this Court before.^{[52][52]} The Code itself does not connect its prohibition on taxation of petroleum products with any existing or future national oil policy, so the change in such national policy with the regime of oil deregulation is ultimately of no moment. Still, we can divine the reasoning behind singling out petroleum products, among all other commodities, as beyond the power of local government units to levy local taxes.

Why the special concern over petroleum products? The answer is quite evident to all sentient persons. In this age where unfortunately dependence on petroleum as fuel has yet no equally feasible alternative, the cost of petroleum products, though fully controlled by private enterprise, remains an area of public concern. To be blunt about it, there is an inevitable link between the fluctuation of oil prices and the prices of every other commodity. The reality, indeed, is oil is a political commodity. Such fact has received recognition from this Court. “[O]il [is] a commodity whose supply and price affect the ebb and flow of the lifeblood of the nation. Its shortage of supply or a slight, upward spiral in its price shakes our economic foundation. Studies show that the areas most impacted by the movement of oil are food manufacture, land transport, trade, electricity and water.”^{[53][53]} “[T]he upswing and downswing of our economy materially depend on the oscillation of oil.”^[54] ^[54] “Fluctuations in the supply and price of oil products have a dramatic effect on economic development and public welfare.”^{[55][55]}

^{[52][52]} See e.g., *John Hay People’s Alternative Coalition vs. Lim*, 460 Phil 530, 551 (2003).

^{[53][53]} *Tatad vs. Secretary of Energy*, 346 Phil 321, 379 (1997).

^{[54][54]} *Id.* at 348.

^{[55][55]} *Garcia vs. Corona*, 378 Phil 848, 859 (1999).

It can be reasonably presumed that if municipalities, cities and provinces were authorized to impose business taxes on manufacturers and retailers of petroleum products, the resulting losses to these enterprises would be passed on to the consumers, triggering the chain of increases that normally accompany the increase in oil prices. No similarly massive trigger effect would ensue upon the imposition of business taxes on other commodities, including those already subject to excise taxation under the *NIRC*.

It may very well be that the policy of deregulation, which was not yet in effect at the time of the enactment of the *Local Government Code*, has changed the complexion of the issue, for unlike before, oil companies are free at will to increase oil prices, thus mitigating the similarly arbitrary consequences that could develop if petroleum products were subject to local taxes. Still, it cannot be denied that subjecting petroleum products to business taxes apart from the taxes already imposed by Congress in this age of deregulation would lead to the same result had they been so taxed during the era of oil regulation – the increase of oil prices. We do not discount the authority of Congress to enact measures that facilitate the increase in oil prices; witness the *Oil Deregulation Law* and the most recent *Expanded VAT Law*. Yet these hard choices are presumably made by Congress with the expectation that the negative effects of increased oil prices are offset by the other economic benefits promised by those new laws (*i.e.*, a more vibrant oil industry; increased government revenue).

The Court defers to the other branches of government in the formulation of oil policy, but when the choices are made through legislation, the Court expects that the choices are deliberate, considering that the stakes are virtually all-in. Herein, respondents may be bolstered by the constitutional and statutory policy favoring local fiscal autonomy, but

it would be utter indolence to reflexively affirm such policy when the inevitable effect is an increase in oil prices. Any prudent adjudication should fully ascertain the mandate of local government units to impose taxes on petroleum products, and such mandate should be cast in so specific terms as to leave no dispute as to the legislative intent to extend such power in the name of local autonomy. What we have found instead, from the plain letter of the law is an explicit disinclination on the part of the legislature to impart that particular taxing power to local government units.

While Section 133 (h) does not generally bar the imposition of business taxes on articles burdened by excise taxes under the *NIRC*, it specifically prohibits local government units from extending the levy of any kind of “taxes, fees or charges on petroleum products.” Accordingly, the subject tax assessment is *ultra vires* and void.

WHEREFORE, the Petition is GRANTED. The Decision of the Regional Trial Court of Malabon City in Civil Case No. 3380-MN is REVERSED and SET ASIDE and the subject assessment for deficiency taxes on petitioner is ordered CANCELLED. The Temporary Restraining Order dated 4 August 2003 is hereby made PERMANENT. No pronouncement as to costs.

SO ORDERED.

DANTE O. TIÑA
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CONCHITA CARPIO MORALES
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

Case No. 4:

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

CONGRESSMAN ENRIQUE T. GARCIA,
Petitioner, G.R. No. 157584

Present:

PUNO, *C.J.*,
QUISUMBING,
YNARES-SANTIAGO,
CARPIO,
AUSTRIA-MARTINEZ,
CORONA,
CARPIO MORALES,
TIÑA,
CHICO-NAZARIO,
VELASCO, JR.,
NACHURA,
LEONARDO-DE CASTRO,
BRION, and PERALTA, *JJ.*

- versus -

THE EXECUTIVE SECRETARY, ET. AL.,
Respondents.

Promulgated:
April 2, 2009

DECISION

X-----X

BRION, J.:

For the second time, petitioner Enrique T. Garcia, Jr. (*petitioner Garcia*) asks this Court to examine the constitutionality of Section 19 of Republic Act No. 8479 (R.A. No. 8479), otherwise known as the *Oil Deregulation Law of 1998*) through this petition for *certiorari*.
[1][1] He raises once again before us the propriety of implementing full deregulation

[1] Filed under Rule 65 of the *Rules of Court*.

by removing the system of price controls in the local downstream oil industry – a matter that we have ruled upon in the past.

THE FACTS

After years of imposing significant controls over the downstream oil industry in the Philippines, the government decided in March 1996 to pursue a policy of deregulation by enacting Republic Act No. 8180 (R.A. No. 8180) or the “Downstream Oil Industry Deregulation Act of 1996.”

R.A. No. 8180, however, met strong opposition, and rightly so, as this Court concluded in its November 5, 1997 decision in *Tatad vs. Secretary of Department of Energy*.^{[2][2]} We struck down the law as invalid because the three key provisions intended to promote free competition were shown to achieve the opposite result; contrary to its intent, R.A. No. 8180’s provisions on tariff differential, inventory requirements, and predatory pricing inhibited fair competition, encouraged monopolistic power, and interfered with the free interaction of market forces. We declared:

R.A. No. 8180 needs provisions to vouchsafe free and fair competition. The need for these vouchsafing provisions cannot be overstated. **Before deregulation**, PETRON, SHELL and CALTEX had no real competitors but did not have a free run of the market because government controls both the pricing and non-pricing aspects of the oil industry. **After deregulation**, PETRON, SHELL and CALTEX remain unthreatened by real competition yet are no longer subject to control by government with respect to their pricing and non-pricing decisions. The aftermath of R.A. No. 8180 is a deregulated market where competition can be corrupted and where market forces

can be manipulated by oligopolies.

[3][3]

Notwithstanding the existence of a separability clause among its provisions, we struck down R.A. No. 8180 in its entirety because its offensive provisions permeated the whole law and were the principal tools to carry deregulation into effect.

Congress responded to our Decision in *Tatad* by enacting on February 10, 1998 a new oil deregulation law, R.A. No. 8479. This time, Congress excluded the offensive provisions found in the invalidated law. Nonetheless, petitioner Garcia again sought to declare the new oil deregulation law unconstitutional on the ground that it violated Article XII, Section 19 of the Constitution.^{[4][4]} He specifically objected to Section 19 of R.A. No. 8479 which, in essence, prescribed the period for removal of price control on gasoline and other finished petroleum products and set the time for the full deregulation of the local downstream oil industry. The assailed provision reads:

SEC. 19. *Start of Full Deregulation.* – Full deregulation of the Industry shall start five (5) months following the effectivity of this Act: *Provided, however,* That when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the DOE and the Department of Finance (DOF) when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account relevant trends and prospects: *Provided, further,* That the foregoing provision notwithstanding, the five (5)-month Transition Phase shall continue to apply to LPG, regular gasoline and kerosene as socially-sensitive petroleum products and said

^[2] G.R. Nos. 124360 and 127867, November 5, 1997, 281 SCRA 311.

^[3] *Ibid*, pp. 361-362.

petroleum products shall be covered by the automatic pricing mechanism during the said period.

Upon the implementation of full deregulation as provided herein, the Transition Phase is deemed terminated and the following laws are repealed:

- (a) Republic Act No. 6173, as amended;
- (b) Section 5 of Executive Order No. 172, as amended;
- (c) Letter of Instruction No. 1431, dated October 15, 1984;
- (d) Letter of Instruction No. 1441, dated November 20, 1984, as amended;
- (e) Letter of Instruction No. 1460, dated May 9, 1985;
- (f) Presidential Decree No. 1889; and
- (g) Presidential Decree No. 1956, as amended by Executive Order No. 137:

Provided, however, That in case full deregulation is started by the President in the exercise of the authority provided in this Section, the foregoing laws shall continue to be in force and effect with respect to LPG, regular gasoline and kerosene for the rest of the five (5)-month period.

Petitioner Garcia contended that implementing full deregulation and removing price control at a time when the market is still dominated and controlled by an oligopoly^[5] would be contrary to public interest, as it would only provide an opportunity for the Big

3 to engage in price-fixing and overpricing. He averred that Section 19 of R.A. No. 8479 is “glaringly pro-oligopoly, anti-competition, and anti-people,” and thus asked the Court to declare the provision unconstitutional.

On December 17, 1999, in *Garcia vs. Corona* (1999 *Garcia case*),^[6] we denied petitioner Garcia’s plea for nullity. We declined to rule on the constitutionality of Section 19 of R.A. No. 8479 as we found the question replete with policy considerations; in the words of Justice Ynares-Santiago, the *ponente* of the 1999 *Garcia case*:

It bears reiterating at the outset that the deregulation of the oil industry is a policy determination of the highest order. It is unquestionably a priority program of Government. The *Department of Energy Act of 1992* expressly mandates that the development and updating of the existing Philippine energy program “shall include a policy direction towards deregulation of the power and energy industry.”

Be that as it may, we are not concerned with whether or not there should be deregulation. This is outside our jurisdiction. The judgment on the issue is a settled matter and only Congress can reverse it.

xxx xxx xxx

Reduced to its basic arguments, it can be seen that the challenge in this petition is not against the legality of deregulation. Petitioner does not expressly challenge deregulation. **The issue, quite simply, is the timeliness or the wisdom of the date when full deregulation should be effective.**

^[4] *Garcia vs. Corona*. G.R No. 132451, December 17, 1999, 321 SCRA 218.

^[5] Referring to the oil companies Shell, Caltex, and Petron, otherwise known as the Big 3.

^[6] *Supra* note 4; herein petitioner Garcia is the same petitioner in G.R. No. 132451, and therein respondent Executive Secretary Renato Corona is now a member of this Court.

In this regard, what constitutes reasonable time is not for judicial determination. Reasonable time involves the appraisal of a great variety of relevant conditions, political, social and economic. They are not within the appropriate range of evidence in a court of justice. It would be an extravagant extension of judicial authority to assert judicial notice as the basis for the determination. [Emphasis supplied.]

Undaunted, petitioner Garcia is again before us in the present petition for *certiorari* seeking a categorical declaration from this Court of the unconstitutionality of Section 19 of R.A. No. 8479.

THE PETITION

Petitioner Garcia does not deny that the present petition for *certiorari* raises the same issue of the constitutionality of Section 19 of R.A. No. 8479, which was already the subject of the 1999 *Garcia case*. He disagrees, however, with the allegation that the prior rulings of the Court in the two oil deregulation cases^{[7][7]} amount to *res judicata* that would effectively bar the resolution of the present petition. He reasons that *res judicata* will not apply, as the earlier cases did not completely resolve the controversy and were not decided on the merits. Moreover, he maintains that the present case involves a matter of overarching and overriding importance to the national economy and to the public and cannot be sacrificed for technicalities like *res judicata*.^{[8][8]}

To further support the present petition, petitioner Garcia invokes the following additional grounds to nullify Section 19 of R.A. No. 8479:

1. Subsequent events after the lifting of price control in 1997 have confirmed the

continued existence of the Big 3 oligopoly and its overpricing of finished petroleum products;

2. The unabated overpricing of finished petroleum products by the Big 3 oligopoly is gravely and undeniably detrimental to the public interest;
3. No longer may the bare and blatant constitutionality of the lifting of price control be glossed over through the expediency of legislative wisdom or judgment call in the face of the Big 3 oligopoly's characteristic, definitive, and continued overpricing;
4. To avoid declaring the lifting of price control on finished petroleum products as unconstitutional is to consign to the dead letter dustbin the solemn and explicit constitutional command for the regulation of monopolies/oligopolies.^{[9][9]}

THE COURT'S RULING

We resolve to dismiss the petition.

In asking the Court to declare Section 19 of R.A. No. 8479 as unconstitutional for contravening Section 19, Article XII of the Constitution, petitioner Garcia invokes the exercise by this Court of its power of judicial review, which power is expressly recognized under Section 4(2), Article VIII of the Constitution.^{[10][10]} The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution.^{[11][11]} Through such power, the judiciary enforces and upholds the supremacy of the Constitution.^{[12][12]} For a court to exercise this power, certain requirements must first be met, namely:

^[9] *Ibid*, pp. 14-15.

^[10] The exercise of the power of judicial review by the lower courts is implicitly recognized in Section 5(1) (a) and (b), Article VIII of the Constitution.

^[11] A. Nachura, *Outline Reviewer in Political Law* (2006 ed.), p. 13.

^[12] H. De Leon, *Philippine Constitutional Law: Principles and Cases* (2004 ed.), p. 473.

^[7] See *Tatad vs. Secretary of DOE*, *supra* note 2, and *Garcia vs. Corona*, *supra* note 4.

^[8] *Rollo*, pp. 430-435.

- (1) an actual case or controversy calling for the exercise of judicial power;
- (2) the person challenging the act must have “standing” to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
- (3) the question of constitutionality must be raised at the earliest possible opportunity; and
- (4) the issue of constitutionality must be the very *lis mota* of the case.^{[13][13]}

Actual Case Controversy Susceptible of Judicial Determination

The petition fails to satisfy the very first of these requirements – the existence of an actual case or controversy calling for the exercise of judicial power. An actual case or controversy is one that involves a conflict of legal rights, an assertion of opposite legal claims *susceptible of judicial resolution*; **the case must not be** moot or academic or **based on extra-legal or other similar considerations not cognizable by a court of justice**. Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of review; more importantly, the issue involved must be susceptible of judicial determination. Excluded from these are questions of policy or wisdom, otherwise referred to as political questions:

As *Tañada vs. Cuenco* puts it, political questions refer “to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which *full discretionary authority has been delegated to the legislative or executive branch of government*.”

Thus, ***if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question***. In the classic formulation of Justice Brennan in *Baker vs. Carr*, “[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or **a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion**; or the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question.”^{[14][14]} [Emphasis supplied.]

Petitioner Garcia’s issues fit snugly into the political question mold, as he insists that by adopting a policy of full deregulation through the removal of price controls at a time when an oligopoly still exists, Section 19 of R.A. No. 8479 contravenes the Constitutional directive to regulate or prohibit monopolies^{[15][15]} under Article XII, Section 19 of the Constitution. This Section states:

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

^[13] *Francisco, Jr. vs. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, citing *Angara vs. Electoral Commission*, 63 Phil. 139 (1936).

^[14] *Integrated Bar of the Philippines vs. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81, citing *Tañada vs. Cuenco*, 103 Phil. 1051 and *Baker vs. Carr*, 369 U.S. 186.

^[15] *Rollo*, pp. 29, 445.

Read correctly, this constitutional provision does not declare an outright prohibition of monopolies. It simply allows the State to act “*when public interest so requires*”; even then, no outright prohibition is mandated, as the State may choose to regulate rather than to prohibit. Two elements must concur before a monopoly may be regulated or prohibited:

1. There in fact exists a monopoly or an oligopoly, and
2. Public interest requires its regulation or prohibition.

Whether a monopoly exists is a question of fact. On the other hand, the questions of (1) what public interest requires and (2) what the State reaction shall be essentially require the exercise of discretion on the part of the State.

Stripped to its core, what petitioner Garcia raises as an issue is the propriety of immediately and fully deregulating the oil industry. Such determination essentially dwells on the soundness or wisdom of the timing and manner of the deregulation Congress wants to implement through R.A. No. 8497. Quite clearly, the issue is not for us to resolve; we cannot rule on when and to what extent deregulation should take place without passing upon the wisdom of the policy of deregulation that Congress has decided upon. To use the words of *Baker vs. Carr*,^{[16][16]} the ruling that petitioner Garcia asks requires “*an initial policy determination of a kind clearly for non-judicial discretion*”; the branch of government that was given by the people the full discretionary authority to formulate the policy is the legislative department.

Directly supporting our conclusion that Garcia raises a political question is his proposal to adopt instead a system of partial deregulation – a system he presents as more consistent with the Constitutional “dictate.” He avers that free market forces (in a fully deregulated

environment) cannot prevail for as long as the market itself is dominated by an entrenched oligopoly. In such a situation, he claims that prices are not determined by the free play of supply and demand, but instead by the entrenched and dominant oligopoly where overpricing and price-fixing are possible.^{[17][17]} Thus, before full deregulation can be implemented, he calls for an indefinite period of partial deregulation through imposition of price controls.^{[18][18]}

Petitioner Garcia’s thesis readily reveals the political,^{[19][19]} hence, non-justiciable, nature of his petition; the choice of undertaking full or partial deregulation is not for this Court to make. By enacting the assailed provision – Section 19 – of R.A. No. 8479, Congress already determined that the problems confronting the local downstream oil industry are better addressed by removing all forms of prior controls and adopting a deregulated system. This intent is expressed in Section 2 of the law:

SEC. 2. *Declaration of Policy.* – It shall be the policy of the State to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality petroleum products. To this end, the State shall promote and encourage the entry of new participants in the downstream oil industry, and introduce adequate measures to ensure the attainment of these goals.

In *Tatad*, we declared that the fundamental principle espoused by Section 19, Article XII of the Constitution is competition.^[20] Congress, by enacting R.A. No. 8479, determined that this objective is better

^[16] Cited in *IBP vs. Zamora*, *supra* note 14.

^[17] *Rollo*, pp. 439-442, 453.

^[18] *Ibid*, pp. 29, 440.

^[19] That is, “pertaining to public policy,” as defined in *The New International Webster’s Dictionary and Thesaurus of the English Language*, International Edition (2002 ed.).

^[20] *Supra* note 2.

realized by liberalizing the oil market, instead of continuing with a highly regulated system enforced by means of restrictive prior controls. This legislative determination was a lawful exercise of Congress' prerogative and one that this Court must respect and uphold. Regardless of the individual opinions of the Members of this Court, we cannot, acting as a body, question the wisdom of a co-equal department's acts. The courts do not involve themselves with or delve into the policy or wisdom of a statute;^{[21][21]} it sits, not to review or revise legislative action, but to enforce the legislative will.^{[22][22]} For the Court to resolve a clearly non-justiciable matter would be to debase the principle of separation of powers that has been tightly woven by the Constitution into our republican system of government.

This same line of reasoning was what we used when we dismissed the first Garcia case. The petitioner correctly noted that this is not a matter of *res judicata* (as the respondents invoked), as the application of the principle of *res judicata* presupposes that there is a final judgment or decree *on the merits* rendered by a court of *competent jurisdiction*. To be exact, we are simply declaring that then, as now, and for the same reasons, we find that there is no justiciable controversy that would justify the grant of the petition.

Grave Abuse of Discretion

Recourse to the political question doctrine necessarily raises the underlying doctrine of separation of powers among the three great branches of government that our Constitution has entrenched. But at the same time that the Constitution mandates this Court to respect acts performed by co-equal departments done within their sphere of competence and authority, it has also allowed us to cross the line of separation on a very limited and specific point – to determine

whether the acts of the executive and the legislative departments are null because they were undertaken with grave abuse of discretion. *IBP vs. Zamora* teaches us that -

When political questions are involved, the Constitution limits the determination as to whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

xxx xxx xxx

[W]hile this Court has no power to substitute its judgment for that of Congress or of the President, it may look into the question of whether such exercise has been made in grave abuse of discretion. A showing that plenary power is granted either department of government, may not be an obstacle to judicial inquiry, for the improvident exercise or abuse thereof may give rise to justiciable controversy.^{[23][23]} [Emphasis supplied.]

Jurisprudence has defined grave abuse of discretion to mean the capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^{[24][24]}

Significantly, the pleadings before us fail to disclose any act of the legislature that may be characterized as patently capricious or whimsical. A reading of the congressional deliberations made on R.A. No. 8479 indicates that the measure was thoroughly and carefully considered. Indeed, petitioner Garcia was

^[21] *Fariñas vs. COMELEC*, G.R. No. 147387, December 10, 2003, 417 SCRA 503.

^[22] *Demetria vs. Alba*, G.R. No. L-71977, February 27, 1987, 148 SCRA 208, citing T. M. Cooley, *A Treatise on the Constitutional Limitations*, Vol. 1, 8th ed.

^[23] *Supra* note 14.

^[24] *Land Bank of the Philippines vs. Court of Appeals*, G.R. No. 129368, 25 August 2003, 409 SCRA 455.

among the many who interpellated the law's principal author, then Congressman Dante O. Tiña, now a Member of this Court.

We note, too, that petitioner Garcia has not adequately proven at this point that an oligopoly does in fact exist in the form of the Big 3, and that the Big 3 have actually engaged in oligopolistic practices. He merely cites (in his argument against the applicability of *res judicata*) and relies on the facts and findings stated in the two prior cases on oil deregulation. This calls to mind what former Chief Justice Panganiban said in his Separate Opinion in the 1999 *Garcia* case:

Petitioner merely resurrects and relies heavily on the arguments, the statistics and the proofs he submitted two years ago in the first oil deregulation case, *Tatad vs. Secretary of the Department of Energy*. **Needless to state, those reasons were taken into consideration in said case, and they indeed helped show the unconstitutionality of RA 8180. But exactly the same old grounds cannot continue to support petitioner's present allegation that the major oil companies -- Petron, Shell and Caltex -- persist to this date in their oligopolistic practices, as a consequence of the current Oil Deregulation Law and in violation of the Constitution.** In brief, the legal cause and effect relationship has not been amply shown. [Emphasis supplied.]

This observation is true in the present case as it was true in the 1999 *Garcia* case; the petitioner has simply omitted the citation of facts, figures and statistics specifically supporting his petition. To prove charges of continued overpricing or price-fixing, he refers to data showing price adjustments of petroleum products for the period covering February 8, 1997 to August 1, 1997. Insofar as R.A. No. 8479 is concerned, however, these

data are irrelevant, as they cover a period way before R.A. No. 8479 was enacted.^{[25][25]}

Petitioner Garcia contends that the identity in the pricing patterns of the Big 3 confirms the existence of an oligopoly and shows that they have colluded to engage in unlawful cartel-like behaviour. His reasoning fails to persuade us. That the oil firms have the same prices and change them at the same rate at the same time are not sufficient evidence to conclude that collusion exists. An independent study on local oil prices explains:

[W]hen products are highly substitutable with each other (or what economists call "homogeneous products"), then firms will tend to set similar prices, especially when there are many competing sellers. Otherwise, if one firm tried to set a price significantly higher than the others, it would find itself losing customers to the others.^{[26][26]}

Even assuming that the Big 3 have indeed colluded in fixing oil prices, this development will not necessarily justify a declaration against the validity and constitutionality of Section 19 of R.A. No. 8479. The remedy against the perceived failure of the *Oil Deregulation Law* to combat cartelization is not to declare it invalid, but to set in motion

^[25] R.A. No. 8479 was enacted on February 10, 1998.

^[26] Report of the SGV-UA&P Independent Study on Oil Prices, May 2008, p. 4.

^[27] SECTION 11. *Anti-Trust Safeguards*. – To ensure fair competition and prevent cartels and monopolies in the Industry, the following acts are hereby prohibited:

- (a) Cartelization which means any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;
- (b) Predatory pricing which means selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: *Provided, however,* That pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this prohibition, "variable cost" as distinguished from "fixed cost", refers to costs such as utilities or raw materials, which vary as the output increases or decreases and "average variable cost" refers to the sum of all variable costs divided by the number of units of outputs.

its anti-trust safeguards under Sections 11,^[27]
[27] 12,^{[28][28]} and 13.^{[29][29]}

Lis Mota

Lis Mota – the fourth requirement to satisfy before this Court will undertake judicial review – means that the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law*. The petitioner must be able to

- (c) Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of three (3) to seven (7) years imprisonment, and a fine ranging from One million pesos (P-1,000,000.00) to Two million pesos (P-2,000,000.00).

[28] SECTION 12. *Other Prohibited Acts*. – To ensure compliance with the provisions of this Act, the refusal to comply with any of the following shall likewise be prohibited:

- (a) submission of any reportorial requirements;
(b) use of clean and safe (environment and worker-benign) technologies;
(c) any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of this Act; and
(d) registration of any fuel additive with the DOE prior to its use as an additive.

Any person, including but not limited to the chief operating officer or chief executive officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and fine ranging from Two hundred fifty thousand pesos (P-250,000.00) to Five hundred thousand pesos (P-500,000.00).

[29] SEC. 13. *Remedies*. – (a) Government Action – Whenever it is determined by the Joint Task Force created under Section 14 (d) of this Act, that there is a threatened, imminent or actual violation of Section 11 of this Act, it shall direct the provincial or city prosecutors having jurisdiction to institute an action to prevent or restrain such violation with the Regional Trial Court of the place where the defendant or any of the defendants reside or has his place of business. Pending hearing of the complaint and before final judgment, the court may at any time issue a temporary restraining order or an order of injunction as shall be deemed just within the premises, under the same conditions and principles as injunctive relief is granted under the *Rules of Court*. Whenever it is determined by the Joint Task Force that the Government or any of its instrumentalities or agencies, including government-owned or -controlled corporations, shall suffer loss or damage in its business or property by reason of violation of Section 11 of this Act, such instrumentality, agency or corporation may file an action to recover damages and the costs of suit with the Regional Trial Court which has jurisdiction as provided above. (b) Private Complaint. – Any person or entity shall report any violation of Section 11 of this Act to the Joint Task Force. The Joint Task Force shall investigate such reports in aid of which the DOE Secretary may exercise the powers granted under Section 15 of this Act. The Joint Task Force shall prepare a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public at the discretion of the Joint Task Force. In the event that the Joint Task Force determines that there has been a violation of Section 11 of this Act, the private person or entity shall be entitled to sue for and obtain injunctive relief, as well as damages, in the Regional Trial Court having jurisdiction over any of the parties, under the same conditions and principles as injunctive relief is granted under the *Rules of Court*.

show that the case cannot be legally resolved unless the constitutional question raised is determined.^{[30][30]} This requirement is based on the rule that every law has in its favor the presumption of constitutionality;^{[31][31]} to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.

Petitioner Garcia argues against full deregulation implemented through the lifting of price control, as it allows oligopoly, overpricing and price-fixing. R.A. No. 8479, however, does not condone these acts; indeed, Section 11 (a) of the law expressly prohibits and punishes cartelization, which is defined in the same section as “*any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins.*” This definition is broad enough to include the alleged acts of overpricing or price-fixing by the Big 3. R.A. No. 8479 has provided, aside from prosecution for cartelization, several other anti-trust mechanisms, including the enlarged scope of the Department of Energy’s monitoring power and the creation of a Joint Task Force to immediately act on complaints against unreasonable rise in the price of petroleum products.^{[32][32]} Petitioner Garcia’s failure is that he failed to show that he resorted to these measures before filing the instant petition. His belief that these

[30] *People vs. Vera*, 65 Phil. 56 (1938).

[31] *Romualdez vs. Sandiganbayan*, G.R. No. 152259, July 29, 2004, 435 SCRA 371.

[32] SECTION 14. *Monitoring*. – xxx (d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, the creation of DOE-DOJ Task Force is here by mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance: *Provided*, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency *motu proprio*. xxx.

oversight mechanisms are unrealistic and insufficient does not permit disregard of these remedies.^[33]^[33]

CONCLUSION

To summarize, we declare that the issues petitioner Garcia presented to this Court are non-justiciable matters that preclude the Court from exercising its power of judicial review. The immediate implementation of full deregulation of the local downstream oil industry is a policy determination by Congress which this Court cannot overturn without offending the Constitution and the principle of separation of powers. That the law failed in its objectives because its adoption spawned the evils petitioner Garcia alludes to does not warrant its nullification. In the words of Mr. Justice Leonardo A. Quisumbing in the 1999 Garcia case, “[a] *calculus of fear and pessimism xxx does not justify the remedy petitioner seeks: that we overturn a law enacted by Congress and approved by the Chief Executive.*”^[34]^[34]

WHEREFORE, we hereby **DISMISS** the petition. No pronouncements as to costs.

SO ORDERED.

ARTURO D. BRION

Associate Justice

WE CONCUR:

REYNATO S. PUNO

Chief Justice

LEONARDO A. QUISUMBING

Associate Justice

CONSUELO YNARES-SANTIAGO

Associate Justice

ANTONIO T. CARPIO

Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

RENATO C. CORONA

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

REYNATO S. PUNO

Chief Justice

^[33] *Rollo*, pp. 459-461.

^[34] *Concurring Opinion* of Justice Quisumbing in the 1999 Garcia case, p. 267.

Case No. 5:

Republic of the Philippines
Supreme Court
Manila

EN BANC

G.R. No. 124360

November 5, 1997

FRANCISCO S. TATAD, Petitioner,

-versus-

THE SECRETARY OF THE DEPARTMENT OF
ENERGY, ET. AL., Respondents.

G.R. No. 127867

November 5, 1997

EDCEL C. LAGMAN, ET. AL.,
Petitioners,

-versus-

HON. RUBEN TORRES in his capacity as
Executive Secretary, ET. AL.,
Respondents.

DECISION

PUNO, J.:

The petitions at bar challenge the constitutionality of Republic Act No. 8180 entitled “*An Act Deregulating the Downstream Oil Industry and For Other Purposes*”.^[1] R.A. No. 8180 ends twenty six (26) years of government regulation of the downstream oil industry. Few cases carry a surpassing importance on the life of every Filipino as these petitions for the upswing and downswing of our economy materially

[1] Downstream oil industry refers to the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas, kerosene and other petroleum and crude oil products.

depend on the oscillation of oil.

First, the facts without the fat. Prior to 1971, there was no government agency regulating the oil industry other than those dealing with ordinary commodities. Oil companies were free to enter and exit the market without any government interference. There were four [4] refining companies [Shell, Caltex, Bataan Refining Company and Filoil Refining] and six [6] petroleum marketing companies [Esso, Filoil, Caltex, Getty, Mobil and Shell], then operating in the country.^[2]

In 1971, the country was driven to its knees by a crippling oil crisis. The government, realizing that petroleum and its products are vital to national security and that their continued supply at reasonable prices is essential to the general welfare, enacted the *Oil Industry Commission Act*.^[3] It created the Oil Industry Commission [OIC] to regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and selling crude oil, gasoline, kerosene, gas and other refined petroleum products. The OIC was vested with the power to fix the market prices of petroleum products, to regulate the capacities of refineries, to license new refineries and to regulate the operations and trade practices of the industry.^[4]

In addition to the creation of the OIC, the government saw the imperious need for a more active role of Filipinos in the oil industry. Until the early seventies, the downstream oil industry was controlled by multinational companies. All the oil refineries and marketing companies were owned by foreigners whose economic interests did not always coincide with the interest of the Filipino. Crude oil was transported to the country by foreign-controlled tankers. Crude processing was done locally by foreign-

[2] Paderanga and Paderanga, Jr., *The Oil Industry in the Philippines*, Philippine Economic Journal, No. 65, Vol. 27, pp. 27-98 [1988].

[3] Section 3, R.A. No. 6173.

[4] Section 7, R.A. No. 6173.

owned refineries and petroleum products were marketed through foreign-owned retail outlets. On November 9, 1973, President Ferdinand E. Marcos boldly created the Philippine National Oil Corporation [PNOC] to break the control by foreigners of our oil industry.^[5] PNOC engaged in the business of refining, marketing, shipping, transporting, and storing petroleum. It acquired ownership of ESSO Philippines and Filoil to serve as its marketing arm. It bought the controlling shares of Bataan Refining Corporation, the largest refinery in the country.^[6] PNOC later put up its own marketing subsidiary PetroPhil. PNOC operated under the business name PETRON Corporation. For the first time, there was a Filipino presence in the Philippine oil market.

In 1984, President Marcos through Section 8 of Presidential Decree No. 1956, created the Oil Price Stabilization Fund (OPSF) to cushion the effects of frequent changes in the price of oil caused by exchange rate adjustments or increase in the world market prices of crude oil and imported petroleum products. The fund is used (1) to reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil, and (2) to reimburse oil companies for cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. Under the law, the OPSF may be sourced from:

1. any increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products subject to tax under P.D. No. 1956 arising from exchange rate adjustment,

2. any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the Minister of Finance in consultation with the Board of Energy,
3. any additional amount to be imposed on petroleum products to augment the resources of the fund through an appropriate order that may be issued by the Board of Energy requiring payment of persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products, or
4. any resulting peso costs differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the Board of Energy.^[7]

By 1985, only three (3) oil companies were operating in the country Caltex, Shell and the government-owned PNOC.

In May 1987, President Corazon C. Aquino signed Executive Order No. 172 creating the Energy Regulatory Board to regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources “when warranted and only when public necessity requires.” The Board had the following powers and functions:

1. Fix and regulate the prices of petroleum products;

[5] P.D. No. 334.

[6] Makasiar, G., *Structural Response to the Energy Crisis: The Philippine Case. Energy and Structural Change in the Asia Pacific Region: Papers and Proceedings of the 13th Pacific Trade and Development Conference*. Published by the Philippine Institute for Development Studies/Asian Development Bank and edited by Romeo M. Bautista and Seiji Nava, pp. 311-312 [1984].

[7] P. D. 1956 as amended by E.O. 137.

2. Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;
3. Fix and regulate the rates of pipeline concessionaries under the provisions of R.A. No. 387, as amended;
4. Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of (E.O. No. 172) under such terms and conditions as are consistent with the national interest; and
5. Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which may enable the importer to recover its cost of importation.^[8]

On December 9, 1992, Congress enacted R.A. No. 7638 which created the Department of Energy to prepare, integrate, coordinate, supervise and control all plans, programs, projects, and activities of the government in relation to energy exploration, development, utilization, distribution and conservation.^[9] The thrust of the Philippine energy program

under the law was toward privatization of government agencies related to energy, deregulation of the power and energy industry and reduction of dependency on oil-fired plants.^[10] The law also aimed to encourage free and active participation and investment by the private sector in all energy activities. Section 5 (e) of the law states that “at the end of four [4] years from the effectivity of this Act, the Department shall, upon approval of the President, institute the programs and timetable of deregulation of appropriate energy projects and activities of the energy industry.”

Pursuant to the policies enunciated in R.A. No. 7638, the government approved the privatization of Petron Corporation in 1993. On December 16, 1993, PNOC sold 40% of its equity in Petron Corporation to the Aramco Overseas Company.

In March 1996, Congress took the audacious step of deregulating the downstream oil industry. It enacted R.A. No. 8180, entitled the “*Downstream Oil Industry Deregulation Act of 1996*.” Under the deregulated environment, “any person or entity may import or purchase any quantity of crude oil and petroleum products from a foreign or domestic source, lease or own and operate refineries and other downstream oil facilities and market such crude oil or use the same for his own requirement,” subject only to monitoring by the Department of Energy.^[11]

The deregulation process has two phases: the transition phase and the full deregulation phase. During the transition phase, controls of the non-pricing aspects of the oil industry were to be lifted. The following were to be accomplished: (1) liberalization of oil importation, exportation, manufacturing, marketing and distribution, (2) implementation of an automatic pricing mechanism, (3) implementation of an automatic formula to set margins of dealers

[8] Section 3, E.O. No. 172.

[9] R.A. No. 7638.

[10] Section 5 (b), R.A. No. 7638.

[11] Section 5, R.A. No. 8180.

and rates of haulers, water transport operators and pipeline concessionaires, and (4) restructuring of oil taxes. Upon full deregulation, controls on the price of oil and the foreign exchange cover were to be lifted and the OPSF was to be abolished.

The first phase of deregulation commenced on August 12, 1996. On February 8, 1997, the President implemented the full deregulation of the Downstream Oil Industry through E.O. No. 372.

The petitions at bar assail the constitutionality of various provisions of R.A. No. 8180 and E.O. No. 372.

In G.R. No. 124360, petitioner Francisco S. Tatad seeks the annulment of section 5 (b) of R.A. No. 8180. Section 5 (b) provides:

- (b) Any law to the contrary notwithstanding and starting with the effectivity of this Act, tariff duty shall be imposed and collected on imported crude oil at the rate of three percent (3%) and imported refined petroleum products at the rate of seven percent (7%), except fuel oil and LPG, the rate for which shall be the same as that for imported crude oil: *Provided*, That beginning on January 1, 2004 the tariff rate on imported crude oil and refined petroleum products shall be the same: *Provided, further*, That this provision may be amended only by an Act of Congress.

The petition is anchored on three arguments:

First, that the imposition of different tariff rates on imported crude oil and imported refined petroleum products violates the equal protection clause. Petitioner contends that the 3%-7% tariff differential unduly favors

the three existing oil refineries and discriminates against prospective investors in the downstream oil industry who do not have their own refineries and will have to source refined petroleum products from abroad.

Second, that the imposition of different tariff rates does not deregulate the downstream oil industry but instead controls the oil industry, contrary to the avowed policy of the law. Petitioner avers that the tariff differential between imported crude oil and imported refined petroleum products bars the entry of other players in the oil industry because it effectively protects the interest of oil companies with existing refineries. Thus, it runs counter to the objective of the law "to foster a truly competitive market."

Third, that the inclusion of the tariff provision in section 5 (b) of R.A. No. 8180 violates Section 26 (1) Article VI of the Constitution requiring every law to have only one subject which shall be expressed in its title. Petitioner contends that the imposition of tariff rates in section 5 (b) of R.A. No. 8180 is foreign to the subject of the law which is the deregulation of the downstream oil industry.

In G.R. No. 127867, petitioners Edcel C. Lagman, Joker P. Arroyo, Enrique Garcia, Wigberto Tañada, Flag Human Rights Foundation, Inc., Freedom from Debt Coalition (FDC) and Sanlakas contest the constitutionality of Section 15 of R.A. No. 8180 and E.O. No. 392. Section 15 provides:

SEC. 15. *Implementation of Full Deregulation.* – Pursuant to Section 5 (e) of Republic Act No. 7638, the DOE

shall, upon approval of the President, implement the full deregulation of the downstream oil industry not later than March 1997. As far as practicable, the DOE shall time the full deregulation when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable. Upon the implementation of the full deregulation as provided herein, the transition phase is deemed terminated and the following laws are deemed repealed:

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E.O. No. 392 states in full, viz.:

WHEREAS, Republic Act No. 7638, otherwise known as the “*Department of Energy Act of 1992*,” provides that, at the end of four years from its effectivity last December 1992, “the Department (of Energy) shall, upon approval of the President, institute the programs and time table of deregulation of appropriate energy projects and activities of the energy sector;”

WHEREAS, Section 15 of Republic Act No. 8180, otherwise known as the “*Downstream Oil Industry Deregulation Act of 1996*,” provides that “the DOE shall, upon approval of the President, implement full deregulation of the downstream oil industry not later than March, 1997. As far as practicable, the DOE shall time the full deregulation when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable;”

WHEREAS, pursuant to the recommendation of the Department of Energy, there is an imperative need to implement the full deregulation of the downstream oil industry because of the following recent developments: (i) depletion of the buffer fund on or about 7 February 1997 pursuant to the Energy Regulatory Board’s Order dated 16 January 1997; (ii) the prices of crude oil had been stable at \$ 21-\$ 23 per barrel since October 1996 while prices of petroleum products in the world market had been stable since mid-December of last year. Moreover, crude oil prices are beginning to soften for the last few days while prices of some petroleum products had already declined; and (iii) the exchange rate of the peso in relation to the US dollar has been stable for the past twelve (12) months, averaging at around P 26.20 to one US dollar;

WHEREAS, Executive Order No. 377 dated 31 October 1996 provides for an institutional framework for the administration of the deregulated industry by defining the functions and responsibilities of various government agencies;

WHEREAS, pursuant to Republic Act No. 8180, the deregulation of the industry will foster a truly competitive market which can better achieve the social policy objectives of fair prices and adequate, continuous supply of environmentally-clean and high quality petroleum products;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by the powers vested in me by law, do hereby declare the full deregulation of the downstream oil industry.

In assailing Section 15 of R.A. No. 8180 and E.O. No. 392, petitioners offer the following submissions:

First, Section 15 of R.A. No. 8180 constitutes an undue delegation of legislative power to the President and the Secretary of Energy because it does not provide a determinate or determinable standard to guide the Executive Branch in determining when to implement the full deregulation of the downstream oil industry. Petitioners contend that the law does not define when it is practicable for the Secretary of Energy to recommend to the President the full deregulation of the downstream oil industry or when the President may consider it practicable to declare full deregulation. Also, the law does not provide any specific standard to determine when the prices of crude oil in the world market are considered to be declining nor when the exchange rate of the peso to the US dollar is considered stable.

Second, petitioners aver that E.O. No. 392 implementing the full deregulation of the downstream oil industry is arbitrary and unreasonable because it was enacted due to the alleged depletion of the OPSF fund – a condition not found in R.A. No. 8180.

Third, Section 15 of R.A. No. 8180 and E.O. No. 392 allow the formation of a *de facto* cartel among the three existing oil companies Petron, Caltex and Shell in violation of the constitutional prohibition against monopolies, combinations in restraint of trade and unfair competition.

Respondents, on the other hand, fervently defend the constitutionality of R.A. No. 8180 and E.O. No. 392. In addition, respondents contend that the issues raised by the petitions are not justiciable as they pertain to the wisdom of the law. Respondents further aver that petitioners have no *locus standi* as they did not sustain nor will they sustain direct injury as a result of the implementation of R.A. No. 8180.

The petitions were heard by the Court on September 30, 1997. On October 7, 1997, the Court ordered the private respondents oil companies “to maintain the status quo and to cease and desist from increasing the prices of gasoline and other petroleum fuel products for a period of thirty (30) days...subject to further orders as conditions may warrant.”

We shall now resolve the petitions on the merit. The petitions raise procedural and substantive issues bearing on the constitutionality of R.A. No. 8180 and E.O. No. 392. The procedural issues are: (1) whether or not the petitions raise a justiciable controversy, and (2) whether or not the petitioners have the standing to assail the validity of the subject law and executive order. The substantive issues are: (1) whether or not section 5 (b) violates the one title one subject requirement of the Constitution; (2) whether or not the same section violates the equal protection clause of the Constitution; (3) whether or not Section 15 violates the constitutional prohibition on undue delegation of power; (4) whether or not E.O. No. 392 is arbitrary and unreasonable; and (5) whether or not R.A. No. 8180 violates the constitutional prohibition against monopolies, combinations in restraint of trade and unfair competition.

We shall first tackle the procedural issues. Respondents claim that the avalanche of arguments of the petitioners assail the wisdom of R.A. No. 8180. They aver that deregulation of the downstream oil industry is a policy decision made by Congress and it cannot be reviewed, much less be reversed by this Court. In constitutional parlance, respondents contend that the petitions failed to raise a justiciable controversy.

Respondents’ joint stance is unnoteworthy. Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess

of jurisdiction on the part of any branch or instrumentality of the government.^[12] The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where a statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act as unconstitutional and void.^[13] We held in the recent case of *Tañada vs. Angara*:^[14]

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In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial rather than political. The duty to adjudicate remains to assure that the supremacy of the Constitution is upheld. Once a controversy as to the application or interpretation of a constitutional provision is raised before this Court, it becomes a legal issue which the Court is bound by constitutional mandate to decide.

Even a side glance at the petitions will reveal that petitioners have raised constitutional issues which deserve the resolution of this Court in view of their seriousness and their value as precedents. Our statement of facts and definition of issues clearly show that petitioners are assailing R.A. No. 8180 because its provisions infringe the Constitution and not because the law lacks wisdom. The principle of separation of power mandates that challenges on the

constitutionality of a law should be resolved in our courts of justice while doubts on the wisdom of a law should be debated in the halls of Congress. Every now and then, a law may be denounced in court both as bereft of wisdom and constitutionally infirmed. Such denunciation will not deny this Court of its jurisdiction to resolve the constitutionality of the said law while prudentially refusing to pass on its wisdom.

The effort of respondents to question the *locus standi* of petitioners must also fall on barren ground. In language too lucid to be misunderstood, this Court has brightlined its liberal stance on a petitioner's *locus standi* where the petitioner is able to craft an issue of transcendental significance to the people.^[15] In *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan*,^[16] We stressed:

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Objections to taxpayers' suit for lack of sufficient personality, standing or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of these petitions.

There is not a dot of disagreement between the petitioners and the respondents on the far reaching importance of the validity of R.A.

[12] Section 1, Article VIII, 1987 Constitution.

[13] *Bondoc vs. Pineda*, 201 SCRA 792 [1991]; *Osmeña vs. COMELEC*, 199 SCRA 750 [1991].

[14] G.R. No. 118295, May 2, 1997.

[15] E.g. *Garcia vs. Executive Secretary*, 211 SCRA 219 [1992]; *Osmena vs. COMELEC*, 199 SCRA [1991]; *Basco vs. Pagcor*, 197 SCRA 52 [1991]; *Daza vs. Singson*, 180 SCRA 496 [1989]; *Araneta vs. Dinglasan*, 84 Phil. 368 [1949].

[16] 163 SCRA 371 [1988].

No. 8180 deregulating our downstream oil industry. Thus, there is no good sense in being hypertechnical on the standing of petitioners for they pose issues which are significant to our people and which deserve our forthright resolution.

We shall now track down the substantive issues. In G.R. No. 124360 where petitioner is Senator Tatad, it is contended that Section 5 (b) of R.A. No. 8180 on tariff differential violates the provision^[17] of the Constitution requiring every law to have only one subject which should be expressed in its title. We do not concur with this contention. As a policy, this Court has adopted a liberal construction of the one title one subject rule. We have consistently ruled^[18] that the title need not mirror, fully index or catalogue all contents and minute details of a law. A law having a single general subject indicated in the title may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general subject.^[19] We hold that Section 5 (b) providing for tariff differential is germane to the subject of R.A. No. 8180 which is the deregulation of the downstream oil industry. The section is supposed to sway prospective investors to put up refineries in our country and make them rely less on imported petroleum.^[20] We shall, however, return to the validity of this provision when We examine its blocking effect on new entrants to the oil market.

We shall now slide to the substantive issues in G.R. No. 127867. Petitioners assail Section 15 of R.A. No. 8180 which fixes the time frame

for the full deregulation of the downstream oil industry. We restate its pertinent portion for emphasis, viz.:

SEC. 15. *Implementation of Full Deregulation.* – Pursuant to section 5 (e) of Republic Act No. 7638, the DOE shall, upon approval of the President, implement the full deregulation of the downstream oil industry not later than March 1997. As far as practicable, the DOE shall time the full deregulation when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable...

Petitioners urge that the phrases “as far as practicable,” “decline of crude oil prices in the world market” and “stability of the peso exchange rate to the US dollar” are ambivalent, unclear and inconcrete in meaning. They submit that they do not provide the “determinate or determinable standards” which can guide the President in his decision to fully deregulate the downstream oil industry. In addition, they contend that E.O. No. 392 which advanced the date of full deregulation is void for it illegally considered the depletion of the OPSF fund as a factor.

The power of Congress to delegate the execution of laws has long been settled by this Court. As early as 1916 in *Compania General de Tabacos de Filipinas vs. The Board of Public Utility Commissioners*,^[21] this Court through Mr. Justice Moreland, held that “the true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection

[17] Section 26 (1) Article VI of the 1987 Constitution provides that “every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.”

[18] *Tobias vs. Abalos*, 239 SCRA 106 [1994]; *Philippine Judges Association v. Prado*, 227 SCRA 703 [1993]; *Lidasan vs. COMELEC*, 21 SCRA 496 [1967].

[19] *Tio vs. Videogram Regulatory Board*, 151 SCRA 208 [1987].

[20] *Journal of the House of Representatives*, December 13, 1995, p. 32.

[21] 34 Phil. 136 citing *Cincinnati, W. & Z. R.R. Co. vs. Clinton Country Commrs.* [1 Ohio St. 77].

can be made.” Over the years, as the legal engineering of men’s relationship became more difficult, Congress has to rely more on the practice of delegating the execution of laws to the executive and other administrative agencies. Two tests have been developed to determine whether the delegation of the power to execute laws does not involve the abdication of the power to make law itself. We delineated the metes and bounds of these tests in *Eastern Shipping Lines, Inc. vs. POEA*,^[22] thus:

There are two accepted tests to determine whether or not there is a valid delegation of legislative power, viz: the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislative such that when it reaches the delegate the only thing he will have to do is to enforce it. Under the sufficient standard test, there must be adequate guidelines or limitations in the law to map out the boundaries of the delegate’s authority and prevent the delegation from running riot. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.

The validity of delegating legislative power is now a quiet area in our constitutional landscape. As sagely observed, delegation of legislative power has become an inevitability in light of the increasing complexity of the task of government. Thus, courts bend as far back as possible to sustain the constitutionality of laws which are assailed as unduly delegating legislative powers. Citing *Hirabayashi vs. United States*^[23] as authority, Mr. Justice Isagani A. Cruz states “that even if the law

does not expressly pinpoint the standard, the courts will bend over backward to locate the same elsewhere in order to spare the statute, if it can, from constitutional infirmity.”^[24]

Given the groove of the Court’s rulings, the attempt of petitioners to strike down Section 15 on the ground of undue delegation of legislative power cannot prosper. Section 15 can hurdle both the completeness test and the sufficient standard test. It will be noted that Congress expressly provided in R.A. No. 8180 that full deregulation will start at the end of March 1997, regardless of the occurrence of any event. Full deregulation at the end of March 1997 is mandatory and the Executive has no discretion to postpone it for any purported reason. Thus, the law is complete on the question of the final date of full deregulation. The discretion given to the President is to advance the date of full deregulation before the end of March 1997. Section 15 lays down the standard to guide the judgment of the President; he is to time it as far as practicable when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable.

Petitioners contend that the words “as far as practicable,” “declining” and “stable” should have been defined in R.A. No. 8180 as they do not set determinate or determinable standards. The stubborn submission deserves scant consideration. The dictionary meanings of these words are well settled and cannot confuse men of reasonable intelligence. Webster defines “practicable” as meaning possible to practice or perform, “decline” as meaning to take a downward direction, and “stable” as meaning firmly established.^[25] The fear of petitioners that these words will result in the exercise of executive discretion that will run riot is thus groundless. To be sure, the Court has sustained the validity of

[22] 166 SCRA 533, 543-544.

[23] 320 US 99.

[24] *Philippine Political Law*, 1995 Ed., p. 99.

[25] Webster, *New third International Dictionary*, 1993 Ed., pp. 1780, 586 and 2218.

similar, if not more general standards in other cases.^[26]

It ought to follow that the argument that E.O. No. 392 is null and void as it was based on indeterminate standards set by R.A. 8180 must likewise fail. If that were all to the attack against the validity of E.O. No. 392, the issue need not further detain our discourse. But petitioners further posit the thesis that the Executive misapplied R.A. No. 8180 when it considered the depletion of the OPSF fund as a factor in fully deregulating the downstream oil industry in February 1997. A perusal of Section 15 of R.A. No. 8180 will readily reveal that it only enumerated two factors to be considered by the Department of Energy and the Office of the President, viz.: (1) the time when the prices of crude oil and petroleum products in the world market are declining, and (2) the time when the exchange rate of the peso in relation to the US dollar is stable. Section 15 did not mention the depletion of the OPSF fund as a factor to be given weight by the Executive before ordering full deregulation. On the contrary, the debates in Congress will show that some of our legislators wanted to impose as a pre-condition to deregulation a showing that the OPSF fund must not be in deficit.^[27] We therefore hold that the Executive department failed to follow faithfully the standards set by R.A. No. 8180 when it considered the extraneous factor of depletion of the OPSF fund. The misappreciation of this extra factor cannot be justified on the ground that the Executive department considered anyway the stability of the prices of crude oil in the world market and the stability of the exchange rate of the peso to the dollar. By considering another factor to hasten full deregulation, the Executive department rewrote the standards set forth in R.A. 8180. The Executive is bereft of any right to alter either by subtraction or

addition the standards set in R.A. No. 8180 for it has no power to make laws. To cede to the Executive the power to make law is to invite tyranny, indeed, to transgress the principle of separation of powers. The exercise of delegated power is given a strict scrutiny by courts for the delegate is a mere agent whose action cannot infringe the terms of agency. In the cases at bar, the Executive co-mingled the factor of depletion of the OPSF fund with the factors of decline of the price of crude oil in the world market and the stability of the peso to the US dollar. On the basis of the text of E.O. No. 392, it is impossible to determine the weight given by the Executive department to the depletion of the OPSF fund. It could well be the principal consideration for the early deregulation. It could have been accorded an equal significance. Or its importance could be nil. In light of this uncertainty, We rule that the early deregulation under E.O. No. 392 constitutes a misapplication of R.A. No. 8180.

We now come to grips with the contention that some provisions of R.A. No. 8180 violate Section 19 of Article XII of the 1987 Constitution. These provisions are:

(1) Section 5 (b) which states, “Any law to the contrary notwithstanding and starting with the effectivity of this Act, tariff duty shall be imposed and collected on imported crude oil at the rate of three percent (3%) and imported refined petroleum products at the rate of seven percent (7%) except fuel oil and LPG, the rate for which shall be the same as that for imported crude oil. *Provided*, That beginning on January 1, 2004 the tariff rate on imported crude oil and refined petroleum products shall be the same: *Provided, further*, That this provision may be amended only by an Act of Congress.”

(2) Section 6 which states, “To ensure the security and continuity

[26] See e.g., *Balbuena vs. Secretary of Education*, 110 Phil. 150 used the standard “simplicity and dignity.” *People vs. Rosenthal*, 68 Phil. 328 [“public interest”]; *Calalang vs. Williams*, 70 Phil. 726 [“public welfare”]; *Rubi vs. Provincial Board of Mindoro*, 73 Phil. 669 [“interest of law and order”].

[27] See for example TSN of the Session of the Senate on November 14, 1995, p. 19, view of Senator Gloria M. Arroyo.

of petroleum crude and products supply, the DOE shall require the refiners and importers to maintain a minimum inventory equivalent to ten percent (10%) of their respective annual sales volume or forty (40) days of supply, whichever is lower;" and

(3) Section 9 (b) which states, "To ensure fair competition and prevent cartels and monopolies in the downstream oil industry, the following acts shall be prohibited:

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(b) *Predatory pricing* which means selling or offering to sell any product at a price unreasonably below the industry average cost so as to attract customers to the detriment of competitors.

On the other hand, Section 19 of Article XII of the Constitution allegedly violated by the aforestated provisions of R.A. No. 8180 mandates: "The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed."

A monopoly is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service.^[28] On the other hand, a combination in restraint of trade is an agreement or understanding between two or more persons, in the form of a contract, trust, pool, holding company, or other form of association, for the purpose of unduly restricting competition, monopolizing trade and commerce in a certain commodity,

controlling its, production, distribution and price, or otherwise interfering with freedom of trade without statutory authority.^[29] Combination in restraint of trade refers to the means while monopoly refers to the end.^[30]

Article 186 of the *Revised Penal Code* and Article 28 of the *New Civil Code* breathe life to this constitutional policy. Article 186 of the *Revised Penal Code* penalizes monopolization and creation of combinations in restraint of trade,^[31] while Article 28 of the *New Civil Code* makes any person who shall engage in unfair competition liable for damages.^[32]

[29] *Id.*, p. 266.

[30] 54 Am Jur 2d 669.

[31] Art. 186. Monopolies and combinations in restraint of trade. The penalty of *prison correccional* in its minimum period or a fine ranging from 200 to 6,000 pesos, or both, shall be imposed upon:

1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce to prevent by artificial means free competition in the market.
2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object in order to alter the price thereof by spreading false rumors or making use of any other article to restrain free competition in the market;
3. Any person who, being a manufacturer, producer, or processor of any merchandise or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, or any such merchandise or object of commerce manufactured, produced, or processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, processed, or imported merchandise or object of commerce is used.

If the offense mentioned in this article affects any food substance, motor fuel or lubricants, or other articles of prime necessity the penalty shall be that of *prison mayor* in its maximum and medium periods, it being sufficient for the imposition thereof that the initial steps have been taken toward carrying out the purposes of the combination.

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Whenever any of the offenses described above is committed by a corporation or association, the president and each one of the directors or managers of said corporation or association, who shall have knowingly permitted or failed to prevent the commission of such offenses, shall be held liable as principals thereof.

[32] Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

[28] Black's Law Dictionary, 6th Ed., p. 1007.

Respondents aver that Sections 5 (b), 6 and 9 (b) implement the policies and objectives of R.A. No. 8180. They explain that the 4% tariff differential is designed to encourage new entrants to invest in refineries. They stress that the inventory requirement is meant to guaranty continuous domestic supply of petroleum and to discourage fly-by-night operators. They also submit that the prohibition against predatory pricing is intended to protect prospective entrants. Respondents manifested to the Court that new players have entered the Philippines after deregulation and have now captured 3%-5% of the oil market.

The validity of the assailed provisions of R.A. No. 8180 has to be decided in light of the letter and spirit of our Constitution, especially Section 19, Article XII. Beyond doubt, the Constitution committed us to the free enterprise system but it is a system impressed with its own distinctness. Thus, while the Constitution embraced free enterprise as an economic creed, it did not prohibit *per se* the operation of monopolies which can, however, be regulated in the public interest.^[33] Thus, too, our free enterprise system is not based on a market of pure and unadulterated competition where the State pursues a strict hands-off policy and follows the let-the-devil devour the hindmost rule. Combinations in restraint of trade and unfair competitions are absolutely proscribed and the proscription is directed both against the State as well as the private sector.^[34] This distinct free enterprise system is dictated by the need to achieve the goals of our national economy as defined by Section 1, Article XII of the Constitution which are: more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the

benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged. It also calls for the State to protect Filipino enterprises against unfair competition and trade practices.

Section 19, Article XII of our Constitution is anti-trust in history and in spirit. It espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for regulation of unmitigated monopolies. Competition is thus the underlying principle of Section 19, Article XII of our Constitution which cannot be violated by R.A. No. 8180. We subscribe to the observation of Prof. Gellhorn that the objective of anti-trust law is “to assure a competitive economy, based upon the belief that through competition producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services, and thus matches their desires with society’s opportunity costs.”^[35] He adds with appropriateness that there is a reliance upon “the operation of the ‘market’ system [free enterprise] to decide what shall be produced, how resources shall be allocated in the production process, and to whom the various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers to determine who will manufacture it.”

Again, we underline in scarlet that the fundamental principle espoused by Section 19, Article XII of the Constitution is competition for it alone can release the creative forces of the market. But the competition that can unleash these creative forces is competition that is fighting yet is fair. Ideally, this kind of competition requires

[33] Bernas, *The Intent of the 1986 Constitution Writers* [1995], p. 877; *Philippine Long Distance Telephone Co. vs. National Telecommunications Commission*, 190 SCRA 717 [1990]; *Northern Cement Corporation vs. Intermediate Appellate Court*, 158 SCRA 408 [1988]; *Philippine Ports Authority vs. Mendoza*, 138 SCRA 496 [1985]; *Anglo-Fil Trading Corporation vs. Lazaro*, 124 SCRA 494 [1983].

[34] Record of the Constitutional Commission, Volume III, p. 258.

[35] Gellhorn, *Anti Trust Law and Economics in a Nutshell*, 1986 Ed. p. 45.

the presence of not one, not just a few but several players. A market controlled by one player [monopoly] or dominated by a handful of players [oligopoly] is hardly the market where honest-to-goodness competition will prevail. Monopolistic or oligopolistic markets deserve our careful scrutiny and laws which barricade the entry points of new players in the market should be viewed with suspicion.

Prescinding from these baseline propositions, we shall proceed to examine whether the provisions of R.A. No. 8180 on tariff differential, inventory reserves, and predatory prices imposed substantial barriers to the entry and exit of new players in our downstream oil industry. If they do, they have to be struck down for they will necessarily inhibit the formation of a truly competitive market. Contrariwise, if they are insignificant impediments, they need not be stricken down.

In the cases at bar, it cannot be denied that our downstream oil industry is operated and controlled by an oligopoly, a foreign oligopoly at that. Petron, Shell and Caltex stand as the only major league players in the oil market. All other players belong to the lilliputian league. As the dominant players, Petron, Shell and Caltex boast of existing refineries of various capacities. The tariff differential of 4% therefore works to their immense benefit. Yet, this is only one edge of the tariff differential. The other edge cuts and cuts deep in the heart of their competitors. It erects a high barrier to the entry of new players. New players that intend to equalize the market power of Petron, Shell and Caltex by building refineries of their own will have to spend billions of pesos. Those who will not build refineries but compete with them will suffer the huge disadvantage of increasing their product cost by 4%. They will be competing on an uneven field. The argument that the 4% tariff differential is desirable because it will induce prospective players to invest in refineries puts the cart before the horse. The first need is to attract new players and they

cannot be attracted by burdening them with heavy disincentives. Without new players belonging to the league of Petron, Shell and Caltex, competition in our downstream oil industry is an idle dream.

The provision on inventory widens the balance of advantage of Petron, Shell and Caltex against prospective new players. Petron, Shell and Caltex can easily comply with the inventory requirement of R.A. No. 8180 in view of their existing storage facilities. Prospective competitors again will find compliance with this requirement difficult as it will entail a prohibitive cost. The construction cost of storage facilities and the cost of inventory can thus scare prospective players. Their net effect is to further occlude the entry points of new players, dampen competition and enhance the control of the market by the three [3] existing oil companies.

Finally, We come to the provision on predatory pricing which is defined as “selling or offering to sell any product at a price unreasonably below the industry average cost so as to attract customers to the detriment of competitors.” Respondents contend that this provision works against Petron, Shell and Caltex and protects new entrants. The ban on predatory pricing cannot be analyzed in isolation. Its validity is interlocked with the barriers imposed by R.A. No. 8180 on the entry of new players. The inquiry should be to determine whether predatory pricing on the part of the dominant oil companies is encouraged by the provisions in the law blocking the entry of new players. Text-writer Hovenkamp,^[36] gives the authoritative answer and We quote:

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The rationale for predatory pricing is the sustaining of losses today that will give a firm monopoly profits in the future. The monopoly profits will

[36] *Economics and Federal Anti-Trust Law*, Hornbook Series, Student Ed., 1985 Ed., p. 181.

never materialize, however, if the market is flooded with new entrants as soon as the successful predator attempts to raise its price. Predatory pricing will be profitable only if the market contains significant barriers to new entry.

As afore-discussed, the 4% tariff differential and the inventory requirement are significant barriers which discourage new players to enter the market. Considering these significant barriers established by R.A. No. 8180 and the lack of players with the comparable clout of Petron, Shell and Caltex, the temptation for a dominant player to engage in predatory pricing and succeed is a chilling reality. Petitioners' charge that this provision on predatory pricing is anti-competitive is not without reason.

Respondents belittle these barriers with the allegation that new players have entered the market since deregulation. A scrutiny of the list of the alleged new players will, however, reveal that not one belongs to the class and category of Petron, Shell and Caltex. Indeed, there is no showing that any of these new players intends to install any refinery and effectively compete with these dominant oil companies. In any event, it cannot be gainsaid that the new players could have been more in number and more impressive in might if the illegal entry barriers in R.A. No. 8180 were not erected.

We come to the final point. We now resolve the total effect of the untimely deregulation, the imposition of 4% tariff differential on imported crude oil and refined petroleum products, the requirement of inventory and the prohibition on predatory pricing on the constitutionality of R.A. No. 8180. The question is whether these offending provisions can be individually struck down without invalidating the entire R.A. No. 8180. The ruling case law is well stated by author Agpalo,^[37] viz.:

[37] Statutory Construction, 1986 Ed., pp. 28-29.

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The general rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent.

The exception to the general rule is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them.

R.A. No. 8180 contains a separability clause. Section 23 provides that "if for any reason, any section or provision of this Act is declared unconstitutional or invalid, such parts not affected thereby shall remain in full force and effect." This separability clause

notwithstanding, we hold that the offending provisions of R.A. No. 8180 so permeate its essence that the entire law has to be struck down. The provisions on tariff differential, inventory and predatory pricing are among the principal props of R.A. No. 8180. Congress could not have deregulated the downstream oil industry without these provisions. Unfortunately, contrary to their intent, these provisions on tariff differential, inventory and predatory pricing inhibit fair competition, encourage monopolistic power and interfere with the free interaction of market forces. R.A. No. 8180 needs provisions to vouchsafe free and fair competition. The need for these vouchsafing provisions cannot be overstated. Before deregulation, Petron, Shell and Caltex had no real competitors but did not have a free run of the market because government controls both the pricing and non-pricing aspects of the oil industry. After deregulation, Petron, Shell and Caltex remain unthreatened by real competition yet are no longer subject to control by government with respect to their pricing and non-pricing decisions. The aftermath of R.A. No. 8180 is a deregulated market where competition can be corrupted and where market forces can be manipulated by oligopolies.

The fall-out effects of the defects of R.A. No. 8180 on our people have not escaped Congress. A lot of our leading legislators have come out openly with bills seeking the repeal of these odious and offensive provisions in R.A. No. 8180. In the Senate, Senator Freddie Webb has filed S.B. No. 2133 which is the result of the hearings conducted by the Senate Committee on Energy. The hearings revealed that (1) there was a need to level the playing field for the new entrants in the downstream oil industry, and (2) there was no law punishing a person for selling petroleum products at unreasonable prices.

Senator Alberto G. Romulo also filed S.B. No. 2209 abolishing the tariff differential beginning January 1, 1998. He declared that the amendment “would mean that instead

of just three [3] big oil companies there will be other major oil companies to provide more competitive prices for the market and the consuming public.” Senator Heherson T. Alvarez, one of the principal proponents of R.A. No. 8180, also filed S.B. No. 2290 increasing the penalty for violation of its Section 9. It is his opinion as expressed in the explanatory note of the bill that the present oil companies are engaged in cartelization despite R.A. No. 8180, viz.:

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Since the downstream oil industry was fully deregulated in February 1997, there have been eight (8) fuel price adjustments made by the three oil majors, namely: Caltex Philippines, Inc.; Petron Corporation; and Pilipinas Shell Petroleum Corporation. Very noticeable in the price adjustments made, however, is the uniformity in the pump prices of practically all petroleum products of the three oil companies. This, despite the fact, that their selling rates should be determined by a combination of any of the following factors: the prevailing peso-dollar exchange rate at the time payment is made for crude purchases, sources of crude, and inventory levels of both crude and refined petroleum products. The abovestated factors should have resulted in different, rather than identical prices.

The fact that the three [3] oil companies’ petroleum products are uniformly priced suggests collusion, amounting to cartelization, among Caltex Philippines, Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation to fix the prices of petroleum products in violation of paragraph (a), Section 9 of R.A. No. 8180.

To deter this pernicious practice and to assure that present and prospective players in the downstream oil industry conduct their business with conscience and propriety, cartel-like activities ought to be severely penalized.

Senator Francisco S. Tatad also filed S.B. No. 2307 providing for a uniform tariff rate on imported crude oil and refined petroleum products. In the explanatory note of the bill, he declared in no uncertain terms that “the present set-up has raised serious public concern over the way the three oil companies have uniformly adjusted the prices of oil in the country, an indication of a possible existence of a cartel or a cartel-like situation within the downstream oil industry. This situation is mostly attributed to the foregoing provision on tariff differential, which has effectively discouraged the entry of new players in the downstream oil industry.”

In the House of Representatives, the moves to rehabilitate R.A. No. 8180 are equally feverish. Representative Leopoldo E. San Buenaventura has filed H.B. No. 9826 removing the tariff differential for imported crude oil and imported refined petroleum products. In the explanatory note of the bill, Rep. Buenaventura explained:

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As we now experience, this difference in tariff rates between imported crude oil and imported refined petroleum products, unwittingly provided a built-in-advantage for the three existing oil refineries in the country and eliminating competition which is a must in a free enterprise economy. Moreover, it created a disincentive for other players to engage even initially in the importation and distribution of refined petroleum products and ultimately in the putting up of refineries. This tariff differential

virtually created a monopoly of the downstream oil industry by the existing three oil companies as shown by their uniform and capricious pricing of their products since this law took effect, to the great disadvantage of the consuming public.

Thus, instead of achieving the desired effects of deregulation, that of free enterprise and a level playing field in the downstream oil industry, R.A. 8180 has created an environment conducive to cartelization, unfavorable, increased, unrealistic prices of petroleum products in the country by the three existing refineries.

Representative Marcial C. Punzalan, Jr., filed H.B. No. 9981 to prevent collusion among the present oil companies by strengthening the oversight function of the government, particularly its ability to subject to a review any adjustment in the prices of gasoline and other petroleum products. In the explanatory note of the bill, Rep. Punzalan, Jr., said:

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To avoid this, the proposed bill seeks to strengthen the oversight function of government, particularly its ability to review the prices set for gasoline and other petroleum products. It grants the Energy Regulatory Board [ERB] the authority to review prices of oil and other petroleum products, as may be petitioned by a person, group or any entity, and to subsequently compel any entity in the industry to submit any and all documents relevant to the imposition of new prices. In cases where the Board determines that there exist collusion, economic conspiracy, unfair trade practice, profiteering and/or overpricing,

it may take any step necessary to protect the public, including the readjustment of the prices of petroleum products. Further, the Board may also impose the fine and penalty of imprisonment, as prescribed in Section 9 of R.A. 8180, on any person or entity from the oil industry who is found guilty of such prohibited acts.

By doing all of the above, the measure will effectively provide Filipino consumers with a venue where their grievances can be heard and immediately acted upon by government. Thus, this bill stands to benefit the Filipino consumer by making the price-setting process more transparent and making it easier to prosecute those who perpetrate such prohibited acts as collusion, overpricing, economic conspiracy and unfair trade.

Representative Sergio A. F. Apostol filed H.B. No. 10039 to remedy an omission in R.A. No. 8180 where there is no agency in government that determines what is “reasonable” increase in the prices of oil products. Representative Dante O. Tiñga, one of the principal sponsors of R.A. No. 8180, filed H.B. No. 10057 to strengthen its anti-trust provisions. He elucidated in its explanatory note:

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The definition of predatory pricing, however, needs to be tightened up particularly with respect to the definitive benchmark price and the specific anti-competitive intent. The definition in the bill at hand which was taken from the Areeda-Turner test in the United States on predatory pricing resolves the questions. The definition reads, “Predatory pricing means selling or offering to sell any oil product at a price below the average

variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a competitor from entering the market.”

The appropriate actions which may be resorted to under the *Rules of Court* in conjunction with the oil deregulation law are adequate. But to stress their availability and dynamism, it is a good move to incorporate all the remedies in the law itself. Thus, the present bill formalizes the concept of government intervention and private suits to address the problem of antitrust violations. Specifically, the government may file an action to prevent or restrain any act of cartelization or predatory pricing, and if it has suffered any loss or damage by reason of the antitrust violation it may recover damages. Likewise, a private person or entity may sue to prevent or restrain any such violation which will result in damage to his business or property, and if he has already suffered damage he shall recover treble damages. A class suit may also be allowed.

To make the DOE Secretary more effective in the enforcement of the law, he shall be given additional powers to gather information and to require reports.

Representative Erasmo B. Damasing filed H.B. No. 7885 and has a more unforgiving view of R.A. No. 8180. He wants it completely repealed. He explained:

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Contrary to the projections at the time the bill on the Downstream Oil Industry Deregulation was discussed and debated upon in the plenary session prior to its approval into

law, there aren't any new players or investors in the oil industry. Thus, resulting in practically a cartel or monopoly in the oil industry by the three [3] big oil companies, Caltex, Shell and Petron. So much so, that with the deregulation now being partially implemented, the said oil companies have succeeded in increasing the prices of most of their petroleum products with little or no interference at all from the government. In the month of August, there was an increase of Fifty centavos (50 ¢) per liter by subsidizing the same with the OPSF, this is only temporary as in March 1997, or a few months from now, there will be full deregulation [Phase II] whereby the increase in the prices of petroleum products will be fully absorbed by the consumers since OPSF will already be abolished by then. Certainly, this would make the lives of our people, especially the unemployed ones, doubly difficult and unbearable.

The much-ballyhooed coming in of new players in the oil industry is quite remote considering that these prospective investors cannot fight the existing and well established oil companies in the country today, namely, Caltex, Shell and Petron. Even if these new players will come in, they will still have no chance to compete with the said three [3] existing big oil companies considering that there is an imposition of oil tariff differential of 4% between importation of crude oil by the said oil refineries paying only 3% tariff rate for the said importation and 7% tariff rate to be paid by businessmen who have no oil refineries in the Philippines but will import finished petroleum/oil products which is being taxed with 7% tariff rates.

So, if only to help the many who are poor from further suffering as a result of unmitigated increase in oil products due to deregulation, it is a must that the *Downstream Oil Industry Deregulation Act of 1996*, or R.A. 8180 be repealed completely.

Various resolutions have also been filed in the Senate calling for an immediate and comprehensive review of R.A. No. 8180 to prevent the downpour of its ill effects on the people. Thus, S. Res. No. 574 was filed by Senator Gloria M. Macapagal entitled Resolution "Directing the Committee on Energy to Inquire Into the Proper Implementation of the Deregulation of the Downstream Oil Industry and Oil Tax Restructuring As Mandated Under R.A. Nos. 8180 and 8184, in Order to Make the Necessary Corrections in the Apparent Misinterpretation of the Intent and Provision of the Laws and Curb the Rising Tide of Disenchantment Among the Filipino Consumers And Bring About the Real Intentions and Benefits of the Said Law." Senator Blas F. Ople filed S. Res. No. 664 entitled resolution "Directing the Committee on Energy to Conduct an Inquiry In Aid of Legislation to Review the Government's Oil Deregulation Policy in Light of the Successive Increases in Transportation, Electricity and Power Rates, As Well As of Food and Other Prime Commodities and Recommend Appropriate Amendments to Protect the Consuming Public." Senator Ople observed:

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WHEREAS, since the passage of R.A. No. 8180, the Energy Regulatory Board [ERB] has imposed successive increases in oil prices which has triggered increases in electricity and power rates, transportation fares, as well as in prices of food and other prime commodities to the detriment of our people, particularly the poor;

WHEREAS, the new players that were expected to compete with the oil cartel – Shell, Caltex and Petron-have not come in;

WHEREAS, it is imperative that a review of the oil deregulation policy be made to consider appropriate amendments to the existing law such as an extension of the transition phase before full deregulation in order to give the competitive market enough time to develop;

WHEREAS, the review can include the advisability of providing some incentives in order to attract the entry of new oil companies to effect a dynamic competitive market;

WHEREAS, it may also be necessary to defer the setting up of the institutional framework for full deregulation of the oil industry as mandated under Executive Order No. 377 issued by President Ramos last October 31, 1996.

Senator Alberto G. Romulo filed S. Res. No. 769 entitled resolution “Directing the Committees on Energy and Public Services in Aid of Legislation to Assess the Immediate Medium and Long Term Impact of Oil Deregulation on Oil Prices and the Economy.” Among the reasons for the resolution is the finding that “the requirement of a 40-day stock inventory effectively limits the entry of other oil firms in the market with the consequence that instead of going down oil prices will rise.”

Parallel resolutions have been filed in the House of Representatives. Representative Dante O. Tiña filed H. Res. No. 1311 “Directing the Committee on Energy to Conduct An Inquiry, In Aid of Legislation, Into the Pricing Policies and Decisions of the Oil Companies Since the Implementation of Full Deregulation Under the Oil Deregulation Act [R.A. No. 8180] for the Purpose of

Determining in the Context of the Oversight Functions of Congress Whether the Conduct of the Oil Companies, Whether Singly or Collectively, Constitutes Cartelization Which Is A Prohibited Act Under R.A. No. 8180, and What Measures Should Be Taken to Help Ensure the Successful Implementation of the Law in Accordance With Its Letter and Spirit, Including Recommending Criminal Prosecution of the Officers Concerned of the Oil Companies If Warranted By The Evidence, And For Other Purposes.” Representatives Marcial C. Punzalan, Jr., Dante O. Tiña and Antonio E. Bengzon III filed H.R. No. 894 directing the House Committee on Energy to inquire into the proper implementation of the deregulation of the downstream oil industry. House Resolution No. 1013 was also filed by Representatives Edcel C. Lagman, Enrique T. Garcia, Jr. and Joker P. Arroyo urging the President to immediately suspend the implementation of E.O. No. 392.

In recent memory there is no law enacted by the legislature afflicted with so much constitutional deformities as R.A. No. 8180. Yet, R.A. No. 8180 deals with oil, a commodity whose supply and price affect the ebb and flow of the lifeblood of the nation. Its shortage of supply or a slight, upward spiral in its price shakes our economic foundation. Studies show that the areas most impacted by the movement of oil are food manufacture, land transport, trade, electricity and water.^[38] At a time when our economy is in a dangerous downspin, the perpetuation of R.A. No. 8180 threatens to multiply the number of our people with bent backs and begging bowls. R.A. No. 8180 with its anti-competition provisions cannot be allowed by this Court to stand even while Congress is working to remedy its defects.

The Court, however, takes note of the plea of Petron, Shell and Caltex to lift our restraining order to enable them to adjust upward the price of petroleum and petroleum products in view of the plummeting value of the

[38] Ibon Facts and Figures, Vol. 18, No. 7, p. 5, April 15, 1995.

peso. Their plea, however, will now have to be addressed to the Energy Regulatory Board as the effect of the declaration of unconstitutionality of R.A. No. 8180 is to revive the former laws it repealed.^[39] The length of our return to the regime of regulation depends on Congress which can fast track the writing of a new law on oil deregulation in accord with the Constitution.

With this Decision, some circles will chide the Court for interfering with an economic decision of Congress. Such criticism is charmless for the Court is annulling R.A. No. 8180 not because it disagrees with deregulation as an economic policy but because as cobbled by Congress in its present form, the law violates the Constitution. The right call, therefore, should be for Congress to write a new oil deregulation law that conforms with the Constitution and not for this Court to shirk its duty of striking down a law that offends the Constitution. Striking down R.A. No. 8180 may cost losses in quantifiable terms to the oil oligopolists. But the loss in tolerating the tampering of our Constitution is not quantifiable in pesos and centavos. More worthy of protection than the supra-normal profits of private corporations is the sanctity of the fundamental principles of the Constitution. Indeed when confronted by a

law violating the Constitution, the Court has no option but to strike it down dead. Lest it is missed, the Constitution is a covenant that grants and guarantees both the political and economic rights of the people. The Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well. The protection of the economic rights of the poor and the powerless is of greater importance to them for they are concerned more with the esoterics of living and less with the esoterics of liberty. Hence, for as long as the Constitution reigns supreme so long will this Court be vigilant in upholding the economic rights of our people especially from the onslaught of the powerful. Our defense of the people's economic rights may appear heartless because it cannot be half-hearted.

IN VIEW WHEREOF, the petitions are granted. R.A. No. 8180 is declared unconstitutional and E.O. No. 372 void.

SO ORDERED.

Regalado, Davide, Jr., Romero, Bellosillo and Vitug, JJ., concur.

Mendoza, J., concurs in the result.

Narvasa, CJ., is on leave.

[39] *Cruz vs. Youngberg*, 56 Phil. 234 [1931].

EXECUTIVE ORDER NO. 377

PROVIDING THE INSTITUTIONAL FRAMEWORK FOR THE ADMINISTRATION OF THE DEREGULATED DOWNSTREAM OIL INDUSTRY

WHEREAS, Republic Act No. 8180, otherwise known as the “Downstream Oil Industry Deregulation Act of 1996”, provides for the deregulation of all activities of the downstream oil industry in the country to foster a competitive market and achieve the social policy objectives of fair prices and adequate, continuous supply of environmentally-clean and high-quality petroleum products;

WHEREAS, the effective and efficient mechanism of this deregulated local downstream oil industry involves the participation and coordination of various agencies as required under the Rules and Regulations of the Act;

WHEREAS, there is need to provide an institutional framework for the administration of the industry in order to define and delineate the functions and responsibilities of these agencies.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by the powers vested in me by law, do hereby establish the delineation of agency functions and responsibilities as the institutional framework for the administration of the deregulated local downstream oil industry;

SECTION 1. *Delineation of Agency Functions and Responsibilities.* – The functions and responsibilities of agencies are delineated as follows:

1.1 *Overall Administration.* – The Department of Energy (DOE) shall be the lead agency in the administration of the deregulated local downstream oil industry. It shall serve as the oversight body which will integrate and coordinate the implementation of policies and

programs affecting the industry. It shall be responsible for the overall monitoring of the downstream oil industry, including the monitoring and publication of daily international oil prices, to ensure the security and continuity of oil supply as well as the compliance of petroleum businesses with quality, safety and environmental standards and fair trade regulations.

1.2 *Standards Setting.* – The government shall prescribe the appropriate quality, safety and environmental standards for petroleum products, downstream facilities and processes as well as set guidelines governing fair trade practices in the local downstream oil industry through the following agencies:

(a) Department of Trade and Industry (DTI) shall establish and update, in coordination with the DOE, the Philippine National Standard (PNS) on quality and safety of petroleum products, including that of materials, equipment and facilities related to petroleum products such as storage tanks, LPG refilling plants and cylinders, valves and regulators; methods of requalification of cylinders; and codes of practices for gas stations. Along with this, the DTI shall undertake the following:

- (1) Enforce the existing PNS in coordination with the DOE, LGUs and other concerned agencies and sectors;
- (2) Provide measures to promote and ensure fair trade practices; and

- (3) Encourage investments in the downstream oil sector.
- (b) Department of Science and Technology (DOST) shall prescribe the calibration and verification intervals of all measuring instruments used in petroleum products. Towards this, the DOST shall initiate the following:
- (1) Evaluate and accredit the laboratories of the municipalities performing the calibration and verification of tank lorries, road tankers, storage tanks, flow meters, calibrating buckets, and weighing scales;
 - (2) Assist the municipalities in calibrating these measuring instruments; and
 - (3) Calibrate the reference standards of accredited laboratories, such as proving tanks, provers, master meter and test weighs.
- (c) Department of Environment and Natural Resources (DENR) shall prescribe the environmental standards for petroleum products and related activities thereto. In this regard, the DENR shall undertake the following:
- (1) Review, evaluate and issue environmental compliance certificates to petroleum businesses;
 - (2) Issue permits to construct and operate petroleum facilities engaged in the recycling, re-refining and re-processing of oil/petroleum products; and that for air and water pollution, control installations and devices as may be required in certain aspects of the downstream oil business pursuant to RA 6969 (*An Act to Control Toxic Substances and Hazardous and Nuclear Wastes*); and PD 984 (*Pollution Control Law*); and
- (3) Monitor emissions, effluents, and the compliance of petroleum businesses with environmental standards and regulations, including the application of sanctions for violations of rules and regulations thereof.
- (d) Department of Health (DOH) shall prescribe the allowable level of toxicity to health as regards the emissions of particulates and harmful substances accruing from the manufacturing, use and combustion of petroleum products. In line with this, the DOH shall undertake the following:
- (1) Issue the necessary health and safety guidelines on toxicity level;
 - (2) Provide health advisory services, information and education related to the effects of petroleum and petroleum products on humans; and
 - (3) Conduct continuing studies on these effects towards determining measures to address them.
- (e) Department of Labor and Employment (DOLE) shall set and enforce the standards for the protection and safety of workers during their employment in any petroleum facility. In this regard, the DOLE shall undertake the following:
- (1) Enforce the requirements for the operation of pressure vessels used in business and in the issuance of certificate of safety of electrical and wiring system for petroleum facilities;

(2) Develop guidelines for handling and storage procedures in petroleum businesses to ensure the safety of workforce and the public and general; and

(3) Formulate and implement programs and information dissemination activities to enforce workers' and employers' awareness on the health risks involved in storage, handling and distribution of petroleum products, including safety measures in dealing with emergency situations.

(f) Department of Transportation and Communication (DOTC) shall set the standards for safety and roadworthiness/seaworthiness of petroleum carriers, such as trucks, haulers, tankers and barges, including their allowable gas emission levels. It shall also set, in coordination with the DOE, the quality standards for fuels used in air transport. In addition, the DOTC shall pursue the following:

(1) Regulate the routes of service, zones or areas of operation of tank trucks and other petroleum transport facilities; and

(2) Establish fare rates for land and sea transport, taking into consideration the price in the international market of oil.

1.3 Enforcement. – The government shall enforce quality and safety standards for petroleum products, carriers and downstream oil facilities. As such, the following agencies shall ensure the compliance of petroleum businesses with these standards, including their strict adherence to fair trade regulations so as to prevent cartelization and monopolies:

(a) Department of Interior and Local

Government (DILG) shall, in coordination with national agencies, ensure the compliance of petroleum businesses with prescribed quality, safety and environmental standards on fuel, downstream oil facilities and labor to ensure the protection of localities hosting petroleum facilities. Towards this, the DILG shall undertake the following:

(1) Strictly enforce the provisions of PD 1185 (*Fire Code of the Philippines*) on safety measures regarding the use, storage and handling of petroleum products and downstream oil facilities; and

(2) Issue corresponding permits for storage, conveyance, installation of tanks and containers, including other petroleum facilities.

(b) Department of Public Works and Highways (DPWH) shall enforce the provisions of the *National Building Code* to ensure the adherence of all downstream oil industry infrastructure to safety standards thereto.

(c) Philippine Economic Zone Authority (PEZA) and the Subic Bay Metropolitan Authority (SBMA) shall enforce laws to prevent smuggling and dumping of petroleum products in Special Economic Zones, including the rules and regulations of the DOE with regard to the lifting of shipments to or from the Zone.

(d) Department of Finance (DOF) shall be responsible for the proper application of import tariff duties on petroleum and related goods/products. In this regard, it shall vigorously undertake the following:

(1) Collect taxes, duties and other charges due;

- (2) Enforce the pertinent provisions of the *Oil Industry Deregulation Act* on the importation, exportation, re-exportation and bunkering of petroleum products within the purview of the *Tariff and Customs Code* and related laws; and
- (3) Monitor and enforce quality as well as the environmental standards on imported oil.
- (e) Department of Justice (DOJ) shall, in its capacity as member of the DOE-DOJ Task Force, adjudicate cases of cartelization, overpricing and predatory pricing of petroleum products.
- (f) Department of National Defense (DND) shall curb the illegal entry and smuggling of petroleum products and related facilities into the country. It shall also prevent and control maritime pollution through inspection of vessel design and equipment, oil transfer procedures and operation, and communication requirement.
- (g) Energy Regulatory Board (ERB) shall, upon the implementation of the full deregulation phase of the downstream oil industry, be responsible for fixing and regulating the rate of schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system.

1.4 Policy Support. – The National Economic and Development Authority (NEDA) shall conduct studies on the social, economic and financial impact of changes in prices of petroleum products. These shall serve as inputs to policy formulation for and review of the downstream oil industry.

1.5 Transition Pricing. – During the transition

phase of deregulation, the pricing of petroleum products shall be the responsibility of the Energy Regulatory Board (ERB), in particular the following:

- (a) Setting, reviewing and resetting of the wholesale posted domestic prices of petroleum products based on the approved automatic pricing formula;
- (b) Maintaining the current margin of dealers and the rates charged by water transport operators, haulers, fillers and pipeline concessionaires, and prescribing the formula automatically setting the rates of the same; and
- (c) Issuing the appropriate Order requiring payment of additional amount to be imposed on petroleum products to augment the resources of the Oil Price Stabilization Fund to persons or companies engaged in the business of importing, manufacturing or marketing petroleum products, including those directly importing petroleum products for their own use.

SECTION 2. Reportorial Requirements. – The concerned Departments and Agencies shall submit at least a quarterly report to the DOE on their activities in discharging their respective functions and responsibilities relative to the deregulated local downstream oil industry, including developments thereto which may require government action.

SECTION 3. Repealing Clause. – All orders, issuances, rules and regulations or parts thereof, inconsistent with this Order are hereby repealed or modified accordingly.

SECTION 4. Effectivity. – This Order shall take effect immediately.

Done in the City of Manila, this 31st day of October, in the Year of Our Lord, Nineteen Hundred and Ninety-Six.

MEMORANDUM OF UNDERSTANDING

KNOW ALL MEN BY THESE PRESENTS:

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between:

The **DEPARTMENT OF ENERGY**, a national government agency created under Republic Act No. 7638, with principal office address at Merritt Road, Fort Bonifacio, Taguig, Metro Manila, represented by its Secretary, **MARIO V. TIAOQUI**, herein referred to as **DOE**;

The **DEPARTMENT OF TRADE AND INDUSTRY**, a national government agency created by virtue of Executive Order No. 133 with offices at the Department of Trade and Industry Building, 361 Sen. Gil J. Puyat Avenue, Makati, Metro Manila, represented by its Acting Secretary, **THOMAS G. AQUINO**, hereinafter referred to as **DTI**;

WITNESSES: That

WHEREAS, Section 2 of Republic Act No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998,” mandates the DOE, through its Energy Industry Administration Bureau (EIAB), to foster a truly competitive market which can better achieve the social policy objectives of fair prices and adequate, continuous supply of environmentally clean and high quality petroleum products;

WHEREAS, Section 1.2 of Executive Order No. 377 of “The Institutional Framework for the Administration of the Deregulated Local Downstream Oil Industry” provides for the DTI, in coordination with the DOE, to establish and update the Philippine National Standards on quality and safety of petroleum products, including those of materials, equipment and facilities related to petroleum products such as storage tanks, liquefied petroleum gas (LPG) refilling plants and cylinders; and codes of practices for gas stations;

WHEREAS, the DTI, through its Bureau of Product Standards (BPS), issued Philippine National Standards (PNS) 03, specifying the requirements for the materials, design, construction, testing and markings of steel cylinders; PNS 41, specifying the methods for the requalification of low pressure unfired cylinder approved for use in the storage, handling and transportation of LPG applicable for locally manufactured and imported second hand LPG cylinders; and PNS 711, specifying the methods for repair of steel cylinders;

WHEREAS, DTI and DOE have mutually observed the proliferation and use of dilapidated and unserviceable LPG cylinders in the market which pose continuous hazard and threat to the health and safety of consumers;

WHEREAS, to ensure the strict enforcement of existing standards on LPG cylinder quality and maintenance, the DTI and DOE deemed it urgent and necessary to provide a mechanism for close coordination in the compliance and enforcement of cylinder quality standards;

NOW, THEREFORE, in view of the foregoing premises, the DOE and DTI hereby stipulate and agree as follows:

1. The DOE, through the EIAB, shall:
 - a) Conduct regular monitoring of LPG cylinders in circulations;
 - b) Direct LPG refillers/marketers/dealers/ retail outlets found possessing unqualified defective and dilapidated LPG cylinders to submit for requalification said cylinders and require the same to present proof of compliance with requalification requirements;
 - c) Recommend to the concerned LGUs the suspension or revocation of the licenses of LPG refillers/marketers/

dealer/retail outlets who fail to comply with government's directive on requalification and other safety standards;

- d) Require LPG refillers/ marketers/ dealer/ retail outlets to submit periodically to EIAB the total number of LPG cylinders requalified for the specific period covered;
 - e) Conduct verification of complaints regarding the quality of LPG cylinders;
 - f) Recommend to BPS, imposition of administrative sanction against LPG refillers/marketers/dealers/retail outlets that violate PNS 41 and its amendments.
2. The DTI, through the BPS and DTI Regional Provincial Offices, shall:
- a) Enforce the implementation of PNS 03, PNS 41 and PNS 711 and its future amendments on all locally manufactured and imported LPG cylinders prior to their circulation and require LPG requalifiers to be accredited under the BPS Laboratory Accreditation Scheme;
 - b) Conduct periodic inspection of plant premises of cylinder manufacturers and requalifiers to ensure compliance with PNS 03, PNS 41 and PNS 711;
 - c) Closely coordinate with DOE in the dissemination of information relevant to the enforcement of PNS 03, PNS 41 and PNS 711 and its future amendments;
 - d) Closely coordinate with DOE ensuring that only LPG cylinders properly marked in accordance with PNS 03 and PNS 41, PS and ICC Mark are refilled and sold;
 - e) Require DTI-accredited LPG requalifiers to properly label LPG cylinders as to date of requalification,

name of requalifier, correct tare weight markings, brand name, etc. as required under PNS 41;

- f) Impose administrative sanctions on violators of PNS 41 and its future amendments.
3. DOE and DTI shall jointly develop and implement an effective strategy for the dissemination of information to the public about LPG cylinder quality.
4. Implementing guidelines, if necessary, shall be prepared and issued jointly by DOE-EIAB and DTI-BPS to clarify provisions in this Memorandum of Understanding and to specify the activities to carry out its requirements.
5. This Agreement shall take effect upon its execution by the Parties. Any modification or amendment of the terms and conditions of this Agreement shall be mutually agreed upon by the parties and shall be made in writing duly signed by the parties.

IN WITNESS WHEREOF, the parties hereby set their hands this 18th day of January, year Two Thousand One at Fort Bonifacio, Taguig, Metro-Manila.

DEPARTMENT OF ENERGY
BY:

MARIO V. TIAOQUI
Secretary

DEPARTMENT OF TRADE AND INDUSTRY BY:

THOMAS G. AQUINO
Acting Secretary

SIGNED IN THE PRESENCE OF:

ZENAIDA Y. MONSADA
OIC Director, DOE-EIAB

JESUS L. MOTOOMULL
Director, DTI-BPS

EIAB MEMORANDUM CIRCULAR NO. 97-04-003

***TO: ALL OIL COMPANIES
ALL LPG INDEPENDENT MARKETERS AND DEALERS
ALL CONCERNED***

SUBJECT : SUBMISSION OF LPG PRICE LIST

WHEREAS, Republic Act No. 8180, otherwise known as the “Downstream Oil Industry Deregulation Act of 1996”, provides for the deregulation of the downstream oil industry to foster a truly competitive market which can better achieve the social policy objectives of fair prices and adequate, continuous supply of environmentally clean and high-quality petroleum products;

WHEREAS, for the protection of the consuming public, Rule IV, Section 12 (a) of the Implementing Rules and Regulations of RA 8180 requires that prices of petroleum products, including LPG be monitored by the Department of Energy to determine whether said prices are reasonable or not; and

WHEREAS, during the full deregulation, prices of LPG shall be closely monitored by the Energy Industry Administration Bureau (EIAB) of the Department of Energy.

NOW, THEREFORE, effective 1 May 1997, all the oil companies, LPG independent marketers and dealers, and all concerned

shall be required to submit a price list for LPG every 20th day of the month to the Energy Industry Administration Bureau (EIAB) of the Department of Energy.

Failure to comply with this directive shall subject the violator to corresponding administrative sanctions as may be imposed by the Bureau.

Enclosed herewith is the standard format for your guidance.

Your strict compliance is hereby enjoined.

Fort Bonifacio, Taguig, Metro Manila, April 2, 1997.

MARCIA F. GESMUNDO
Acting Director

APPROVED:

FRANCISCO L. VIRAY
Secretary of Energy

DEPARTMENT OF ENERGY – DEPARTMENT OF JUSTICE (DOE-DOJ) TASK FORCE RESOLUTION NO. 98-01

RULES AND REGULATIONS OF THE DOE-DOJ TASK FORCE

Pursuant to paragraph (d) of Section 14 of Republic Act No. 8479, “The Downstream Oil Industry Deregulation Act of 1998”, the Department of Energy-Department of Justice Task Force hereby adopts the following rules and regulations to govern its activities:

SECTION 1. *Definition of Terms.* – Unless the context otherwise provides, the following, as well as the other terms used herein, shall have the meanings attached to them by Republic Act No. 8479 and the rules and regulations issued by the Department of Energy pursuant to said Act –

- (a) “Act” refers to Republic Act 8479;
- (b) “DOE” refers to the Department of Energy;
- (c) “DOJ” refers to the Department of Justice;
- (d) “Task Force” refers to the DOE-DOJ Task Force;
- (e) “Cartelization” refers to any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by product or by areas, or allocate markets, either by product or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;
- (f) “Predatory Pricing” refers to selling or offering to sell any oil product at a price below the seller’s or offeror’s average cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: *Provided, however,* That pricing below average variable cost

in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing; and

- (g) “Report” refers to any written report or complaint concerning any unreasonable rise in prices of petroleum products or of a threatened, imminent or actual cartelization or predatory pricing.

SECTION 2. *Report, Where Filed.* – A report shall be filed with –

“The DOE-DOJ Task Force
Department of Energy
Merritt Road, Fort Bonifacio
Taguig, Metro Manila”

However, the Task Force may, *motu proprio*, consider/investigate any alleged incident of cartelization or predatory pricing whenever public interest will be served thereby.

SECTION 3. *Form and Contents of Report.* – A report shall not be entertained by the Task Force if it is not subscribed and signed by its author. It shall contain a detailed statement of the reason or reasons for alleging an unreasonable rise in the price of a petroleum product or of the elements of the cartelization or predatory pricing, and the identity of the firm or person or persons who appear to be responsible therefor.

SECTION 4. *Action on Report.* – The report, if found sufficient in form and content, shall be forwarded by the Task Force to the Office of the DOE Secretary within ten (10) days from receipt thereof for appropriate action. Otherwise, the report shall be dismissed by the Task Force.

SECTION 5. *DOE Investigation of Report.*

– The Office of the DOE Secretary may investigate the report. The DOE Secretary may, after investigation, either dismiss the report if it finds no merit therein or direct the Task Force to conduct a formal investigation thereof in the manner provided hereunder.

SECTION 6. *Task Force Investigation.* – Upon the recommendation of the DOE Secretary to investigate a report, the Task Force shall issue a subpoena against the respondent. A copy of the investigation report of the DOE Secretary shall be attached to the subpoena. Within ten (10) days from receipt of the subpoena, the respondent may submit counter-affidavits and other supporting documents and shall be allowed to examine all the evidence considered in the findings of the Office of the DOE Secretary.

If the respondent cannot be subpoenaed or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the Task Force shall resolve the matter on the basis of the records and evidence on hand. The Task Force may, however, set a hearing where it may propound clarificatory questions to the parties or their witnesses.

SECTION 7. *Resolution of Task Force.* –

The Task Force shall prepare a written resolution on the results of its investigation of the report within thirty (30) days after the commencement thereof. The Resolution shall state whether or not there has been an unreasonable rise in the price of petroleum product or if substantial evidence exists for the filing of a criminal complaint against the respondent for cartelization or predatory pricing. The Secretaries of DOE and DOJ, and all concerned parties, shall be furnished with copies of the Resolution. The DOE Secretary may make said Resolution public.

SECTION 8. *Motion for Reconsideration.* –

An aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from the date of receipt of the Resolution, furnishing all concerned parties with copies thereof.

Only one motion for reconsideration shall be allowed.

SECTION 9. *Filing of Complaint.* –

In cases where substantial evidence exists for the filing of a criminal complaint for cartelization or predatory pricing, the Task Force shall direct the provincial or city prosecutor having jurisdiction to file the appropriate criminal complaint with the Regional Trial Court of the place where the defendant or any of the defendants reside or has his place of business.

SECTION 10. *Injunctive Action.* –

Pending hearing of the complaint for cartelization or predatory pricing or in case there is an unreasonable rise in the price of a petroleum product, the Task Force may request the prosecutor concerned to ask the proper court to issue a temporary restraining order or an injunction under the same conditions and principles as injunctive relief is granted under the *Rules of Court*.

SECTION 11. *Referral to the Solicitor General or Government Corporate Counsel.* –

If the Task Force finds that the disclosed cartelization or predatory pricing, or the unreasonable rise in the price of a petroleum product will result in loss or damage in the business of a government agency or instrumentality, including government-owned or -controlled corporations, the Task Force shall refer the said matter to the Office of the Solicitor General or to the Office of the Government Corporate Counsel for appropriate action.

SECTION 12. *Effectivity.* –

These Rules shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Done in the City of Manila this 8th day of April 1998.

For the Department of Energy:

BEN HUR C. SALCEDO

Undersecretary

For the Department of Justice:

RAMON J. LIWANAG

Undersecretary

**DEPARTMENT OF ENERGY-DEPARTMENT OF JUSTICE
(DOE-DOJ) TASK FORCE**

RESOLUTION NO. 2008-01

AMENDING RESOLUTION NO. 98-01 OTHERWISE KNOWN AS THE “RULES AND REGULATIONS OF THE DOE-DOJ TASK FORCE”

Pursuant to paragraph (d) of Section 14 of Republic Act No. 8479, the “Downstream Oil Industry Deregulation Act of 1998”, the Department of Energy-Department of Justice Task Force resolves, as it is hereby resolved to adopt the following amendments:

SECTION 1. Section 4 of Resolution No. 98-01 is hereby amended to read as follows:

“SEC. 4. *Action on the Report.* – The report if found sufficient in form and content, shall be forwarded by the Task Force to the panel of State Prosecutors duly designated by the Secretary of Justice. Otherwise, the report shall be dismissed by the Task Force.”

SECTION 2. Section 5 of Resolution No. 98-01 is hereby deleted.

SECTION 3. Section 6 of the Resolution is renumbered to Section 5 and is hereby amended to read as follows:

“SEC. 5. *Task Force Investigation.*
– In the process of conducting a preliminary investigation of the report, the Task Force, through the State Prosecutor, shall issue a subpoena against the respondent. Within ten (10) days from receipt of subpoena, the respondent may submit counter affidavits and other supporting documents and shall be allowed to examine all the evidence considered in the findings of the Task Force.

“If the Respondent cannot be subpoenaed or if subpoenaed, does not submit counter-affidavits within ten (10) days period, the Task Force shall resolve the matter on the basis of the records and evidence on hand. The Task Force may, however, set a hearing where it may propound clarificatory questions to the parties or their witnesses.

“The following parameters (the ‘Parameters’) shall guide the Task Force in determining whether or not there has been an “unreasonable rise” in the price or prices of petroleum products:

“1. **MOVEMENTS IN WORLD OIL PRICES.** – When an increase in price is inconsistent with the increase or increases in the price of:

“(a) Crude Oil as registered in the Singapore market within a particular period as determined by the DOE as regards refiners of crude oil; or

“(b) Petroleum Products as registered in the Singapore market within a particular period as determined by the DOE as regards importers of petroleum products;

“2. **FOREIGN EXCHANGE FLUCTUATIONS.** – When an increase in price is inconsistent with foreign currency adjustments resulting

from fluctuations or changes in the Philippine Peso-US Dollar rates;

“3. VIOLATION OF REPORTORIAL REQUIREMENTS. – When an oil company fails to report an increase in price pursuant to the pertinent department circular or rules/regulations issued by the DOE Secretary pursuant to the Act; and

“4. TIMING AND FREQUENCY. – When an increase in price occurs during a period of and inconsistent with a prevailing industry advisory issued in accordance with Rule V Section 19-A of the Implementing Rules and Regulations of R.A. 8479.

“In determining whether or not an increase in price is ‘unreasonable’, the Task Force shall give due consideration to the interaction of all local and international factors affecting the price of petroleum products. The Task Force may consider such other factors not included in the parameters set forth in this Section as may be relevant under the circumstances.”

SECTION 4. Section 7 of the Resolution is renumbered into Section 6 and hereby amended to read as follows:

“SEC. 6. *Resolution of Task Force.* – The Task Force shall prepare a written Resolution on the results of investigation of the report within thirty (30) days after the commencement thereof. The Resolution shall state whether or not there has been an unreasonable rise in the price of a petroleum product or if evidence warrants/probable cause exists for the filing of a criminal complaint against the respondent for

cartelization or predatory pricing. The Secretaries of DOE and DOJ, and all concerned parties, shall be furnished with copies of the Resolution. The DOE Secretary may make said Resolution public.”

SECTION 5. Section 9 of the Resolution is renumbered into Section 8 and is hereby amended to read as follows:

“SEC. 8. *Filing of Complaint.* – If the evidence warrants/probable cause exists for the filing of a complaint for cartelization, predatory pricing or unreasonable rise in the price of petroleum product as determined by the State Prosecutor, the Task Force shall approve the resolution and, thereafter refer the same to the Provincial or City Prosecutor having jurisdiction of the case for the filing of the appropriate criminal complaint with the Regional Trial Court of the place where the defendant or any of the defendants reside or has his place of business.”

SECTION 6. *Effectivity.* – These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done in the City of Manila this 14th day of July 2008.

For the Department of Energy:

ROY V. KYAMKO
Undersecretary

For the Department of Justice:

JOSE VICENTE B. SALAZAR
Undersecretary

DEPARTMENT CIRCULAR NO. 98-02-003

AMENDING DEPARTMENT CIRCULAR NO. 95-10-008, DIRECTING ALL OPERATORS OF OIL RIGS OR PLATFORMS, POWER PLANTS, OIL TANKERS AND BARGES CARRYING, PRODUCING AND/OR UTILIZING CRUDE OIL-BASED PRODUCTS TO REPORT ALL OIL SPILLS OR ENVIRONMENTAL INCIDENTS TO THE DEPARTMENT OF ENERGY

SECTION 1. The title is hereby amended to read as follows:

DIRECTING ALL OWNERS, AGENTS, LESSEES, OPERATORS OR REPRESENTATIVES OF PETROLEUM REFINERIES, TERMINALS AND DEPOTS, OIL RIGS OR PLATFORMS, POWER PLANTS, OIL TANKERS AND BARGES HAULING, CARRYING, PRODUCING AND/OR UTILIZING CRUDE OIL-BASED PRODUCTS TO REPORT ALL OIL SPILL INCIDENTS TO THE DEPARTMENT OF ENERGY

SECTION 2. Section 1 is hereby amended to read as follows:

The owner, agent, lessee, operator or representative of any tanker, barge, ship or facility used in relation to the petroleum and/or energy industries, petroleum refineries, terminals and depots, oil rigs or platforms and power plants, oil tankers and barges hauling, carrying, producing and/or utilizing crude oil and/or other oil-based products shall submit a verbal report within eight (8) hours, and a written report within forty eight (48) hours, to the DOE Secretary through the Environmental Protection and Monitoring Division (EPMD) during office hours (Telefax No. 844-72-14) otherwise, to the DOE Security Guard (Telephone No. 844-10-21 to 31 loc 278/210) so far as practicable, on any incident, whether accidental or intentional, of spill, leak, discharge, disposal of oil and/or oil-based products or hydrocarbon contaminated wastewaters and. similar occurrences through the most practicable and fastest means of communication possible.

Any third party may file a formal complaint of any such incident of oil spill with the DOE-EPMD. The DOE-EPMD shall require that such complaint shall be verified under oath and accompanied by evidences and documents, if any, showing such incident of oil spill prior to its conduct of investigation of the incident disposal of oil and/or oil-based products or hydrocarbon contaminated wastewaters and similar occurrences through the most practicable and fastest means of communication possible.

SECTION 3. Section 4 is hereby amended to read as follows:

The DOE-EPMD with other concerned DOE units will conduct a thorough, technical and impartial investigation of the direct and indirect causes of the incident. The EPMD shall submit a report of its investigation and recommendations to the DOE Secretary and the concerned party within fifteen (15) days after the conclusion of said investigation. The EPMD shall conduct a compliance monitoring thirty (30) days after the receipt by the concerned party of its report to ascertain that its recommendations contained in its report have been complied with by the concerned party.

SECTION 4. Section 5 is hereby amended to read as follows:

Failure of the concerned party to submit the required verbal report to the DOE within eight (8) hours after the incident of spill, leak, discharge, disposal of oil and/or oil based products or hydrocarbon contaminated

wastewaters or any other violation of this Department Circular shall subject said party to an administrative fine of P 20,000.00 to be paid to DOE. If no written report is submitted within forty eight (48) hours after the occurrence of said incident the party shall be liable to pay an administrative fine of P 50,000.00 to the DOE.

SECTION 5. Section 6 is amended to read as follows:

In case of the failure of the concerned party to file the required verbal or written report, or to comply with the recommendations submitted by EPMD, or to pay the administrative fine, the DOE shall have the right to coordinate with other concerned government agencies for the possible suspension or cancellation of any

service contract, permit, license, authority or other privileges previously granted by the DOE or such other concerned government agencies to such concerned party.

SECTION 6. A new Section 7 is hereby provided, to read as follows:

This circular shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

FRANCISCO L. VIRAY
Secretary

Fort Bonifacio, Taguig
Metro Manila
February 23, 1998

DEPARTMENT CIRCULAR NO. 98-03-004

**RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT 8479,
“Downstream Oil Industry Deregulation Act of 1998”**

Pursuant to Chapter VII, Section 23 of Republic Act 8479, “*Downstream Oil Industry Deregulation Act of 1998*,” the Department of Energy, in coordination with the Energy Regulatory Board, Department of Environment and Natural Resources, Department of Foreign Affairs, Department of Labor and Employment, Department of Health, Department of Finance, Department of Trade and Industry, National Economic and Development Authority and Technology and Livelihood Resource Center, hereby issues, adopts and promulgates the following rules and regulations to implement the Act.

RULE I
GENERAL PROVISIONS

SECTION 1. Title

These rules shall be known and cited as the

“Implementing Rules and Regulations (IRR) of the Downstream Oil Industry Deregulation Act of 1998.”

SECTION 2. Coverage

These rules shall apply to all persons or entities engaged in any, a combination of, or all activities or business of the downstream oil industry, such as importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and/or selling, crude oil, gasoline’s, diesel, fuel oils, aviation fuels, liquefied petroleum gas (LPG), kerosene, and other petroleum products as herein defined, as well as persons or companies directly importing refined petroleum products for their own use or requirement. This shall likewise include the activities or business of blending, recycling, and/or re-processing of petroleum products.

SECTION 3. *Definition of Terms*

The terms used in this IRR shall have the following respective meanings:

- a. *Act* refers to Republic Act 8479;
- b. *Average Variable Cost* refers to the sum of all variable costs divided by the number of units of outputs;
- c. *Basel Convention* refers to the international accord which governs the trade or movement of hazardous and toxic waste across borders;
- d. *Board* refers to the Energy Regulatory Board;
- e. *BOI* refers to the Board of Investments;
- f. *BPS* refers to the Bureau of Product Standards of the DTI;
- g. *Bulk Supplier* refers to a person or entity engaged in the sale of petroleum products in bulk;
- h. *Bureau* refers to the Energy Industry Administration Bureau of the DOE;
- i. *Cartelization* refers to any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;
- j. *Crude Oil* refers to the oil in its natural state before the same has been refined or otherwise treated, but excluding water, bottoms, sediments and foreign substances;
- k. *Dealer* refers to any person, whether natural or juridical, engaged in the marketing and direct selling of petroleum products to motorists, end users, and other consumers;
- l. *DENR* refers to the Department of Environment and Natural Resources;
- m. *DFA* refers to the Department of Foreign Affairs;
- n. *DOE* refers to the Department of Energy;
- o. *DOF* refers to the Department of Finance;
- p. *DOH* refers to the Department of Health;
- q. *DOJ* refers to the Department of Justice;
- r. *DOLE* refers to the Department of Labor and Employment;
- s. *DTI* refers to the Department of Trade and Industry;
- t. *Downstream Oil Industry or Industry* refers to the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and/or selling, crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum products;
- u. *EMB* refers to the Environmental Management Bureau of the DENR;
- v. *Hauler* refers to any person, whether natural or juridical, engaged in the transport, distribution, hauling, and carriage of petroleum products, whether in bulk or packed form, from the oil companies and independent marketers to the petroleum dealers and other consumers;
- w. Unless the context otherwise indicates, *Importer* refers to any person,

whether natural or juridical, engaged in the importation of crude oil and/or petroleum products, whether for processing, marketing or own use;

x. *IRR* refers to these rules and regulations implementing the Act;

y. *Liquefied Petroleum Gas or LPG* means commercial propane gas or commercial butane gas or a mixture of the two gases, with properties conforming to the specifications set by the BPS;

z. *LPG cylinder* refers to any portable pressure-vessel or container for LPG, conforming to the specifications set by the BPS;

aa. *LPG Distributor* refers to any person, whether natural or juridical, engaged in exporting, refilling, transporting, marketing, and/or selling of LPG to end users and other consumers;

bb. *LPG Retail Outlet* refers to any person, whether natural or juridical, engaged in direct selling of LPG to consumers and whose supply comes from dealers;

cc. *Marketer* refers to any person, whether natural or juridical, engaged in the sale of petroleum products, whether in bulk or retail;

dd. *NEDA* refers to the National Economic and Development Authority;

ee. *New Industry Participants* refers to new participants in a particular subsector of the downstream oil industry with investments and initial business operations commencing after January 1, 1994;

ff. *OPSF* refers to the Oil Price Stabilization Fund established under Presidential Decree No. 1956, as amended;

gg. *Person* refers to any person, whether natural or juridical, who is engaged in any activity of the downstream oil industry;

hh. *Petroleum* refers to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances; with the exception of coal, peat, bituminous shale, and/or other stratified mineral fuel deposits;

ii. *Petroleum Products* refers to products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvent, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products;

jj. *PNS* refers to the Philippine National Standards;

kk. *Predatory Pricing* refers to selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition,

eliminating a competitor or discouraging a potential competitor from entering the market: *Provided, however,* That pricing below average variable cost in order to match lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing.

ll. *Qualified LPG Serviceman* refers to an individual who has been trained, qualified and certified by the Philippine Liquefied Petroleum Gas Association (PLPGA) or to an individual who has successfully completed an approved training course for LPG servicemen in a training school duly recognized and accredited by the Philippine government;

mm. *Refilling Plant* refers to any installation that has LPG bulk storage and filling/refilling facilities for bottling LPG;

nn. *Refiller* refers to an LPG marketer who buys LPG in bulk from bulk suppliers, refills LPG into cylinders under his own brand name or that of other LPG marketers, and sells the same to his dealers, whether in bulk or retail to his customers;

oo. *Refiner* refers to any person that locally refines through distillation, conversion and treatment of crude oil and other naturally occurring petroleum hydrocarbons; and pp. *Variable Cost* refers to costs such as utilities or raw materials, which vary as the output increases or decreases.

RULE II

LIBERALIZATION OF DOWNSTREAM OIL INDUSTRY AND TARIFF TREATMENT

SECTION 4. Liberalization of Downstream Oil Industry

Any person may import or purchase any quantity of crude oil and petroleum products from foreign or domestic source, lease or own and operate refineries and other downstream oil facilities and market such crude oil and petroleum products either in a generic name or his or its own trade name, or use the same for his or its own requirement: *Provided, That,* such person shall comply with the notice, reportorial, quality, health, safety and environmental requirements as set forth in this IRR.

SECTION 5. Notice Prior to Engagement in any Activity or Business in the Downstream Oil Industry

Any person who intends to engage in the business of importing, exporting, re-exporting, refining, processing, manufacturing, blending, recycling, and/or reprocessing, shipping, transporting, transshipping, storing, distributing, and marketing and/or selling of crude oil, gasoline, diesel, LPG, kerosene, and other petroleum products, and in any similar activities, shall file a notice with the Bureau prior to initial engagement in the proposed activity or prior to construction of the petroleum products facilities, as the case may be. All notices shall be in writing, addressed to the Bureau, and shall contain the following information, as may be applicable:

- a. Business name, address, telephone/fax number;
- b. Project or business plan indicating the scope of operation/activity;
- c. List of facilities and proof of the availability of such facilities to support the proposed business;
- d. Business permits such as Mayor's permit, Securities and Exchange Commission (SEC)/DTI registration;
- e. Building permit;
- f. Locational/ zoning clearance; and

- g. Other local government permits/clearances.

Any person already legally engaged in any activity in the downstream oil industry upon the effectivity of this IRR is deemed to have complied with this notice requirement.

SECTION 6. *Notice Prior to Every Importation*

For effective monitoring, and to ensure conformance to the Basel Convention, any person who shall import crude oil and/or petroleum products from foreign countries, freeports and economic zones, whether for trade or for his own use or requirement, shall file a notice with the Bureau prior to actual loading of every importation, indicating details and/or accompanying documents related to the importation, as follows:

- a. type and quantity of cargo;
- b. the estimated date of loading and arrival;
- c. supplier of cargo;
- d. FOB price, freight and insurance cost;
- e. vessel particulars;
- f. port of loading and discharge;
- g. guaranteed specification of the product; and
- h. proforma invoice

In the case of importations of slop/used/waste oils, sludges and similar petroleum products/by-products, such notice shall be accompanied by a clearance from the EMB/DENR pursuant to RA 6969, otherwise known as “*Toxic Substances, Hazardous and Nuclear Wastes Control Act of 1990*,” in accordance with the Basel Convention.

SECTION 7. *Reportorial Requirements*

Any person who is engaged or intends to engage in any activity or business in the downstream oil industry shall submit the

following reportorial requirements to the Bureau:

a. *Prior to Operation in Proposed Business or Activity*

Any person intending to engage in any business/activity in the downstream oil industry shall submit authenticated copies of the following documents and permits to the Bureau prior to operation:

- (1) Fire Safety Inspection Certificate of the facilities;
- (2) Permits on the suitability of facilities for the proposed operation (Certificate of conformance of facilities to national or accepted international standards on health, safety and environment);
- (3) Product Liability Insurance Certificate or Product Certificate of Quality; and
- (4) Environmental Compliance Certificate issued by EMB, whenever applicable.

For LPG dealers and retail outlets, an authenticated copy of the Fire Safety Inspection Certificate will suffice.

b. *Importations*

To ensure proper representation of the importation and to ascertain the quality of imported crude oil, petroleum products and petroleum-based products, the importer shall submit to the Bureau the following information/documents:

- (1) ***Not later than one (1) working day prior to loading of every importation:*** details of importation as enumerated in Section 6 of this Rule.
- (2) ***Not later than twenty (20) working days after unloading of every***

importation:

- i) Bill of lading;
- ii) Commercial Invoice;
- iii) Final Import Entry Declaration; and
- iv) Certificate of Quality issued by the supplier for the actual shipment including the Delivery Receipt or Receiving Report.

c. *Exportations*

Any person or entity who shall engage in exportation of crude oil and petroleum products shall submit the following to the Bureau, ***not later than ten (10) working days after the departure of shipment:***

- (1) Details of Exportation;
 - i) Name and address of exporter and consignee;
 - ii) Type and quantity of cargo;
 - iii) Loading and discharge ports and dates; and
 - iv) Cost and vessel particulars.
- (2) Certificate of Quality;
- (3) Export Manifest and Release Certificate; and
- (4) Bill of Lading.

d. *Bunkering From Freeports and Special Economic Zones*

Any person or entity who shall engage in bunkering of international vessels in Philippine waters, bunkering of aircraft for domestic service and liftings from Custom Bonded Warehouses located outside the source freeports/special economic zones, but which shall be eventually used for international bunkering shall report the following to the Bureau, ***not later than ten (10) working days after bunkering:***

- (1) Details of bunkering such as name and registry of vessel, type, quantity and price of product, place of bunkering, destination of vessel, transporter (product carrying vessel), loading and bunkering date;
- (2) Proforma Invoice;
- (3) Bunkering permit from Bureau of Customs (BOC) for specific vessels; and
- (4) Certificate of Quality.

e. *Chartering of Foreign Vessel*

Any person who shall use, charter or utilize a foreign-owned petroleum product tanker/vessel from an international source for domestic use in the Philippines, subject to existing and pertinent cabotage and maritime laws as approved by the Maritime Industry Authority (MARINA), shall report the following to the Bureau ***not later than ten (10) working days after the actual date of commissioning/utilization of the tanker/vessel:*** name and capacity of vessel, number of compartments, cargo segregation, draft and year built.

f. *Monitoring Reports*

All refiners, importers, and marketers shall submit to the Bureau monthly reports of their actual and projected importations, exportations, local purchases, actual and projected sales (local, international and exports), and/or consumption, and inventory on a per crude and/or product basis, in the format to be prescribed for this purpose. Submissions are ***due on the fifteenth (15th) day of the month.***

For those engaged in the petroleum products business as bulk supplier, they shall submit the following data to the Bureau on or before January 15 of each year:

- (1) List of the names and addresses of their dealers/buyers;
- (2) Annual volume of petroleum products supplied to each dealer/buyer; and
- (3) Lists of names and business addresses of authorized petroleum product haulers.

Failure to comply with the notice requirement shall constitute violation of Sec. 5 in relation to Section 12 of the Act.

SECTION 8. *Tariff*

Pursuant to Section 6(a) of the Act, a single and uniform tariff duty shall be imposed and collected both on imported crude oil and imported refined petroleum products at the rate of three percent (3%): *Provided, however,* That the President of the Philippines may, in the exercise of his powers, reduce such tariff rate when on his judgment such reduction is warranted, pursuant to Republic Act No. 1937, as amended, otherwise known as the “Tariff and Customs Code”: *Provided, further,* That beginning on January 1, 2004 or upon implementation of the Uniform Tariff Program under the World Trade Organization and ASEAN Free Trade Area commitments, the tariff rate shall be automatically adjusted to the appropriate level notwithstanding the provisions under the aforementioned Section.

NPC Exemption

Pursuant to Section 6(b) of the Act, for as long as the National Power Corporation (NPC) enjoys exemptions from taxes and duties on petroleum products used for power generation, the exemption shall apply to purchases through the local refineries and to the importation of fuel oil and diesel.

RULE III

FAIR TRADE PRACTICES AND PROMOTION OF FREE COMPETITION

SECTION 9. *Promotion of Fair Trade Practices*

The DTI and DOE shall take all measures to promote fair trade and prevent cartelization, monopolies, combinations in restraint of trade and any unfair competition in the Industry as defined in Article 186 of the Revised Penal Code, and Articles 168 and 169 of Republic Act No. 8293, otherwise known as the “Intellectual Property Rights Law.”

Joint Industry Activities

To serve the public interest, achieve efficiency and cost reduction, ensure continuous supply of petroleum products, and enhance environmental protection, the DOE shall continue to encourage joint industry activities, which may include borrow-and-loan agreements, rationalized depot and manufacturing operations, hospitality agreements, joint tanker and pipeline utilization, and joint actions on oil spill control and fire prevention. Participants to this joint industry activity, either as a group or individual, shall inform the DOE, through the Bureau of occurrence and details of such activities.

SECTION 10. *Monitoring and Arbitration by the DOE*

a. Monitoring

To help ensure the observance of fair and equitable practices and to ensure the enforcement of existing contracts, the DOE shall monitor the relationship between the oil companies (refiners and importers) and their dealers, haulers and LPG distributors.

For purposes of such monitoring, the oil companies shall provide the DOE, through the Bureau, with copies of all existing contracts between them and their dealers, haulers, and LPG distributors.

b. Arbitration and Conciliation

1. Disputes subject to arbitration

The DOE shall conciliate and arbitrate any dispute that may arise with respect to the contractual relationship, existing therein, involving the dealer's mark-up, the freight rate in transporting petroleum products and the margins of LPG distributors,

2. Arbitrator

The DOE Secretary shall be the arbitrator for any dispute that may arise under Section 7 of the Act. Provided, that the DOE Secretary may designate or appoint an official in the DOE to act as arbitrator on his behalf, which official shall not be lower than a Director. Provided further, that any award resulting from such arbitration shall be signed by the Secretary.

3. Guidelines and Procedures

- a. Upon the filing of the complaint, the arbitrator shall forthwith notify the adverse party/parties in writing of the issues raised in the said complaint and shall require him/them within ten (10) days from receipt thereof to submit position paper with respect to arbitrable issues and the possible evidences that the parties may present to support his/their respective position.
- b. The arbitrator shall set a time and place for the hearing of the dispute submitted to him and must cause notice thereof to be given to each of the parties.
- c. *The hearing may proceed in the absence of any party who, after due notice, fails to be present*

at such hearing or fails to file a motion for the postponement or continuance thereof.

- d. *The arbitrator shall not make an award based solely on the default of a party but shall require the other party to submit such evidence as he may require for making an award.*
- e. *Each of the party to the dispute may be represented by counsel.*
- f. *The Arbitrator shall arrange for the taking of stenographic record of the proceedings.*
- g. The Arbitrator shall have the power to administer the oaths to all witnesses in the hearing. This oath shall be required of every witness before his testimony is heard.
- h. The Arbitrator may subpoena any person to attend the hearing as a witness or to produce documents whenever he may deem necessary.
- i. In the absence of any agreement, the normal order of arbitration is as follows:

1. *Opening statements of the parties.*

The Arbitrator may, at the commencement of the hearing, ask both parties for brief statements of the issues in controversy and/or agreed statements of facts. He shall have wide latitude of discretion in determining the order of presentation.

2. *Stipulation of Facts*

The arbitrator, when warranted, attempt to draw the parties to stipulate facts, which are no longer disputable, leaving

the presentation and examination of evidence only to such facts that are still in dispute.

3. *Presentation of Evidence*

The parties may offer such evidence as they desire, and shall produce such additional evidence as the arbitrator shall require or deem necessary to a better understanding and determination of the dispute.

4. *Formal Offer of Evidence*

The formal offer of evidence may be dispensed with unless otherwise agreed upon by the parties.

5. *Appreciation of Evidence*

The Arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered or produced and shall not be bound to conform to the Rules of Court pertaining to evidences. He shall receive as exhibits in evidence any document, which the parties may wish to submit, and the exhibits shall be properly identified and marked at the time of submission.

6. *Submission of Memoranda*

The Arbitrator may require the parties to submit their respective memoranda. A definite time limit for the filing shall be fixed by the arbitrator at the close of the hearing.

7. *Time for rendering award.*

The written award of the Arbitrator shall be rendered within thirty (30) days after the closing the hearings, or if the oral hearing shall have been waived, within thirty (30) days after the Arbitrator shall have declared such proceedings as closed.

In the event that the parties to an arbitration have, during the course of such arbitration, settled their dispute, they may request of the Arbitrator that such settlement be embodied in an award which shall be signed by him.

8. *Form of Award*

The award must be made in writing and signed by the DOE Secretary

9. *Proceeding in lieu of hearing*

The parties may, by written agreement, submit their dispute to arbitration by a mode other than oral hearing. The parties may submit an agreed statement of facts. They may also submit their respective contentions to the Arbitrator in writing; which shall include a statement of facts, together with all documentary proof. Parties may also submit a written argument. Each party shall provide all other parties to the dispute with a copy of all statements and documents submitted to the arbitrators.

Each party shall have an opportunity to reply in writing to any other party's statements and proofs; but if such party fails to do so within seven (7) days after receipt of such statements and proofs, he shall be deemed to have waived his right to reply. Upon the delivery to the arbitrators of all statements and documents, together with any reply statements, the arbitrators shall declare the proceedings in lieu of hearing closed.

10. *Reconsideration*

Any motion for reconsideration of any award by the arbitrator shall be filed within fifteen (15) days from receipt of the award by the adverse party.

11. *Judicial Review*

Any appeal that may be taken from an award and the proceeding thereon shall be instituted by certiorari and the proceeding thereof shall be governed by the rules of court as these are applicable.

SECTION 11. *Program to Encourage the Entry of new Participants in the Industry*

Pursuant to Section 8 of the Act, the DOE, the DFA and the DTI shall jointly formulate and establish a program that will promote the entry of new participants in the Industry. This program shall commence after three (3) months from the effectivity of the Act.

a. International Information Campaign

Among others, the program shall include a strategic international information campaign to be implemented through selected embassies and consular offices of the Philippines.

b. *“Philippine Downstream Oil Industry Investment Guide”*

The DOE shall provide an investment guide to new Industry participants and prospective participants, which shall contain, among others, the following:

1. An introduction to the Philippine Downstream Oil Industry and the government’s unwavering commitment to deregulation;
2. The entry requirements;
3. Information on the benefits and incentives for new industry participants which shall specify:
 - (i) all the incentives and benefits they can enjoy, and (ii) the procedural and substantive requirements needed for entitlement; and
4. Such other information the DOE may

deem necessary to promote the entry of new participants.

SECTION 12. *Incentives for New Investments*

The same incentives granted to BOI-registered enterprises engaged in a preferred area of Investments, pursuant to Executive Order No. 226 (Omnibus Investment Code of 1987), shall be extended, as applicable, to persons with new investments as determined by the DOE and registered with the BOI in refining, storage, marketing and distribution of petroleum products. Such incentives shall include the following:

- a. Income tax holiday;
- b. Additional deduction for labor expenses;
- c. Minimum tax and duty of three percent (3%) and value-added tax (VAT) on imported capital equipment;
- d. Tax credit on domestic capital equipment;
- e. Exemption from contractor’s tax;
- f. Unrestricted use of consigned equipment;
- g. Exemption from the real property tax on production equipment or machineries;
- h. Exemption from taxes and duties on imported spare parts; and
- i. Such other applicable incentives under Article 39 of Executive Order No.226.

SECTION 13. *Availment of Incentives*

The incentives cited under Section 12 hereof may be availed of by persons with new investments for a period of five (5) years from registration with the BOI: *Provided, however,* That in the storage, marketing (including the establishment of gasoline stations) and distribution of petroleum products, only the investments of new industry participants

shall be entitled to incentives provided in the Omnibus Investment Code of 1987.

For this purpose, the industry shall be included in the Annual Investment Priorities Plan (IPP): *Provided*, That nothing herein contained shall preclude qualified persons or entities as provided under the Code from applying for or continue enjoying incentives and benefits under the said Code.

SECTION 14. Promotion of Retail Competition

To achieve the social policy objective of fair prices, and facilitate the attainment of a truly competitive petroleum product market in the retail level, the DOE shall promote and encourage by way of information dissemination, networking and management/skills training, the active and direct participation of the private sector and cooperatives in the retailing of petroleum products through joint venture/supply agreements with new industry participants for the establishment and operation of gasoline stations; *Provided*, That, the training herein shall include LPG retailing.

a. Management and Skills Training

The DOE shall, in cooperation with the Technology and Livelihood Resource Center (TLRC) and Technical Education and Skills Development Authority (TESDA), coordinate with new industry participants and existing petroleum dealer’s associations in the formulation of a two-fold program on management and skills training for the management, establishment and operation of gasoline stations and LPG retail outlets.

b. Government Assistance

Persons who successfully completed the two-fold program shall be entitled to government assistance being extended by government lending agencies, in the form of medium-to long-term loans with low interest rates and to the training and loan fund.

c. Training and Loan Fund

This shall serve as capital for the establishment and operation of gasoline stations and shall be administered by the DOE under a separate account.

An initial amount of Three hundred million pesos (P300, 000,000.00) shall be provided by the Philippine Amusement and Gaming Corporation (PAGCOR). Of this amount, two percent (2%) plus any additional funding shall be allocated for the two-fold program; one percent (1%) plus any additional funding shall be set aside for administrative, maintenance, and other operating expenses; ninety-four percent (94%) shall be used exclusively for lending and financial assistance; and the remaining three percent (3%) shall be utilized in accordance with the provision of Section 26 of the Act. *Provided*, that the loans to be awarded herein shall be from short-to-medium-term with low interest rates.

RULE IV

**ANTI-TRUST SAFEGUARDS,
OTHER PROHIBITED**

ACTS AND REMEDIES

SECTION 15. Anti-Trust Safeguards

To ensure fair competition and prevent cartels and monopolies in the Industry, the following acts are hereby prohibited:

- a. Cartelization, which means any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;
- b. Predatory Pricing which means selling or offering to sell any oil product at a price below the seller’s or offeror’s average variable cost for the purpose of destroying

competition, eliminating a competitor or discouraging a potential competitor from entering the market: Provided however, that pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this prohibition, “variable cost” as distinguished from “fixed cost” refers to costs such as utilities or raw materials, which vary as the output increases or decreases and “average variable cost” refers to the sum of all variables cost divided by the number of units and outputs.

Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts, shall suffer the penalty of three (3) to seven (7) years imprisonment, and a fine ranging from One million pesos (P1, 000,000.00) to two million pesos (P2,000,000.00).

SECTION 16. *Other Prohibited Acts*

To ensure compliance with the provisions of the Act, the refusal to comply with any of the following shall likewise be prohibited:

- (a) Submission of any reportorial requirements;
- (b) Use of clean and safe (environment and worker-benign) technologies;
- (c) Any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of the Act; and
- (d) Registration of any fuel additive with the DOE prior to its use as an Additive.

Any person, including but not limited to the chief operating officer, chief executive officer

of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and fine ranging from Two hundred fifty thousand pesos (250,000.00) to Five hundred thousand pesos (500,000.00).

SECTION 17. *Remedies*

The DOE-DOJ Task Force, created under Section 14 (d) of the Act, shall take the following remedial measures:

- a. Investigate and act upon complaints or reports from any person of an unreasonable rise in the prices of petroleum products and may, motu proprio, investigate and/or file the necessary complaint with the proper court or agency;
- b. Investigate and act upon complaints or reports of commission of the prohibited acts under Section 11 of the Act, and after determination of such violation endorse the same to the provincial or city prosecutor having jurisdiction for institution of the appropriate action;
- c. Prepare and submit a report to the Secretary of Energy and Secretary of Justice embodying its findings and recommendations as a result of its investigation of the alleged violation of Section 11 of the Act;
- d. Investigate and act upon a complaint by any instrumentality or agency of the Government, including government-owned or –controlled corporations, that loss or damage has been suffered or incurred by such instrumentality, agency or government corporation by reason of violation of Section 11 of the Act; and
- e. Perform such other functions as may jointly be assigned by the Secretary of Energy and the Secretary of Justice.

RULE V
POWERS AND FUNCTIONS
OF THE DOE AND DOE SECRETARY

SECTION 18. *Monitoring*

The DOE shall monitor the following pursuant to Section 14 of the Act. Any misrepresentation, mislabeling, concealment or fraud, shall be subject to penalties under existing applicable laws.

a. *Prices*

The DOE shall monitor and publish international oil prices as well as follow the movement of domestic oil prices.

1. *Price Display Boards*

For the convenience of the public, all retailers of petroleum products shall display the prices of each type of petroleum product sold in gasoline stations in prominently installed price display boards with backgrounds preferably conforming to the color coding scheme for the product, such as: green for Unleaded Premium Gasoline, red for Premium Low Lead Gasoline, orange for Regular Gasoline, yellow for Diesel Fuel, and white for Kerosene. In the case of LPG (which has no product color), the price display board may be light blue in color. The numeric entries in these boards shall be at least six (6) inches in height.

The price display boards shall be properly installed and labeled not later than June 30, 1998. Failure to comply with this requirement shall be penalized pursuant to Section 24 of the Act.

2. *Unreasonable Rise in Prices*

Any report from any person of an unreasonable rise in the prices

of petroleum products shall be immediately acted upon by the DOE-DOJ Task Force in accordance with Section 17 of this IRR. The said Task Force shall determine within thirty (30) days the merits of the report and shall initiate the necessary actions warranted under the circumstances.

b. *Product Quality and Quantity*

The Bureau shall monitor the quality of petroleum products, including adulteration and other forms of product misrepresentation or mislabeling, and stop the operation of businesses involved in the sale of petroleum products which do not comply with the national standards of quality, which the BPS, together with the DENR, the DOE, the DOST, representatives of the fuel and automotive industries and the consumers, shall set pursuant to Section 14 of the Act. Misrepresentation of the quantity of petroleum products such as underdelivery, shortselling, underfilling of LPG, dispensed at the outlets, as well as inaccurate tare weight markings on the LPG cylinders, shall be subject to penalties under existing applicable laws.

1. *Color Coding/Use of Marker Dyes*

Products sold on retail shall conform to the color-coding scheme prescribed under Section 18 (b) hereof. The required marker dyes for certain petroleum products shall likewise be enforced to all refiners and marketers directly importing these products.

2. *Sampling and Testing of Product*

To ascertain and ensure conformance to national standards of quality, the Bureau may conduct spot and periodic sampling and testing of petroleum products at various

points of the business. Likewise, quality control certificates shall be made available for monitoring purposes. All fees and charges to be encountered during the testing of petroleum product samples shall be borne by the refiners/importers/bulk marketers except in cases of product complaints from the public against such entities, whereby the corresponding testing fee for the product shall be borne by the Bureau.

3. *Calibration*

Periodic calibration of dispensing pumps, tank trucks, storage tanks, weighing scales and calibration buckets shall be done in accordance with existing government standards, the records of which shall be made available upon the Bureau's inspection and validation. Likewise, the required weighing scale shall be installed and rendered usable at all times.

c. *Refining, Manufacturing and Marketing Processes*

The Bureau shall monitor the local refining and manufacturing processes and the process of marketing local and imported petroleum products to ensure that clean and safe (environment and worker-benign) technologies are applied.

1. *Conformance to Standards and Facilities*

The refiners and marketers shall operate using processes and facilities conforming to national standards and/or internationally accepted standards for the oil industry. The following information/documents shall be submitted upon actual start of operation, and to be updated annually:

- (i) Refining, Processing, including Recycling and Blending
 - (a) Exact location of the refinery/plant;
 - (b) Plot plan (location of various equipment and facilities for the refinery/plant);
 - (c) Process configuration and description;
 - (d) Material balance and product yield;
 - (e) Maximum design and actual capacities for crude and product storage, oil movements facilities (docking, berthing, and loading), as well as process units capacities.
- (ii) Storing (transshipment)
 - (a) Exact location of the storage site;
 - (b) Plot plan (location of various facilities for the storage);
 - (c) Maximum design and actual capacities of crude and product storage oil movements' facilities (docking, berthing, and loading).
- (iii) Distribution/Operation of Petroleum Carriers (Pipeline, Tankers, Barges, Tanktrucks)
 - (a) For tankers and barges: details and particulars of the vessel
 - (b) For pipelines: location and description; product service; and capacity/pumping rate
 - (c) For tank trucks: number of units and corresponding capacities; and Calibration Certificate
- (iv) Gasoline Stations

- (a) List of dispensing pumps and underground tanks with the corresponding capacities and products stored; and
- (b) Lay-out plan and latest photograph of the outlet

(v) LPG Refilling Plant

- (a) List of approved-type filling equipment
- (b) Plant data on storage and other fixed facilities
- (c) Technical data on plant capacity
- (d) List of Qualified LPG servicemen and duly licensed personnel; and
- (e) Lay-out plan and latest photograph of the plant

(vi) Bunkering From Freeports and Special Economic Zones -

Copy of the delivery receipt signed by both the transporter and end-user vessels' official/master/chief mate, and representatives of the BOC and Philippine Ports Authority

2. *Inspection and Audit of Facilities*

The Bureau shall conduct periodic inspection and audit at various points of the business, such as but not limited to refineries, manufacturing and storage plants, handling, marketing, and distribution facilities, as well as terminals, tankers, barges, pipeline, and tank trucks, or in coordination with the appropriate government agencies. Such facilities shall conform to the government standards, or in its absence, internationally accepted standards for the downstream oil industry.

3. *Safety*

To ensure safety of end-users and the buying public in general, all persons and engaged in the downstream oil industry shall comply with the following:

- (i) All persons and entities engaged in the downstream oil industry, including selling of gasolines and any petroleum and petroleum-based products, shall use only facilities, and equipment that comply with the specification, design, fabrication, inspection, marking and requalification provision of the safety codes set and observed in the industry.
- (ii) All other matters affecting the safe and proper handling, transport, storage, installation and use of equipment and facilities used in the downstream oil industry shall be governed by the pertinent provisions of the different international safety codes now observed and adopted in the industry.
- (iii) All installations for the filling, use and storage of petroleum products including gasoline and LPG as well its containers and their necessary appurtenances shall conform to local zoning ordinances and regulations.
- (iv) Any person undertaking the initial installation of an LPG system shall be responsible for providing his customer with adequate instructions for the proper and safe handling, use and maintenance of the system installed. All installations of LPG systems shall be done only by Qualified Servicemen.
- (v) All LPG brand owners shall keep their own cylinders in safe, clean

and serviceable condition and shall maintain them in a manner consistent with the provisions of the safety codes adopted in the industry.

- (vi) All persons or entities engaged in the sale and distribution of petroleum products including LPG shall provide free inspection and technical assistance to their customers, retail outlets and dealers, as the case may be, to ensure conformity to safety standards in accordance with the provisions of this IRR and shall respond to all emergency calls affecting safety at any time.
- (vii) To ensure safety of consumers, all LPG marketers are enjoined to procure only brand new cylinders from duly licensed cylinder manufacturers with their brand name clearly embossed on the cylinder body and shall conform with the provisions of the Philippine National Standards ("Specification for Steel Cylinders for LPG"). All cylinders shall be re-qualified ten (10) years from the date of manufacture and every five (5) years thereafter.
- (viii) All LPG marketers shall have appropriate provisions for the safe handling of all cylinders in circulation.
- (ix) Imported cylinders that are without the prescribed safety and engineering standard markings must be requalified prior to being put in circulation, and every five (5) years thereafter.
- (x) Vehicles used in transporting LPG cylinders shall have substantially flat floors and equipped with

suitable racks for holding the cylinders which shall be securely fastened in a position that shall minimize the possibility of movement and tipping over, which might cause danger to life and property.

- (xi) All brand owners who sell LPG in bulk or retail shall carry a product liability insurance to answer for whatever damage or liability that may result from the unsafe condition of LPG tanks, installation and equipment.
- (xii) All cylinders offered for sale to the public shall be filled only at the authorized filling and refilling plants.
- (xiii) All unsafe or dilapidated empty cylinders shall be set aside for requalification, repair, cleaning, painting prior to having such cylinders refilled.
- (xiv) All re-assembles or the so-called "chop-chop" cylinders shall not be used by those engaged in the LPG business.
- (xv) All LPG refillers shall test-weigh and leak test every cylinder before each one leaves the refilling plant premises.

4. *Data on Facilities*

Any person who shall engage in any activity or business in the downstream oil industry shall provide the Bureau with annual updates of information on the facilities used in the operation, including the capacities and working/operating conditions of such facilities. Pertinent permits for any or all new/additional/renovated/refurbished facilities

and its respective operation shall be submitted to the Bureau prior to commissioning. Decommissioning or non-operation of facilities, and the reasons for such, shall be reported to the Bureau within five (5) working days from stoppage of operation.

SECTION 19. *National Emergency*

By virtue of Section 14 (e) of the Act, in times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the industry.

In cases of imminent supply disruptions, the DOE shall adopt contingency measures pursuant to Section 12 (c)(2) of RA 7638. of the Department of Energy Act of 1992.

RULE VI TRANSITION PHASE

SECTION 20. *Phases of Deregulation*

Pursuant to Section 16 of the Act, the deregulation shall be done in two (2) phases: Phase I (Transition Phase) and Phase II (Full Deregulation Phase).

SECTION 21. *Buffer Fund*

An amount not exceeding Two billion nine hundred million pesos (P2,900,000,000.00) from the Reserve Control Account or RCA may be used by the President as a buffer fund to cover increases in the prices of petroleum products, except for premium gasoline, during the Transition Phase over the prices prevailing as of February 12, 1998. The RCA refers to a lump sum collation of reserve impositions deducted from the appropriations approved by Congress for the operation of the government and the implementation of projects and programs;

SECTION 22. *Automatic Oil Pricing Mechanism*

Pursuant to Section 18 of the Act, the Board shall establish an automatic pricing mechanism to enable the domestic price of petroleum products to approximate and promptly reflect the price of oil in the international market.

RULE VII FULL DEREGULATION

SECTION 23. *Start of Full Deregulation*

As provided under Sec. 19 of the Act, full deregulation of the Industry shall start five (5) months following the effectivity of the Act. However, the DOE and DOF are authorized to recommend to the President of the Philippines the acceleration of the start of full deregulation when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account relevant trends and prospects.

Notwithstanding the foregoing provision, the five (5) -month Transition Phase shall continue to apply to LPG, regular gasoline and kerosene as socially sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period. Upon the implementation of full deregulation, the transition phase shall be deemed terminated.

RULE VIII FINAL PROVISIONS

SECTION 24. *OPSF Balance*

All outstanding claims against the OPSF as of the effectivity of the Act, subject to the existing auditing rules and regulations of the Commission on Audit (COA), shall be considered as accounts payable of the National Government. The reimbursement certificates issued by the DOE covering the

said outstanding claims shall be honored and accepted by the Bureau of Customs and the Bureau of Internal Revenue as payment to the extent of ten percent (10) per payment of the tariff duties and specific taxes due from the creditor-claimant against the OPSF until such claims are settled in full. All reimbursement certificates are not transferable.

SECTION 25. *Initial Public Offering*

Any person engaged in the oil refinery business shall make a public offering through the stock exchange of at least ten percent (10%) of its common stock within a period of three (3) years from the effectivity of the Act, or the commencement of its refinery operations. Provided, That no single person or entity shall be allowed to own more than five percent (5%) of the stock offered by any other crude oil refining company pursuant to Section 22 of the Act. Provided, finally, that any such company which made the requisite public offering before the affectivity of the Act shall be exempted from the requirement.

SECTION 26. *Penal Sanction*

Any person who violates any of the provisions of the Act shall suffer the penalty of three (3) months to one (1) year imprisonment and a fine ranging from Fifty thousand pesos (P50, 000.00) to Three hundred thousand pesos (P300,000.00).

SECTION 27. *Public Information Campaign*

The DOE, in coordination with the Board and the Philippine Information Agency, shall undertake an information campaign to educate the public on the deregulation program of the Industry.

SECTION 28. *Repealing Clause*

Any rule or regulation inconsistent with the provisions of this IRR is hereby repealed or modified accordingly.

SECTION 29. *Separability Clause*

If, for any reason or reasons, any part of this IRR be declared unconstitutional or invalid, no other parts or provisions hereof shall be affected thereby.

SECTION 30. *Effectivity*

This IRR and any amendments thereto shall take effect upon complete publication in at least two (2) newspapers of general circulation.

FRANCISCO L. VIRAY
Secretary

Fort Bonifacio, Taguig City, Metro Manila,
March 11,1998.

ERRATAIN

DOE DEPARTMENT CIRCULAR NO. 98-03-004

1. Section 10, Paragraph b (3) ix (5) of Rule III (Appreciation of Evidence)

From:

“x x x. He shall have his award on the evidence submitted. x x x.”

To:

“x x x. He shall have his award on the evidence submitted. x x x.”
2. Section 10, Paragraph b (3) ix (6) of Rule III (Submission of Memoranda)

From:

“x x x. A definite time limit for the filing of such memoranda shall be fixed by the arbitrator at the close of the hearing.”

To:

“x x x. A definite time limit for the

filing of such memoranda shall be fixed by the arbitrator at the close of the hearing.”

3. Section 18, Paragraph b of Rule V (Refining, Manufacturing and Marketing Processes)

From:

“b. Refining, Manufacturing and Marketing Processes.”

To:

“c. Refining, Manufacturing and Marketing Processes.”

DEPARTMENT CIRCULAR NO. 2002-05-001

AMENDING SECTION 14 OF DEPARTMENT CIRCULAR NO. 98-03-004 ENTITLED “RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT 8479, DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998”

Pursuant to Chapter VII, Section 23 of Republic Act No. 8479 “Downstream Oil Industry Deregulation Act of 1998,” Section 14 of Department Circular No. 98-03-004 is hereby amended to read as follows:

“SECTION 14. Promotion of Retail Competition

“To achieve the social policy objective of fair prices and facilitate the attainment of a truly competitive petroleum product market in the retail level, the DOE shall promote and encourage by way of information dissemination, networking and management/skills training, the active and direct participation of the private sector and cooperatives in the retailing of petroleum products through joint venture/supply agreements with new industry participants for the establishment and operation of gasoline stations: *Provided*, That the training herein shall include LPG retailing.

“(a) *Recipients of Preferential Treatment*

“New industry participants shall be given preference in the formulation and implementation of a two-fold program on management and skills training for the establishment, operation, management and maintenance of gasoline stations. They shall likewise be given preferential treatment in the grant of gasoline station training and loan fund provided in Section 10 of R.A. 8479 to serve as capital for the establishment and operation of gasoline stations.

“New industry participants refer to new participants in a particular sub-sector of the downstream oil industry with investments made and initial business operations commenced after 1 January 1994 as provided under Section 4 (k) of R.A. 8479.

“The private sector and cooperatives may enter into joint venture/supply agreements with new industry participants for the establishment, management and operation of gasoline stations.

“In no case shall the investment of a new industry participant in the joint venture agreement be lower than

90% of the total investment in the joint venture.

“(b) Training Program for New Industry Participants

“The Department of Energy (DOE) shall, in cooperation with the Technology and Livelihood Resource Center (TLRC) and Technical Education and Skills Development Authority (TESDA) and other training agencies recognized by the DOE, with expertise in conducting training for would-be gasoline station dealers, coordinate with new industry participants and existing petroleum dealer associations in the formulation and implementation of a two-fold program on management and skills training for the establishment, operation, management and maintenance of gasoline stations. The DOE shall approve the training program, obtained through competitive bidding, for which it shall have proprietary rights to the training curriculum design.

“The two-fold program on management and skills training shall also cover the retail of all petroleum products including LPG retailing and shall be conducted as often as necessary at the discretion of the DOE. The DOE shall collect minimal fees to cover materials and other administrative expenses in the conduct of the training.

“(c) Grant of Gasoline Station Loan

“The following shall be qualified to apply for a loan to serve as capital for the establishment and operation of gasoline stations:

“(1) Natural persons who successfully complete the two-fold program

on management and skills training for the establishment, operation, management and maintenance of gasoline stations; or,

“(2) Corporations, partnership, cooperatives, associations, non-government organizations, joint ventures, consortia, single proprietorships and similar parties whose owners/representatives/s successfully complete the two-fold program on management and skills training for the establishment, operation, management and maintenance of gasoline stations.

“Employees of the DOE and its attached agencies namely, the National Electrification Administration, Philippine National Oil Company and its subsidiaries and the National Power Corporation are disqualified to apply for the gasoline station loan during their employment in the said offices or entities and up to a period of one (1) year after the time of their resignation or separation from the service of such offices or entities. In addition, relatives up to the fourth civil degree either by consanguinity or affinity of members of the Executive Committee (EXCOM) of the DOE, Chief Executive Officers and members of the Board of Directors/Administrators of such attached agencies shall not be qualified to apply for the gasoline station loan while said officials are in the service of such offices/ entities up to a period of one (1) year after their resignation or separation from the service of said offices or entities.

“The DOE shall establish a separate account with a Government Financial Institution as the depository bank

under a Memorandum of Agreement (MOA) to be executed for the administration and management of the loan fund to be provided by the Philippine Amusement and Gaming Corporation (PAGCOR).

“Any qualified person or entity who applies for the gasoline station loan shall be entitled to an amount equivalent to fifty percent (50%) of the total project cost but not exceeding Five Million Pesos (P 5,000,000.00) with an interest rate of six percent (6%) per annum payable in a period of no more than seven (7) years. There shall be no fees/penalty for fast-track payments. The loan proceeds shall be used in activities enumerated in Annex “A.”

“The terms and conditions of the loan including interest payments shall be provided in a Loan Agreement to be entered into among the DOE, the Government Financial Institution (GFI) and the applicant.

“All applications for a gasoline station loan shall be submitted to the DOE with the following papers or documents:

“(i) Certificate of Completion of the two-fold training program;

“(ii) Application Form stating the name of the applicant, address, telephone number cellular phone number, FAX number, e-mail address, amount applied for and other pertinent information;

“(iii)DTI/SEC Registration and Articles of Incorporation, if applicable;

“(iv)Feasibility study for the gasoline station to be put up, including

the location of the proposed gasoline station or proposed suppliers and other similar information;

“(v) Manpower complement.

“The DOE shall act upon said application within fifteen (15) working days from receipt thereof. It is understood that any application not acted upon within the said period shall be deemed automatically endorsed for processing by the GFI.

“The grantee shall not assign or transfer the operation of the gasoline station without the written consent of the DOE within the period of the Loan Agreement.

“(d) Mechanics for the Loan Disbursement

“The disbursement of loan will follow the process described in Annex “B.”

“(e) Annexes

“Annexes are integral part of this Circular.

“(f) Standards of Quality

“The construction and operation of the gasoline station shall be in accordance with international standards of quality. Only products meeting the Philippine National Standard (PNS) shall be dispensed at the stations.

“(g) Reportorial Requirements and Visitation Rights

“The grantee of the loan shall submit to the DOE a monthly status report on the construction and operation of the gasoline station starting from

the notice of approval of the loan. Contents of the report is described in Annex “C.” The DOE has the right to counter-check the report submitted by inspecting the said station.

“(h) Sanctions, Cancellation and Administrative Fines

“The corresponding sanctions described in Annex “D” hereof shall be imposed upon violation of any provision of this Circular.

“(i) Repealing Clause

“Any Department Order or Circular inconsistent with the provisions of this Circular is hereby repealed or modified accordingly.

“(j) Separability Clause

“If, for any reason or reasons, any part of this Circular is declared unconstitutional or invalid, no other parts or provisions hereof shall be affected thereby.

“(k) Effectivity

“This Department Circular No. 2002-05-001 shall take effect upon its complete publication in at least two (2) newspapers of general circulation.”

VINCENT S. PEREZ, JR.

Secretary
May 6, 2002

**ANNEX A
ELIGIBLE PROJECT EXPENDITURES**

(1) Payment for the purchase of equipment to be used for the operation of a gasoline station (i.e., dispensing pumps, underground tanks, lifter, compressor, etc.) (2) Payment for the purchase of equipment related to safety and environment protection such as fire extinguisher, water tank (3) Payment of actual installation costs of equipment	(4) Payment of construction and concreting of pump island/s (5) Payment for the initial purchase of petroleum products but not to exceed P 1 M (6) Payment for the purchase of brand new LPG cylinders (not to exceed 40 cylinders)

ANNEX B

MECHANICS FOR LOAN DISBURSEMENT

Disbursement by the GFI of the approved loan shall be made upon endorsement by the DOE, based on the following:

CIVIL WORKS

- (1) Progressive disbursement – Loan releases will be in two (2) tranches based on the development of the civil works.
 - (a) First Release – 20% of the approved loan for civil works upon 20% completion of the same
 - (b) Second Release – balance of the

amount approved for civil works upon 100% completion of the same

EQUIPMENT

Release for the payment of the equipment to be installed shall be made upon submission to the DOE of the purchase order.

FUEL REQUIREMENTS

Release for the payment of the equipment to be installed shall be made upon submission to the DOE of the fuel supply purchase order.

ANNEX C

MONITORING REPORTS

- (1) Pre-Construction Report – report for the period covering approval of loan up to start of construction
Contents: Status of negotiations with civil works contractor, equipment provider, fuel supplier
- (2) Progress Report – to be submitted in accordance with the mechanics of loan disbursement (Annex B)

- (3) Monthly Report – from start of commercial operation onwards to be submitted fifteen (15) days after the end of the preceding month

Contents: volume of sales, records of petroleum products deliveries (by product, by supplier)

ANNEX D

SANCTIONS

- (1) Non-compliance with the reportorial requirements
 - (a) first offense – reprimand
 - (b) two (2) weeks after notice –
 - a. cancellation of loan agreement for pre-construction period
 - b. withhold release of succeeding loan tranche
 - c. penalty provided under the Loan Agreement

- (2) Non-conformity with quality standards for fuel, facilities and practices.

Penalty pursuant to DOE regulations.

- (3) Late/Non-payment of monthly amortization.

Penalty provided under the Loan Agreement.

- (4) Transfer of operation of the gasoline station without consent of the DOE.

Penalty – cancellation of the Loan Agreement

DEPARTMENT CIRCULAR NO. DC 2003-06-007

FURTHER AMENDING SECTION 14 OF DEPARTMENT CIRCULAR NO. 98-03-004 ENTITLED “RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT 8479, DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998,” AS AMENDED

SECTION 1. Coverage

Pursuant to Chapter VII, Section 23 of Republic Act No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998,” Section 14 (paragraph) c of Department Circular No. 98-03-004, as amended by Department Circular No. 2002-05-001, is hereby further amended to read as follows:

“SECTION 14. Promotion of Retail Competition xxx

c. Grant of Gasoline Station Loan

(1) The Gasoline Station Lending and Financial Assistance Program

The Gasoline Station Lending and Financial Assistance Program (hereinafter referred to as the Program) is designed to provide credit assistance to New Industry Participants (Borrowers) whose owners successfully complete the two-fold program on management and skills training in the retailing of Petroleum Products for the establishment, operation, improvement, management and maintenance of gasoline stations within the current deregulated environment. The financial assistance covers the retailing of all Petroleum Products sold in gasoline stations, including LPG.

(2) Program Fund

Pursuant to Section 10 of R. A. 8479, the total amount (Program Fund) earmarked for the Program is Ninety-Four Percent (94%) of the Three Hundred Million Pesos, equivalent to Two Hundred Eighty-Two Million Pesos (P282M). This Program Fund shall be made available by the Philippine Amusement and Gaming Corporation (PAGCOR) through the DOE and administered by the Development Bank of the Philippines (DBP). The DBP and the DBP-Trust Services (DBP-TS) shall administer the Program Fund under a Memorandum of Agreement (MOA) dated January 23, 2003. This Program Fund shall be placed in two (2) special accounts with DBP-TS, which is tasked to perform fund management functions and loan administration services to monitor fund disbursement and collection. The DBP-TS shall maintain two (2) books of accounts for the Program Fund and a subsidiary ledger account of all borrowers.

All repayments, including amortization payments of principal and interest earnings, shall accrue to the “Second Generation Fund” in accordance with the MOA.

The Program Fund shall assume the credit risk of Borrowers.

(3) Eligible Borrowers

The following Borrowers shall be qualified to avail of the Program:

- (i) Natural persons who successfully completed the two-fold program on management and skills training for the establishment, operation, management and maintenance of gasoline stations; or
- (ii) Corporations, partnerships, cooperatives, associations, non-government organizations, joint ventures, consortia, single proprietorships and similar parties whose owners/representatives successfully completed the two-fold program on management and skills training for the establishment, operation, management and maintenance of gasoline stations.

Employees of the DOE and its attached agencies namely, the National Electrification Administration, Philippine National Oil Company and its subsidiaries, National Power Corporation, Private Sector Assets and Liabilities Management (PSALM) and National Transmission Corporation (TRANSCO) are disqualified from applying for the gasoline station loan during their employment in the said offices or entities and up to a period of one (1) year after the time of their resignation or separation from the services of such offices or entities. In addition, relatives up to the fourth civil degree either by consanguinity or affinity of members of the Executive Committee (ExCom) of the DOE, Chief Executive Officers and the members of the Board of Directors/Administrators of such attached agencies shall not be qualified to apply for the gasoline station loan while said officials are in the service of such offices/entities up to a period of one (1) year after their resignation or separation from the service of said offices or entities.

(4) Eligible Loan Purposes

The following Loan Purposes shall be eligible for funding under the Program:

- (i) Purchase and installation of equipment to be used for the operation of a gasoline station including, but not limited to, dispensing pumps, underground tanks, filters, compressors;
- (ii) Purchase and installation of equipment related to safety and environmental protection including, but not limited to, fire extinguishers, water tanks;
- (iii) Construction and concreting of pump islands;
- (iv) Purchase of initial inventory of Petroleum Products from suppliers of good standing not exceeding One Million Pesos (P1 million);
- (v) Purchase of brand new LPG cylinders not to exceed forty (40) cylinders;
- (vi) Purchase and installation of other similar equipment as may be approved by OIAB.

(5) Equity Participation

A minimum of fifty percent (50%) of the total Project cost, including existing land and improvements made by the Borrower, shall serve as equity of said Borrower.

(6) Loanable Amount/Terms of the Loan

All eligible projects (Projects) can avail of the one hundred percent (100%) loanable amount provided that such amount shall not exceed

fifty percent (50%) of the total Project cost or Five Million Pesos (P5,000,000.00), whichever is lower. The maximum term of the loan shall be seven (7) years and payments of principal shall be made monthly; Provided, that the first installment shall be due within six (6) months from the date of initial release of the loan proceeds.

(7) Interest Rate

Interest on the loan shall be fixed at six percent (6%) per annum and shall be payable monthly in arrears starting six (6) months after the release of loan.

(8) Penalties

Late payments shall be subject to a penalty of twenty-four percent (24%) per annum based on past due amortizations, computed from due date of such amortization until fully paid.

(9) Collateral Requirements

Loans may be secured by any or a combination of the following collaterals:

- (i) Real estate mortgage for up to sixty percent (60%) of appraised value;
- (ii) Chattel mortgage for up to seventy-five percent (75%) of appraised value;
- (iii) Assets acquired out of loan proceeds and other applicable securities specific to the Projects, such as but not limited to the following:
 1. Real estate mortgage;

2. Chattel mortgage on Project assets;
3. Assignment of insurance coverage;
4. Assignment of leasehold contract; and/or
5. Joint and several signatures (JSS) of stockholders and/or key officers

(iv) Assignment of leasehold contract; and

(v) Joint and several signatures (JSS) of stockholders/key officers.

(10) Loan Disbursement

Loan proceeds shall be disbursed upon one hundred percent (100%) completion of the equity requirement. For civil works, loan releases for the construction and concreting of pump islands (including canopy), shall be made in two (2) tranches based on the development of the civil works.

An initial fifty percent (50%) of the total approved loan shall be released provided that one hundred percent (100%) of the equity has been complied with. The balance of the approved amount shall be made upon full completion of the civil works.

(11) Loan Application and Acceptance

- (i) Persons interested to participate in the Program shall submit the following documents to the Oil Industry Administration Bureau (OIAB) of the DOE:
 1. Duly accomplished Application Form (Annex 1);
 2. Check payable to the DOE in the amount of Five

Thousand Five Hundred Pesos (P 5,500.00) as application fee;

3. Check payable to DBP in the amount of Twenty Thousand Pesos (P20,000.00) as processing fee (to be returned to Borrower if his application fails initial evaluation);
 4. DOE Certificate of Completion of the two-fold training program;
 5. DTI or SEC Registration and Articles of Incorporation, as applicable;
 6. Feasibility Study of the Project including the location and layout of the proposed gasoline station, proposed supplier/s, manpower complement and other similar information; and
 7. Environmental Compliance Certificate (ECC) issued by the DENR for stations ready to operate, or ECC application letter duly received by the Environmental Monitoring Bureau of the DENR for stations still to be established.
- (ii) The DOE, through its OIAB shall undertake a preliminary evaluation of the application which shall include, but not be limited to, the checking of eligibility criteria, identification and inspection of the proposed site and other relevant matters.

(iii) Within fifteen (15) working days from receipt of the application, the OIAB shall submit the results of its evaluation and its recommendation to the DOE Review Committee (RC).

(iv) The DOE RC shall deliberate on the OIAB findings and recommendation within five (5) working days from receipt of such OIAB recommendation. Applications that merit funding assistance shall be immediately endorsed by the DOE RC to the DBP, together with the processing fee, for credit investigation, appraisal of offered collaterals and final evaluation.

Applications not found qualified to avail of the Program Fund shall be returned to the OIAB which shall immediately inform the applicant of the DOE Review Committee's decision.

(12) Loan Approval/Denial

(i) The DBP, through its lending units in the Branch Banking Sector (BBS) and the Development Banking Sector (DBS) Head Office, shall undertake the investigation and evaluation of the loan applications and forward to the OIAB their recommendation for approval within twenty-five (25) working days from receipt of such application.

1. A recommendation for approval shall be supported by a credit application which shall be returned to DBP upon the DOE's approval.

2. In the event of a denial, the DBP shall return all documents to the DOE Review Committee with a written explanation citing the reason(s) for the denial together with the evaluation reports.
- (ii) The OIAB shall act on the DBP's favorable findings and recommendations by issuing a Notice of Approval to approved credit applications to the DBP together with the complete requirements, copy furnished the Loan Administrator (DBP-TS) within five (5) working days from receipt of said recommendation. In case of disapproval, the OIAB shall directly inform the applicants.
3. Verify compliance with all pre-release conditions. If all conditions are complied with, the DBP shall forward the necessary documents to DBP-TS, which is the duly designated Loan Administrator, with the written instruction for the release of the loan, copy furnished the OIAB.
- (ii) The DBP shall serve as the clearing office for transactions under this Program. Loan approvals, releases and related transactions from the branches shall be forwarded to DBP-TS for release and/or recording and booking.
- (iii) The DBP-TS shall, upon receipt of the written instructions from the DBP, prepare the necessary check release to qualified Borrowers. For branch releases, the DBP-TS shall transfer funds to the branch concerned which shall, in turn, prepare the check release and issue the check in favor of the Borrower. The branch shall advise DBP-TS of the actual date of release to Borrower.

(13) Loan Documentation and Release

- (i) The DBP, through its BBS and/ or Program Management I/ Program Management II (PMI/ PMII) shall, upon receipt of the Notice of Approval from the OIAB, undertake the following:
1. Require the approved Borrower to submit documentary requirements including post-dated checks.
 2. Prepare and cause the execution of required loan documents such as the loan agreement, promissory note, mortgage contract and other security documents. The loan agreement shall be executed by representatives of the Borrower and the DOE, and duly witnessed by representatives from the DBP.

(14) Account Management

For account management, the DBP-TS shall have the following responsibilities:

- (i) Book loan releases and maintain subsidiary and general ledgers;
- (ii) Send the appropriate billing statements and collection letters to Borrowers;

(iii) Remit monthly to the Bureau of Treasury, through the DOE, all earnings/income, net of fees, accruing to the General and Second Generation Fund;

(iv) Render regular reports including, but not limited to, financial statements, schedule of investments and other related reports; and

(v) Perform such other functions as may be necessary to comply with the foregoing.

(15)Collection of Loan Payments

The DBP shall be responsible for sending the appropriate collection letters and/or reminders to the Borrowers. On the amortization due dates, the DBP shall deposit the applicable postdated check issued by the Borrower for application as loan payment and on the same day remit the collection to the Loan Administrator. All loan payments shall be credited by the DBP-TS to the Second Generation Fund.

(16)Reportorial Requirements

All Borrowers shall submit Quarterly Reports to the OIAB commencing from the start of commercial operation and fifteen (15) days after the end of each succeeding quarter to include volume of sales and records of Petroleum Products deliveries (by product, by supplier) and other information requested by DOE.

(17)Non-Transferability Clause

The Borrower shall neither assign nor transfer the operation of the gasoline station subject of the loan

application without the express written consent of the DOE during the term of the Loan Agreement.

(18)Standards of Quality

The construction, operation, improvement and maintenance of the gasoline station subject of the loan applications shall be in accordance with existing and future standards promulgated for the industry or with international standards of quality. Only products meeting the Philippine National Standard (PNS) shall be dispensed at the stations. Moreover, these stations shall be operated and maintained in conformance with all rules and regulations of the DOE.

(19)Sanctions

Sanctions shall be imposed on the following offenses:

- (i) Non-conformity with applicable standards for fuel, facilities and practices – Penalties imposed pursuant to DOE regulations
- (ii) Late/Non-payment of monthly amortization – Penalty provided under the Loan Agreement
- (iii) Transfer of operation of the gasoline station without consent of the DOE – Penalty shall include termination of Loan Agreement and other relevant penalties

Section 2. Repealing Clause

Any Department Orders, Circulars or Issuances inconsistent with this Circular are hereby repealed or modified accordingly.

Section 3. Separability Clause

If, for any reason or reasons, any part of this Circular is declared by a court of competent jurisdiction as unconstitutional or invalid, the other parts or provisions not so declared shall not be affected thereby.

in at least two (2) newspapers of general circulation.

Issued in Fort Bonifacio, Taguig, Metro Manila, this 30 day of May 2003.

Section 4. Effectivity

This Department Circular No. DC 2003-06-007 shall take effect upon its publication

VINCENT S. PÉREZ, JR.
Secretary

“Annex 1”

DOE GASOLINE STATION LENDING AND FINANCIAL ASSISTANCE PROGRAM

APPLICATION FORM
NAME: _____ DATE _____
ADDRESS: _____
Requirements Submitted:
• Bio-data of Applicant/Major Stockholders/Officers • Certificate of Completion of the two-fold training program • Certificate of Registration of Business/Articles of Partnership or Incorporation/By- Laws • Feasibility Study (including proposed location of gasoline station, proposed suppliers) • Board Resolution authorized the borrowing & designating Authorized Signatories for the loan • Certified List of Stockholders and Officers • Contact person & telephone No./address/authority to inspect • Income Tax Return (last 3 years) • Customer Information Report • ECC or Letter of 'Application to DENR for ECC issuance
On Lot/Building:
• 2 copies of lot plan, certified by a Geodetic Engineer • Location/Vicinity Map • 2 photo copies of TCT/OCT authenticated by the Registry of Deeds • Latest Real Estate Tax Declaration & Tax Receipt • Bill of Materials, Building plans and Specifications • Building permit (to be submitted before construction)
On Machinery and Equipment :
• Affidavit of ownership & Non-incumbrance of machineries & equipment with complete machine specifications • Supplier's quotation of machinery & equipment With complete technical specifications for machinery to be acquired • Contract to sell for machinery and equipment to be acquired • Copy of Certificate of Registration with LTO for transportation equipment

DEPARTMENT CIRCULAR NO 98-06-009

SUPPLEMENTING RULES AND REGULATIONS AND REGULATIONS IMPLEMENTING REPUBLIC ACT 8479, "DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998," PARTICULARLY SECTION 15 THEREOF

WHEREAS, the Department of Energy (DOE) issued on 11 March 1998, Department Circular No. 98-03-004, entitled "Rules and Regulations Implementing Republic Act 8479, Downstream Oil Industry Deregulation Act of 1998," which took effect on 13 March 1998;

WHEREAS, there is a need to enunciate more fully the powers and functions of the DOE Secretary provided in Section 15 of the Act to apprise all persons and entities involved in the downstream oil industry activities or businesses for a more effective enforcement of the Act;

WHEREAS, a separate set of criminal-sanctions has been provided under Section 12 of the Act whereby any person, including, but not limited to the chief operating officer or chief executive officer of a partnership, corporation or any entity involved, found guilty of refusing to comply with any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of the Act shall suffer the penalty of imprisonment for two (2) years and fine ranging from Two hundred fifty thousand pesos (250,000.00) to Five hundred thousand pesos (500,000.00);

NOW, THEREFORE, a new section is hereby incorporated in Department Circular No. 98-03-004, particularly Section 19-A thereof to implement Section 15 of the Act, to read as follows:

"SECTION 19-A. ADDITIONAL POWERS OF THE DOE SECRETARY

In connection with the enforcement of R.A. 8479" the DOE Secretary shall have the

following powers:

a. Submission of Documents Concerning Organization

1. Other than prior notice and reportorial requirements prescribed under Department Circular No. 98-03-004, dated March 11, 1998, the Secretary from time to time, may order or require any person or entity in the Industry to submit information, papers and documents concerning the organization, business, conduct, practices and management of such person or entity.
2. The abovementioned information, papers and documents shall be submitted to the Secretary not later than fifteen (15) calendar days from receipt of such Order, unless another period is otherwise provide in said Order.

b. Submission of Annual or Special Reports

1. Filing of annual or special report

The Secretary may require, by general or special orders, persons and entities engaged in a particular activity of the Industry to file, under oath, an annual or special report, or both in such form as the Secretary may prescribe as to the organization, business, conduct, practices, management and relation to other corporations, partnerships and individuals of the respective persons or entities filing such a report.

2. Requirement to answer specific questions

The Secretary may likewise require, by general or special orders, said persons or entities to answer specific questions in writing, furnishing to the Secretary such information, papers, documents, contracts or agreements, deeds, resolutions or other writings of whatever nature or kind, as he may require.

3. Filing of answer/report under oath

Such reports and/or answer shall be filed with the Secretary under oath and within such reasonable time as the Secretary may prescribe.

c. Investigation upon the Discretion of the President or Congress

Upon their discretion, the President of the Philippines or either House of Congress may direct the Secretary to investigate and submit to it a report on any fact or information relating to any alleged violation of the Act by any person or corporation.

d. Recommendation for the Readjustment of Business

Upon the application of the Secretary of Justice, the DOE Secretary may investigate and make recommendations for the readjustment of the business of any person or entity alleged to be violating the Act in order that such person or entity may thereafter maintain his or its organization, management and conduct of business in accordance with law.

e. Suspension of Business Permit

At any time during an investigation of any violation of the Act, the Secretary may

recommend to the proper government agency the suspension of the business permit of an offender. Whenever a final order has been entered against any person found to have violated any of the provisions of the Act, the Secretary shall recommend to the proper government agency the termination of said business permit of said offender.

f. Establishment of Programs for Continuous Supply of Energy

Consistent with Section 15 (f) of the Act in relation to Section 5(c) and Section 12 (c) (2) of Republic Act 7638, otherwise known as the "Department of Energy Act of 1992," the Secretary may establish and administer programs and plans for the transportation, marketing, distribution, utilization, conservation, stockpiling and storage of crude oil and petroleum products to ensure a continuous, adequate and economic supply of energy.

g. Public Disclosure and Submission of Report to Congress

1. Public Disclosure

The Secretary may make public from time to time all or such portions of any information obtained by him in the exercise of his powers under the Act as are in the public interest: Provided, That the Secretary shall not make public any trade secret or any commercial or financial information which is obtained from any person or entity which is privileged or confidential, except that the Secretary may disclose such information to any officer or employee of appropriate law enforcement agencies upon the prior certification by an officer of such law agencies that such information will be maintained in confidence and will be used only for official law enforcement purposes.

2. Submission of Reports to Congress

The Secretary shall make annual and special reports to Congress pertaining to the enforcement of the Act and to submit appropriate recommendations for additional legislation.

3. Publication of Reports and Decisions

The Secretary shall cause the publication of his reports and decisions in such form and manner as may be best adapted for public information and use, consistent with existing rules and regulations.

h. Implementation/Execution of Final Orders

Whenever a final order has been entered against any defendant in any suit brought by the government to prevent and restrain any violation of the anti-trust provisions of the Act, the Secretary, upon his initiative, or upon the recommendation of the Secretary of Justice, shall make an investigation of the manner in which such final order has been or is being carried out.

The Secretary shall transmit to the Secretary of Justice a report embodying his findings and recommendations as a result of any such investigation, and the report may be made public at the discretion of the DOE Secretary.

i. Delegation of Powers:

Pursuant to Section 7(8) of Chapter 2, Book IV of the Administrative Code of 1987 (Executive Order No. 292), the Secretary may delegate any or all of his authority provided herein, to officers and employees under his direction.

j. Penal Sanctions

Any person, including but not limited to the chief operating officer or chief executive officer of a partnership, corporation or any entity involved, who is found guilty of refusing to comply with any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of the Act shall suffer the penalty of imprisonment for two (2) years and fine ranging from two hundred fifty thousand pesos (250,000.00) to five hundred thousand pesos (500,000.00).

k. Effectivity

This Department Circular shall take effect immediately upon its complete publication in at least two (2) newspapers of general circulation.

FRANCISCO L. VIRAY

Secretary

Fort Bonifacio, Taguig, Metro Manila, June 19, 1998

MEMORANDUM CIRCULAR NO. 2001-05-002

TO : ALL OIL COMPANIES

SUBJECT : PRIOR NOTICE ON PRICE ADJUSTMENTS

DATE : 25 May 2001

Pursuant to Republic Act No. 8479, the Department of Energy is mandated to monitor domestic petroleum prices and assess its reasonableness in light of the prevailing market conditions. In order for the DOE to perform this function effectively, it is imperative that we are apprised of current and related developments in the industry.

It is, therefore, requested that all oil companies engaged in business in the Philippines extend due courtesy to the Department by notifying us of the details of oil price adjustments, whether upward or downward, at least one (1) day prior to its effectivity.

May we reiterate that the House Committee on Energy has earlier recommended implementation of this procedure.

Your company's full cooperation and compliance is hereby enjoined.

JOSE ISIDRO N. CAMACHO

Secretary

DEPARTMENT CIRCULAR NO. 2005-08-007

GUIDELINES IMPLEMENTING THE REQUIREMENT OF A PRIOR NOTICE ON PRICE ADJUSTMENTS PURSUANT TO MEMORANDUM CIRCULAR NO. 2001-05-002

Pursuant to Sections 14 (a) and 15 (a), (b.ii) and (g) of Chapter IV of Republic Act No. 8479 or the *Downstream Oil Industry Act of 1998* and in order for the Department of Energy (DOE) to monitor movements of domestic oil prices, the DOE hereby adopts the following guidelines to implement and clarify the said Memorandum Circular.

ARTICLE I

GENERAL PROVISIONS

SECTION 1. *Title.* –

These guidelines shall be known as “Implementing Guidelines for the

Requirement of Prior Notice on Price Adjustments of Industry Players” and shall be hereafter referred to as the “Guidelines”.

SECTION 2. *Scope and Coverage.* –

These Guidelines shall apply to any person or entity engaged in business activities covered under Section 5, Chapter 2 of R.A. No. 8479 (Oil Companies) selling the following petroleum products: gasoline, diesel, kerosene, jet fuel, bunker oil and liquefied petroleum gas (LPG).

ARTICLE II

PRIOR NOTICE ON PRICE ADJUSTMENTS

SECTION 1. Notification Requirements. –

- (a) For price increase: Oil companies shall notify the DOE within one (1) day, but not less than six (6) hours, prior to implementing any intended price increase and prior to any public announcement of said movement.
- (b) For price reduction: Oil companies shall notify the DOE prior to implementing any intended price reduction and prior to any public announcement of said movement.

**ARTICLE III
FORM AND CONTENTS OF NOTICE**

SECTION 1. Initial Notice. –

A notice sent via SMS message shall be deemed in compliance with this Circular when the following conditions are met:

- (a) the message is sent to and received by the Undersecretary who exercises supervision over the Oil Industry Management Bureau (OIMB), the OIMB Director and the Division Chief of the Oil Industry Competition and Monitoring Division (OICMD) and duly acknowledged by any of them;
- (b) the message is sent within the timeframe specified in Article II hereof; and
- (c) subsequent submission of a formal notice required in Section 2 below.

SMS message should include the list of products subject to the price adjustment, the corresponding price adjustment, the cause of adjustment and why such magnitude and timing are reasonable.

SEC. 2. Formal Notice. –

A formal notice of any price adjustment shall be submitted to the officials referred to in Article III, Section 1 (a), and to the DOE

Secretary indicating therein the required details on the day that the price adjustment takes effect. A formal notice shall be in any of the following forms and duly acknowledged received at least by the OIMB:

- (a) a letter;
- (b) a facsimile copy; or
- (c) electronic mail;

If the price adjustment is intended to take effect on a non-working day, the formal notice shall be submitted not later than on the first working day following the adjustment.

**ARTICLE IV
FINAL PROVISIONS**

SECTION 1. Penalties. –

Any failure to comply with the provisions of these Guidelines shall be governed by the terms of Section 12 (a) of R.A. 8479, in relation to Section 15 of the said Act and shall be punishable in accordance therewith.

SECTION 2. Public Announcement of Price Adjustments. –

Compliance with the provisions of this Circular shall be without prejudice to the Oil Companies' initiative of initiating their own public announcement of intended price adjustments.

SECTION 3. Effectivity. –

These Guidelines shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

Issued in Fort Bonifacio, Taguig, Metro Manila this 11th day of August 2005.

(sgd)
RAPHAEL P.M. LOTILLA
Secretary

DEPARTMENT CIRCULAR NO. 2003-11-010

PROVIDING FOR THE RULES AND REGULATIONS GOVERNING THE BUSINESS OF RETAILING LIQUID PETROLEUM PRODUCTS

WHEREAS, R.A. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, applies to all persons or entities engaged in any and all activities of the domestic downstream oil industry and mandates the DOE to promote the entry of new industry participants;

WHEREAS, R.A. 8479 also mandates the DOE to promote fair trade practices, monitor marketing processes and quality of petroleum products and stop the operation of businesses involved in the sale of petroleum products not complying with the national standards of quality;

WHEREAS, Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865, and the Implementing Rules and Regulations therefor, define and penalize certain prohibited acts that are considered inimical to the public interest and national security, including illegal trading in petroleum and/or petroleum products, hoarding of petroleum products, adulteration and underdelivery, among others;

WHEREAS, there now exist petroleum Retail Outlets or gasoline stations engaged in the Retailing of Liquid Petroleum Products which do not comply with safe and appropriate technologies for the petroleum products retail business;

WHEREAS, there is also an increasing proliferation of unsafe practices in Liquid Petroleum Product Retailing particularly with the use of inappropriate containers (e.g., “bote-bote”), storage tanks and tank vehicles;

WHEREAS, the Retailing of Liquid Petroleum Products is subject to pertinent permits and

licenses issued by government authorities including the Department of Environment and Natural Resources, Bureau of Fire Protection, Bureau of Internal Revenue and Local Government Units;

WHEREAS, all matters affecting the safe and proper handling, transport, storage, installation and use of equipment and facilities in the downstream oil industry shall be governed by the pertinent provisions of the different national and international safety codes observed and adopted by the industry;

WHEREAS, the continued operation of unsafe and sub-standard Retail Outlets may (i) expose the consuming public to fire, security, health and environmental risks; (ii) deny the public the proper quality and quantity of the Liquid Petroleum Products they purchase; (iii) deprive legitimate Retail Outlets of additional sales volume; (iv) deprive the government of revenue derived from licensing fees, local business taxes and pump calibration charges, among others; and (v) encourage the marketing of Liquid Petroleum Products sourced from illegal activities such as smuggling, pilferage, theft and the like;

WHEREAS, certain provisions of Department Circular No. 98-03-004, otherwise known as the *Rules and Regulations Implementing R.A. 8479*, and the Rules and Regulations in the Implementation of Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865, need to be further clarified, updated, amended and/or repealed, particularly in the conduct of the Liquid Petroleum Product Retailing business;

NOW, THEREFORE, in consideration of the foregoing premises, the following rules are

hereby promulgated to govern the Retailing of Liquid Petroleum Products.

RULE I
GENERAL PROVISIONS

SECTION 1. Title. –

This Department Circular shall be known and cited as “The Rules and Regulations Governing the Business of Retailing Liquid Petroleum Products” or “Retail Rules.”

SECTION 2. Coverage. –

These Retail Rules shall apply to all Persons engaged or intending to engage in the business of Retailing Liquid Petroleum Products.

SECTION 3. Definition of Terms. –

Except as provided below, the terms used in these Retail Rules shall have the same meaning as the terms used in Department Circular No. 98-03-004, as amended (Implementing Rules and Regulations of the Downstream Oil Industry Deregulation Act of 1998):

- (a) API – shall refer to the American Petroleum Institute;
- (b) BFP – shall refer to the Bureau of Fire Protection;
- (c) Bote-bote – shall refer to the manner of Retailing Liquid Petroleum Products in soda bottles, plastic containers, jugs and other similar portable containers not intended or suited for storing, handling and dispensing Liquid Petroleum Products;
- (d) DOST-ITDI – shall refer to the Department of Science and Technology –Industrial Technology Development Institute;
- (e) Liquid Petroleum Products – shall refer to Petroleum Products that are flammable liquids such as gasoline, kerosene and

diesel and combustible liquid products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery and sold through Retail Outlets; provided, that Liquid Petroleum Products shall refer to class I flammable liquids with a flash point below thirty seven and eight tenths (37.8°C) degrees Celsius, and class II flammable liquids with a flash point at or above thirty seven and eight tenths (37.8°C) degrees Celsius, and below sixty (60°C) degrees Celsius. Combustible Liquid Petroleum Products have flash points at or above sixty (60°C) degrees Celsius;

- (f) LGU – shall refer to Local Government Units;
- (g) OIMB – shall refer to the Oil Industry Management Bureau of the DOE;
- (h) Portable Tank – shall refer to any closed vessel for holding liquids but not intended for fixed installation;
- (i) Retail Outlet – shall refer to a gasoline station, outlet, facility or business establishment which sells or dispenses Liquid Petroleum Products directly to individual end user/s or to the public;
- (j) Retailing – shall refer to the act of selling and/or dispensing Liquid Petroleum Products directly to individual end users or to the public;
- (k) Tank Truck – shall refer to any single self-propelled motor vehicle with or without a trailer, equipped with a cargo tank mounted thereon or built as an integral part thereof, and used for the transportation of Liquid Petroleum Products.

RULE II
MINIMUM STANDARDS AND
REQUIREMENTS

SECTION 4. *Retailing.* –

Any Person engaged or intending to engage in the Retailing of Liquid Petroleum Products shall comply with the following minimum standards:

- (a) The Retailing of Liquid Petroleum Products shall be conducted in duly approved premises with an initial minimum lot area of 100 square meters and where vehicles being serviced shall at all times be inside the duly approved business premises.
- (b) The Retailing of Liquid Petroleum Products shall only be carried out through fixed and permanent dispensing pumps duly approved by the DOE and further subject to the following:
 - (i) The dispensing pump clearly indicates on its face the type of Liquid Petroleum Product being dispensed and its brand name, if any;
 - (ii) The dispensing pump accurately displays both the volume of Liquid Petroleum Product dispensed (in liters) and the corresponding amount (in Pesos) up to the 1/100th part;
 - (iii) The dispensing pump for gasoline displays the Octane Rating of the product as required under Department Circular No. 2001-09-003;
 - (iv) All dispensing pumps and storage tanks of Liquid Petroleum Products are distinct and labeled to ensure that there shall be no product contamination or inadvertent mixing or misfueling of the different Petroleum Products; and

(v) Dispensing pumps are properly calibrated and sealed in accordance with Section 12 of these Retail Rules.

- (c) The owner and/or operator of the Retail Outlet must possess valid permits, licenses and certifications for the retailing, storage, handling, transfer and/or dispensing of Liquid Petroleum Products from the LGU concerned, the BFP, the DENR, DOE and other relevant government authorities.
- (d) The construction and operation of the Retail Outlet must comply with all applicable laws, rules, regulations and LGU ordinances.
- (e) The operation of service bays shall be subject to and fully comply with the criteria and/or guidelines set by the DENR-EMB for such facilities and/or operations. Generated waste oil or petroleum from Retail Outlets shall be properly collected, stored and disposed of in accordance with the requirement of DENR DAO 92-29, as amended.
- (f) The Prior Notice requirement provided for in Section 6 of these Retail Rules shall be fully complied with.

SECTION 5. *Fuel Storage, Handling, Transfer and/or Dispensing.* –

The storage, handling, transfer and/or dispensing of Liquid Petroleum Products shall be subject to the following:

- (a) Liquid Petroleum Products shall be transferred only from underground tanks by means of fixed pumps designed and equipped to allow the control of the flow and prevent leakage or accidental discharge;
- (b) Liquid Petroleum Products shall not be dispensed from above -ground tanks, portable tanks, tank vehicles, drums,

barrels or similar containers, e.g., bote-bote, into the fuel tanks of motor vehicles or containers;

- (c) The product suction lines of storage tanks shall be elevated at least four (4) inches from the bottom of the tank to avoid water draw-off with the product;
- (d) The discharge of Liquid Petroleum Products into or upon any street, highway, drainage canal or ditch, storm drain or flood control channel, lake or tidal waterway, or upon the ground shall be strictly prohibited.

SECTION 6. *Prior Notice.* –

No Person may engage in the business of Retailing Liquid Petroleum Products without previously notifying the OIMB in writing of its intention to engage in such activity, Such notification shall contain the following information:

- (a) Business name, address, telephone/fax number of the business office;
- (b) Location and complete address of Retail Outlet/s;
- (c) Project or business plan indicating the scope of operation/activity;
- (d) List of facilities and proof of availability of such facilities to support the proposed business; and
- (e) Such other requirements as may be imposed by the OIMB from time to time.

SECTION 7. *Documentary Requirements.* –

In addition to the prior notice requirement of Section 6 of these Retail Rules, the following documents shall also be submitted to the OIMB:

- (a) Before commencement of construction

- (i) Barangay Clearance (Barangay concerned)
- (ii) Department of Trade and Industry/ Securities and Exchange Commission Registration
- (iii) Zoning/Location Clearance (LGU concerned)
- (iv) Environmental Compliance Certificate (DENR)
- (v) Building Permit (LGU concerned)
- (vi) Discharge Permit, if applicable (Laguna Lake Development Authority)

(b) Before commencement of Operation

- (i) Fire Safety Inspection Certificate (BFP)
- (ii) Reference Standards/Codes and compliant statement for Facility Design & Operation
- (iii) Mayor’s Permit (LGU concerned)
- (iv) List of dispensing pumps, storage tanks and Tank Trucks, with corresponding capacities
- (v) Lay-out plan and latest photograph of the Retail Outlet

The documents enumerated in this Section 7 must be accompanied by original copies thereof for authentication purposes.

SECTION 8. *Consumer Safety and Informational Signs.* –

The following signs shall be prominently displayed by the owner and/or operator of the Retail Outlet in strategic and appropriate locations within the premises of the said outlet for the awareness and information of the buying public and service station

personnel:

- (a) Price Display Board with updated prices for each Liquid Petroleum Product sold in the Retail Outlet, pursuant to Rule V, Section 18 a (1) of Department Circular No. 98-03-004;
- (b) Signs which require the switching-off of cellular phones while filling pursuant to Department Circular No. 2002-05-002;
- (c) No Smoking signs;
- (d) Switch off engine while filling signs; and
- (e) Other safety signs as may be required by the DOE, other government agencies and relevant LGUs.

SECTION 9. *Certificate of Compliance.* –

The DOE, through the OIMB, shall issue a Certificate of Compliance upon the complete submission of and full compliance by the Retail Outlet owner and/or operator with the requirements provided in the foregoing Sections of this Rule. No Retail Outlet shall operate until a Certificate of Compliance is so secured from the DOE.

The owner and/or operator shall be deemed to be engaged in the ILLEGAL TRADING of Liquid Petroleum Products if he/she operates without the Certificate of Compliance and/or violates any of the foregoing Sections, except for Section 8 hereof.

SECTION 10. *Issuance of Receipts.* –

All transactions involving the Retail of Liquid Petroleum Products must be evidenced by an official receipt bearing the registered name and address of the seller and detailing the quantity, price and type of Liquid Petroleum Product sold, the date of the transaction and such other information required under Republic Act No. 8424, otherwise known as “An Act Amending the National Internal Revenue Code” and Section 237 of the

National Internal Revenue Code. Duplicate copies of official receipts shall be made available for verification by OIMB inspectors.

SECTION 11. *Hoarding.* –

For purposes of these Retail Rules, the following shall constitute prima facie evidence of HOARDING:

- (a) The refusal of Retail Outlets to sell Liquid Petroleum Products shortly before a price increase or in times of tight supply, and in both instances if the buyer or consumer has the ability to pay in cash for the product; or
- (b) The undue accumulation of Retail Outlets of Liquid Petroleum Products in times of tight supply or shortly before a price increase. Undue accumulation shall mean the keeping or stocking of quantities of Liquid Petroleum Products beyond the normal inventory levels maintained by Retail Outlets for thirty (30) days immediately preceding the period of tight supply or price increase.

RULE III

**PUMP CALIBRATION, TESTING, SEALING
AND PRODUCT SAMPLING**

SECTION 12. *Calibration and Sealing of Dispensing Pumps.* –

All dispensing pumps used in Retail Outlets must be properly calibrated once every sixty (60) days and sealed by a duly authorized calibrating entity immediately after calibration. A dispensing pump that is not calibrated and sealed or goes off-calibration shall be clearly marked with an “out of order” sign and shall not be used until the said pump is recalibrated and resealed.

For the purpose of these Retail Rules, the authorized calibrating entities are the Municipal or City Treasurer of an LGU or, in their absence or incapacity, duly authorized representatives of the DOST-ITDI or, in their

absence or incapacity, duly authorize d representatives of any other government agency authorized therefor or, in their absence or incapacity, duly authorized representatives of the oil company.

In locations where the Municipal or City Treasurer are capable of calibrating dispensing pumps, the calibration by other authorized entities shall be provisional only and subject to final calibration by the Treasurer. The authority performing the calibration shall install a seal after calibration to guard against the unauthorized adjustment of the dispensing pump meter which seal may not be broken or removed until the next calibration by an authorized entity.

All calibrations shall be duly documented and signed by the mechanic performing the calibration and countersigned by the Retail Outlet owner and/or operator or the shift supervisor of the Retail Outlet. A copy of these calibration documents shall be kept on file at the Retail Outlet.

After calibration, a sticker provided by the oil company having a dimension of at least one-half (1/2) inch by two (2) inches and bearing the date of the calibration and the signature of the mechanic who calibrated the pump shall be posted on the face of the pump calibrated.

For independently owned Retail Outlets or Retail Outlets with its own Liquid Petroleum Product brand name, the owner and/or operator of the Retail Outlet shall be responsible for complying with this Section 12.

Failure of the Retail Outlet owner and/or operator to have his/her dispensing pumps calibrated and sealed shall constitute ILLEGAL TRADING.

SECTION 13. *Calibration, Registration and Sealing of Petroleum Product Transport Containers.* –

The capacity of all Tank Trucks used to transport measured amounts of Liquid Petroleum Products in bulk must be certified, calibrated and sealed by the DOST-ITDI.

Tank Trucks transporting Liquid Petroleum Products shall have all valves, hatches and other openings sealed shut by the Marketer before leaving the source depot. Such seal may be removed, tampered with or broken by the buyer or his representative, or by the supplier, and only at their places of business or location designated by the buyer.

A broken or tampered valve or hatch seal, or the absence of one on a loaded compartment, shall give rise to the presumption that the Tank Truck is UNDERDELIVERING or that the product contained is adulterated and the shipment may be refused by the buyer.

SECTION 14. *Calibration and Testing of Dispensing Pumps Using A Properly Sealed Calibrating Bucket.* –

Owners and/or operators of Retail Outlet/s shall maintain in their Retail Outlets a DOST-ITDI calibrated and sealed calibrating bucket available for use pursuant to Section 12 hereof. The Retail Outlet's calibrating bucket/s must be recalibrated and resealed once every twelve (12) months.

All dispensing pump meters of Retail Outlets shall be tested daily not later than 9:00 A.M. for accuracy in delivering Liquid Petroleum Products using said calibrating bucket.

Any dispensing pump not delivering the correct quantity shall be marked by the owner and/or operator with an "out-of-order" sign and padlocked and shall not be used until said pump is recalibrated and resealed by the proper authority.

The calibrating bucket and a written record or logbook of the daily testing thereof shall be maintained at all times in the Retail Outlet premises, and presented to OIMB inspectors and to the public upon demand thereof.

Failure to provide the written record or logbook and the properly sealed calibrating bucket shall give rise to the presumption that the dispensing pump is UNDERDELIVERING.

SECTION 15. *Sample Taking and Testing of Dispensing Pumps.* –

Duly authorized inspectors from the OIMB shall undertake random and unannounced inspections in the presence of the owner and/or operator of the Retail Outlet or his designated shift supervisor to test for, among others, the sample taking and calibration of dispensing pumps. Owners and/or operators of the Retail outlets, or their shift supervisors in their absence, shall allow said inspectors to inspect their Retail Outlets and cooperate with them fully.

Retail Outlets shall provide duly authorized OIMB inspectors samples of Liquid Petroleum Products which they are offering for sale, in volumes required by current DOE issuances and circulars on sample taking and as reflected in the Special Assignment covering the said inspection, for product testing on-site or quality tests at the DOE laboratory.

Retail Outlets shall retain a duplicate set of the samples obtained by the OIMB inspectors during their inspection and product quality verification as provided in Memorandum Circular No. 2001-02-001. Refusal to allow entry of the authorized OIMB inspectors to the Retail Outlet and/or to conduct the inspection and sampling shall constitute *prima facie* evidence of ILLEGAL TRADING.

SECTION 16. *Underdelivery in Dispensing Pumps.* –

The quantity of Liquid Petroleum Products delivered by dispensing pumps at Retail Outlets as measured by the dispensing pump meter shall not be less than the actual quantity by more than fifty (50) milliliters for every ten (10) liters as measured by a calibrating bucket certified and sealed by the DOST- ITDI.

The calibrating bucket shall be filled to the ten (10)-liter mark three (3) times at low, medium and fast flow rates and the average quantity as measured by the pump meter shall constitute the quantity to be compared with the actual quantity of ten (10) liters. Dispensing pumps delivering less than the tolerable minimum quantity shall be deemed to be UNDERDELIVERING. The absence of an 11 out-of- order” sign or padlock locking the dispensing pump shall be deemed an actual use of the pump for the conduct of Retailing. A dispensing pump found with a broken or no seal shall constitute a *prima facie* evidence of UNDERDELIVERING.

RULE IV
PETROLEUM PRODUCT STANDARDS

SECTION 17. *Product Quality.* –

Only Liquid Petroleum Products complying with the Philippine National Standards (PNS), including the prescribed color coding scheme for the same shall be dispensed at Retail Outlets.

The possession of Liquid Petroleum Products which do not meet the prescribed PNS shall constitute *prima facie* evidence of ADULTERATION and the sale, distribution, transportation, exchange or barter of adulterated products shall constitute ILLEGAL TRADING.

SECTION 18. *Testing and Retention of Samples of Petroleum Products by Dealer/Operator.* –

In order to protect against the delivery of adulterated products, Retail Outlets may do either of the following:

- (a) The owner and/or operator shall take one (1) liter samples of each Liquid Petroleum Product delivered to his Retail Outlets. The samples shall be placed in an OIMB-specified container and sealed in the presence of the Tank Truck driver who shall verify the taking of the sample by

signing on the invoice. The sample shall be kept by the owner and/or operator for at least one (1) month or until the third delivery thereafter, whichever is shorter.

- (b) By using a hydrometer, the owner and/or operator shall take the American Petroleum Institute (API) gravity or density and obtain the corrected API gravity at 60 degrees Fahrenheit or specific gravity at 15 degrees Celsius and compare this against the API gravity at 60 degrees Fahrenheit or density at 15 degrees Celsius as indicated in the product invoice. For this purpose, oil companies shall indicate the API gravity at 60 degrees Fahrenheit or density at 15 degrees Celsius of all deliveries of Liquid Petroleum Products in the corresponding invoice. A Retail Outlet owner/operator may refuse to accept the shipment if the API gravity difference exceeds by 0.6 degrees API or the density difference exceeds by 0.0024. Both the oil company's and Retail Outlet owner's and/or operator's specific gravity or density readings should be recorded in a logbook specifically kept for this purpose.

Retail Outlet owners and/or operators may require their respective oil company suppliers to perform verification quality tests on products received.

RULE V

MISCELLANEOUS PROVISIONS

SECTION 19. Reportorial requirements. –

In addition to the obligations of the owners and/or operators of Retail Outlets provided under these Retail Rules, all owners and/or operators of Retail Outlets shall:

- (a) File a notice to the OIMB of their official start of business at least five (5) days prior to the start of actual operations.
- (b) Submit applicable permits for any new, additional, renovated or refurbished

facilities and their respective operation five (5) days prior to commissioning.

- (c) Report to the OIMB any decommissioning, removal from service or abandonment of storage tank/s or of the entire Retail Outlet not later than five (5) days prior to the proposed activity.
- (d) Submit to the OIMB, not later than ninety (90) days from the effectivity of these Retail Rules, a list of all its Retail Outlets, their corresponding locations, names of dealers and operators, number and type of storage tanks (e.g., UGT, AGT) and respective capacities, number of dispensing pumps, types of products sold and a layout of their Retail Outlets. This list shall be updated on an annual basis by the submission of a report not later than the thirtieth (30th) day of January each year. The updating report shall contain, among others, change in dealership; expansions, additions or closures of previously reported outlets; and such other information that the OIMB may require from time to time.

SECTION 20. Penalties and Sanctions by LGUs. –

The DOE recognizes and respects the right of the appropriate LGU to refuse issuing the necessary business permits, revoke business permits and/or impose fines and/or penalties in the event of a violation of ordinances enacted by them consistent with these Retail Rules. Likewise, the DOE may recommend to the concerned LGU the suspension, revocation or termination of the business permits of Persons found to be in violation of this Department Circular as provided in Section 15 (e) of R.A. 8479.

RULE VI

ADMINISTRATIVE FINES AND SANCTIONS

SECTION 21. Fines/Sanctions Against Prohibited Acts. –

Any Person engaged in the business of Retailing Liquid Petroleum Products who commits any of the prohibited acts defined or provided in this Department Circular such as ILLEGAL TRADING, ADULTERATION, UNDERDELIVERY and HOARDING shall be imposed, for the first offense, a fine of *Ten Thousand Pesos (P10,000.00)* for every prohibited act. A fine of *Ten Thousand Pesos (P10,000.00)* shall be imposed against such Person in the event the latter is found to have committed the same prohibited act a second time. In the event such Person is found to have committed the same offense a third time, the DOE shall recommend to the proper government agency the suspension or revocation of the business permit of the offender.

Any Person who does not comply with the consumer safety and informational signs required under Section 8 of these Retail Rules shall be issued a warning for the first offense. In the event such Person is found to have committed the same violation a second time, the DOE may recommend to the proper government agency the suspension or revocation of the business permit of the offender.

SECTION 22. *Initiation of Administrative Proceedings.* –

Any Person may initiate administrative proceedings against Persons committing any of the prohibited acts defined or provided in this Department Circular in accordance with Department Circular No. 2002-07-004 (“Rules of Practice and Procedure Before the Department of Energy”): *Provided*, That the DOE may *motupropio* proceed administratively against any Person who violates or does not comply with this Department Circular pursuant to the said Department Circular No. 2002-07-004.

SECTION 23. *Initiation of Criminal Acts.* –

The initiation of an administrative action

and/or the imposition of any fine against any Person who violates or does not comply with this Department Circular shall be without prejudice to the filing of any criminal action against such person pursuant to Batas PambansaBlg. 33, as amended.

**RULE VII
FINAL PROVISIONS**

SECTION 24. *Transition Period.* –

All existing Retail Outlets that have fully complied with the prior notice requirements of the DOE pursuant to Department Circular No. 98-03-004 shall be given six (6) months from effectivity of these Retail Rules to fully comply with the provisions hereof: *Provided*, That new Retail Outlets under construction shall immediately comply with the same.

SECTION 25. *Repealing Clause.* –

The following DOE issuances and circulars are hereby repealed or amended accordingly upon the effectivity of these Retail Rules:

- (a) Department Circular No. 98-03-004, Rules and Regulations Implementing Republic Act No. 8479, “Downstream Oil Industry Deregulation Act of 1998”
 - (i) Section 5 – Notice Prior to Engagement in any Activity or Business in the Downstream Oil Industry.
 - (ii) Section 7 – Reportorial Requirements
 - Section 7 (a) – Prior to Operation in the Proposed Business or Activity
 - (iii) Section 16 – Other Prohibited Acts 16
 - (a) – Submission of Any Reportorial Requirements
 - (iv) Section 18.a.1 – Price Display Boards

Section 18.b.2 – Sampling and Testing of Product

Section 18.b.3 – Calibration

Section 18.c.2 – Inspection & Audit of Facilities

Section 18.c.3 – Safety

Section 18.c.1.iv – Conformance to Standards & Facilities, Gasoline Stations

(b) Rules & Regulations Implementing BP 33 as amended by PD 1865

(i) Rule I Section 2 – Definition of Terms

(ii) Rule 11 – Illegal Trading

Section 1 – BEU Licensing

Section 2 – Issuance of Receipts

Section 5 – Unloading of Petroleum Products

Section 6 – Calibration & Sealing of Dispensing Pumps

Section 7 – Calibration, Registration & Sealing of Petroleum Product Transport Containers

(iii) Rule III – Petroleum Product Adulteration

Section 2 – Sampling & Testing of Finished Petroleum Products by Oil Companies

Section 3 – Testing or Retention of Sample of Petroleum Products by the Dealer/Operator

Section 4 – Sample taking by the Bureau

Section 5 – Removal of Water phase in Underground Tank by Dealer/

Operator of Petroleum Product Retail Outlet

(iv) Rule IV – Underdelivery&Underfilling

Section 1a. – Underdelivery in Dispensing Pumps

Section 1b. – Daily Testing of Dispensing Pumps by Dealer

Section 1c. – Calibration of Dispensing Pumps by Oil Companies

Section 1d. – Testing of dispensing Pumps by Bureau personnel and/or by other Law Enforcement Agents

(v) Rule V – Hoarding

SECTION 26. *Separability Clause.* –

Should any provision herein be declared invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of the other provisions not so declared.

SECTION 27. *Effectivity.* –

This Department Circular shall take effect fifteen (15) days from the date of its complete publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila
November 14, 2003.

VINCENT S. PEREZ JR.
Secretary

MEMORANDUM CIRCULAR NO. 2001-02-001

TO: ALL PETROLEUM PRODUCT SUPPLIERS OF FILLING/SERVICE STATIONS
SUBJECT: PROPER RETENTION OF PETROLEUM SAMPLES IN RETAIL OUTLETS

In furtherance to Rule V, Section 18 (b) of Department Circular No. 98-03-004 (Rules and Regulations Implementing Republic Act 8479), all petroleum suppliers are hereby required to coordinate with their client service stations for the provision in their place of business SAMPLE BOTTLES for use in retaining duplicate petroleum samples taken in the course of inspection made by representatives of the Department of Energy (DOE).

Retention of duplicate samples by the service stations is accordingly institutionalized in the inspection procedures of the DOE. Access to the retained duplicate samples is allowed to settle with finality contested DOE-National Petroleum Testing Laboratory test results on DOE-held samples.

Suppliers are further instructed to give guidance to their respective dealers in ensuring the integrity of the samples retained through the following procedures:

- Appropriate labeling of the sample taken; product name and date taken.

- Provision for tamper-proof seal and ensure that the DOE inspector/representative affix a distinguishable mark on the said seal.
- The sealed samples must be stored in a safe and preferably cool place away from direct sunlight to preserve its properties.
- Disposition of the said duplicate samples are to be undertaken only upon receipt of the official Test Results on the samples taken by the DOE or after six months from the taking of the said sample.
- Said Sample Bottles are of the following specifications:

Description	Specifications
Color	Amber
Volume	0.5 liter (min.)
Cover	Air-tight
Orifice opening (dia.)	1.0" (min.)

Suppliers are advised to ensure compliance by their clients by April 1, 2001.

BEN-HUR C. SALCEDO
OIC – Secretary

DEPARTMENT CIRCULAR NO. 2001-09-003

OCTANE POSTING AT THE PUMP

FOR : ALL COMPANIES : ALL GASOLINE DEALERS AND RETAIL OUTLETS : ALL CONCERNED

WHEREAS, Republic Act No. 8479, otherwise known as the ‘Downstream Oil Industry Deregulation Act of 1998’, provides for the deregulation of the downstream oil industry to foster a truly competitive market which can better achieve the social policy objectives of. Fair prices, adequate and continuous supply of environmentally-clean and high quality petroleum products ;

WHEREAS, as a result of the lead phase-out program and pursuant to Republic Act 8749 or the “Philippine Clean Air Act” which prohibits the sale and use of leaded gasoline nor later than eighteen (18) months from its enactment, various brands and grades of unleaded gasoline (ULG) have been introduced in the market at different prices creating confusion among consumers;

WHEREAS, the octane rating or number of gasoline is commonly used for differentiation of various grades in most countries;

WHEREAS, the Philippine National Standard for Unleaded Gasoline requires a minimum octane rating for each gasoline grade;

WHEREAS, the reflection of the octane ratings at the pump level will readily apprise the consumers on the quality of gasoline they are buying, thereby relating it to the price they are paying;

NOW, THEREFORE, upon effectivity of this Circular, all dealers/operators of gasoline stations shall be required to display the octane rating, in terms of Research Octane Number (RON) as part of the gasoline label at the pumps sold in their establishment

through a “sticker” with the specifications below.

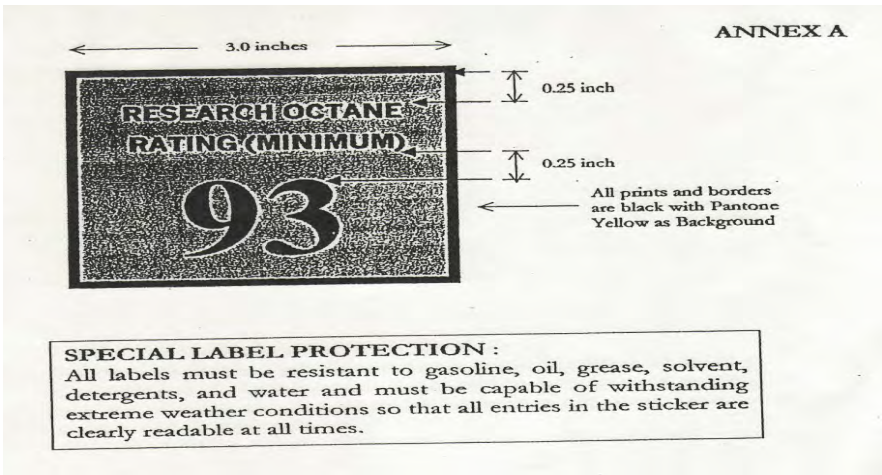
- 1) *Layout.* The label is 3 inches wide and 2 1/2 inches long. Spacing of the label is ¼ inch between the top border and the first line of text, 1/8 inch between the first and second line of text, ¼ inch between the octane rating and the line of text above it. All text and numerals are centered within the interior borders;
- 2) *Type size and setting.* The Helvetica series is used for all letters at font 16, bold and all capital, while the octane number in Franklin gothic at font 96 condensed with ¼ inch space between the numbers.
- 3) *Colors.* The basic color (background) on all labels is 012C Pantone yellow. All prints and borders are black;
- 4) *Contents.* The contents are shown in the illustration (annex A). The PNS RON for each gasoline grade must be shown. No marks or information other than that called for by this rule may appear on the label; and
- 5) *Special label protection.* All labels must be resistant to gasoline, oil, grease solvent, detergents, water, etc. and must be capable of withstanding extreme weather conditions so that the entries in the sticker are clearly readable at all times. The label should be replaced immediately in the event it is substantially defaced, soiled, torn-off, or otherwise destroyed.

This Department Circular shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation. Full compliance to this Circular shall not be later than January 1, 2002. Failure to comply with this directive shall subject the violator to corresponding administrative sanctions as

may be imposed by the Department.

Fort Bonifacio, Taguig, Metro Manila, 10 September, 2001.

VICENTE S. PEREZ
Secretary of Energy



DEPARTMENT CIRCULAR NO. 2002-05-002

REQUIRING DEALERS AND/OR OPERATORS OF GASOLINE STATIONS TO POST A WARNING SIGN AGAINST THE USE AND/OR OPERATION OF CELLULAR PHONES WHILE GASSING-UP IN GASOLINE STATIONS

WHEREAS, the Department of Energy (DOE) and the Department of Transportation and Communication (DOTC) recognize the possibility that battery-operated equipment represent a potential ignition source and should not be permitted on sites where there is a concentration of flammable vapors;

WHEREAS, despite the lack of documented evidences, both agencies recognize the possibility that the use and operation of cellular phones by consumers while filling up in gasoline stations pose a threat to the safety of the motorists, gasoline station personnel and to the establishments through the possibility of igniting gas fumes by even a small electric spark produced by the key pad or ringer;

WHEREAS, the said threat is acknowledged by many, particularly by cellular phone manufacturers themselves as manifested by the warnings carried by their products, by oil companies here and abroad as reflected in their information materials, and by local government units as reflected by issuance of city ordinances;

WHEREAS, areas with a potentially explosive atmosphere are often but not always clearly marked;

WHEREAS, in the interest of consumer safety, there is a need for both agencies to take necessary steps to avoid occurrence of accidents resulting from the use of cellular phones in gasoline stations;

NOW, THEREFORE, in view of the above premises, the following are hereby ordered:

1. Upon effectivity of this Circular, all dealers/operators of gasoline stations shall be required to post ample and prominent warning signs in each pump island within the station, against the use of cellular phones while filling up in gasoline stations or at any time within the forecourt. Attached as Annex A is the warning design for use in such station. Oil companies and dealers shall not be precluded from posting their own warning signs; provided that prior approval from the DOE is required.
2. Dealer and/or operators of gasoline stations who fail to post the recommended warning signs required herein or a

suitable equivalent as determined by a DOE inspection team shall be subject to the following penalties:

- a. First Offense – warning
- b. Second Offense – P 2,000.00 fine
- c. Third Offense – P 5,000.00 fine

This Department Circular shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation. Full compliance with this Circular shall not be later than July 30, 2002.

Fort Bonifacio, Taguig, Metro Manila, May 30, 2002.

VINCENT S. PEREZ, JR.
Secretary

DEPARTMENT CIRCULAR NO. DC2007-05-0005

IMPLEMENTING THE PHILIPPINE NATIONAL STANDARD SPECIFICATION FOR BUNKER FUEL OILS (PNS/DOE QS 006:2005)

WHEREAS, Republic Act (R.A.) No. 7638 “An Act Creating the Department of Energy (DOE)”, tasks the DOE to formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution;

WHEREAS, R. A. No. 8479 otherwise known as the ‘Downstream Oil Industry Deregulation Act of 1998”, provides for the deregulation of the downstream oil industry to foster a truly competitive market which can better achieve the social policy objectives of fair prices, adequate and continuous supply of environmentally-clean and high quality petroleum products;

WHEREAS, Rule V, Section 18, b and b (2) of the Implementing Rules and Regulations (IRR)

of R.A. 8479, provides that the Oil Industry Management Bureau (OIMB) shall monitor thru spot and periodic sampling and testing of petroleum products including adulteration and other forms of product misrepresentation or mislabelling to ensure conformance to the Philippine National Standards of quality.

WHEREAS, Section 26 of R.A. No. 8749 otherwise known as the “Philippine Clean Air Act of 1999”, provides that the DOE together with the Department of Environment and Natural Resources (DENR), Bureau of Product Standards (BPS) and Department of Science and Technology (DOST) and other stakeholders shall set specifications for all types of fuel and fuel-related products and improve fuel composition;

WHEREAS, it is the intent of R. A. 8749 that the specifications of fuels shall be reviewed and revised for further improvement in harmony with the continuing development of fuel quality standards worldwide;

WHEREAS, PNS/DOE QS 006:2005 was promulgated on April 18, 2006 to supersede PNS 21:1997 as the latest revision/update of quality standard specification for Bunker Fuel Oils (BFO);

NOW, THEREFORE, the following guidelines are hereby adopted to effectively implement the Philippine National Standard specification for BFO:

1. Starting June 1, 2007, only BFO conforming to PNS/DOE QS 006:2005 shall be manufactured, imported, sold, offered for sale, dispensed, or introduced into commerce in the Philippines;
2. All oil company manufacturers/importers of BFO shall submit to the OIMB within ten (10) days after the end of each quarter a report of the production/importation and sales of each type of BFO with the corresponding quality specification. Companies importing BFO for their own use shall submit a similar report covering their importations and consumption;
3. The oil company/ies, shall conduct quality control tests and undertake regular monitoring of all activities being undertaken at their refineries, bulk plants, terminals, depots, tank trucks, power plants, barges, commercial and noncommercial ships nationwide to ensure that the quality of all BFO sold meets the latest BFO specifications provided in PNS/DOE QS 006:2005;
4. Effectively, PNS/DOE QS 006:2005 provides the minimum standard requirements for BFO and shall be the reference standard for all BFO commercially available in the country;
5. Failure to comply with the provisions of this Department Circular shall subject the violator to the corresponding sanctions imposed by the appropriate laws, DOE rules and regulations and the Philippine Clean Air Act.

This Department Circular shall take effect upon publication in any newspaper of general circulation.

Fort Bonifacio, Taguig City, Metro Manila, 11 May 2007.

(sgd.) **RAPHAEL P. M. LOTILLA**
Secretary

SUMMARY OF DEPARTMENT OF ENERGY/PHILIPPINE NATIONAL STANDARDS (DOE/PNS)

Fuel Quality Standards Development

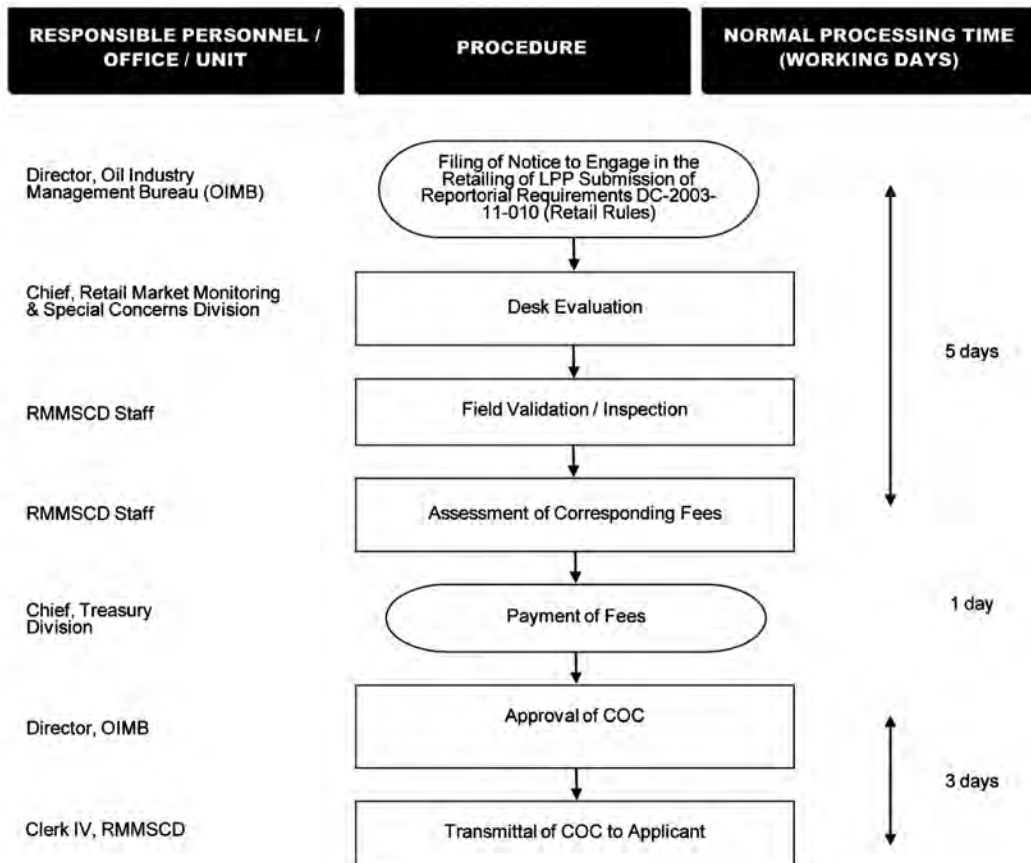
Title	Highlights/Notes
PNS/DOE 001:2009 – Unleaded motor gasoline	This standard is a revision of PNS/DOE QS 001:2005 and was made to update and provide clear guidance on fuel classification for conventional gasoline distinct from the Ethanol-Blended Gasoline (E-Gasoline) or E10 Standard.
PNS/DOE QS 001:2005 – Unleaded motor gasoline Completed/Promulgated: December 5, 2005	• This standard replaced PNS 1131:2002 (DOE:001:2002), highlights among other quality improvements, the reduction of maximum sulfur content from 0.1% for premium and 0.2% for regular grade to 0.005% mass for all grades in conformance with sulfur limit of EURO II standard.
PNS 1131:2002/DOE 001:2002 - Unleaded motor gasoline Completed/Promulgated: May 21, 2003	• This standard is a revision of PNS 1131:2001 and was made in line with the need to address the improved gasoline fuel specification requirements of the CAA for 2003. ○ Aromatic – 35% max. by vol. ○ Benzene – 2% max. by vol.
PNS 1131:2001 – Unleaded motor gasoline Completed/Promulgated: Jan. 2003	• This standard is a revision of PNS 1131:2000 and was made in line with the need to address other concerns brought about by the prohibitions on the use of leaded gasoline as provided under the CAA of 1999. • This standard provided the multi grade ULG: ○ Premium Plus = 95 RON ○ Premium = 93 RON ○ Regular Plus = 87 RON ○ Regular = 81 RON
PNS 1131:2000 (1st DOE/TCPPA std.) -Unleaded premium motor gasoline Completed/Promulgated: July 2000	• This standard supersedes and cancels the standard issued in 1998 in compliance with the Clean Air Act of 1999 which provides the prohibitions on the use of leaded gasoline starting 23 December 2000.

PNS/DOE QS 002:2007 – Coconut Methyl Ester (B100) Completed/Promulgated: Aug. 24, 2007	• This standard supersedes the first CME (PNS 2020:2003/DOE 002:2003, B100) biodiesel specification promulgated in support of the Coco-biodiesel Program of the DOE in 2003. • As an improvement to the previous standard, current specifications are harmonized with the specifications of EN 14214, ASTM D6751 as well as recent biodiesel quality specifications assessments conducted by Japan Automotive Manufacturers Association (JAMA) and current Philippine studies and actual experience on coco-biodiesel use.
PNS 2020:2003/DOE 002:2003 - Coconut Methyl Ester (B100) Completed/Promulgated: May 21, 2003	• Jumpstarting the coco-diesel program, this was made to ensure the quality and effectiveness of coconut methyl ester for blending with diesel.
PNS/DOE QS 003:2003 – Two-stroke lubricating oil Completed/Promulgated: May 6, 2004	• This standard is in line with the technological improvements in the formulation of two-stroke lubricating oil vis-à-vis stringent emission requirements for two-stroke motorcycles which is primarily aimed at benefiting its environmental friendliness supporting the intent of the Clean Air Act for a cleaner environment. • This standard also considers CME as a possible feedstock.
PNS/DOE QS 004:2009 Fatty Acid Methyl Ester (FAME) – Blended Diesel Oils (B2) Completed/Promulgated: Feb 3, 2009	• This standard is revision of PNS/DOE QS 004:2007, and was made to comply with the requirements of the Biofuels Act of 2006 for a 2% volume biodiesel blend into all diesel oils solid in the country by February 2009.
PNS/DOE QS 004:2007 Fatty Acid Methyl Ester (FAME) – Blended Diesel Oils (B1) Completed Promulgated : Apr 24, 2007	• This standard is harmonized with the regional trends in quality improvements of conventional diesel as well as the incorporation of biodiesel into the fuel blend as required by the “Biofuels Act of 2006” which mandate the blending of 1% volume biodiesel into all diesel oil solid in the country, to wit: -0.7-1.2% FAME blend to conventional diesel
PNS/DOE QS 004:2003 - Diesel Oils Completed/Promulgated: May 6, 2004	• This standard is a revision of PNS 20:2000 in compliance with the reduction of sulfur for Automotive Diesel Oil (ADO) from 0.2% max. to 0.05% max., by weight by January 2004 provided under the CAA. • This is also the last CAA-mandated specification.

PNS/DOE QS 005:2005 – Liquefied Petroleum Gases (LPG) Completed/Promulgated: April 13, 2005	• This standard is a revision of PNS 22:1990 and was made to highlight the use of LPG as motor fuel in support of the Philippine Government's effort to promote the utilization of alternative and clean fuel technology. • Also improves the properties of LPG not only as motor fuel but also its other uses.
PNS/DOE QS 006:2005 –Fuel Oils (Bunker) Completed/Promulgated: April 18, 2006	• This standard is an update/review of PNS 21:1997 with no major revision made except on the test methods. Said standard retained the three grades based on Sulfur content: BFO 1, BFO 2, and BFO 3.
PNS/DOE QS 007:2005 –Anhydrous Bioethanol Fuel Completed/Promulgated: April 18, 2006	• This is a quality standard for fuel grade ethanol both pure (Bioethanol with 99.3% purity), and denatured grade (Fuel Bioethanol with 96.9% purity with 2% ULG denaturant) for blending with gasoline for use as automotive spark ignition engine fuel.
PNS/DOE QS 008:2009 – E-Gasoline Fuel (multi-grade) Completed/Promulgated Feb. 03, 2009	• This is a revision of PNS/DOE QS 008:2006 and has now two (2) grades in terms of research octane number (RON) to provide more choices to the public, particularly in the mandatory substitution by ethanol of 5% of the annual gasoline sales starting February 2009.
PNS/DOE QS 008:2006 – E- Gasoline Fuel Completed/ Promulgated:Oct. 24, 2006	• This standard specifies the chemical and physical requirements for bioethanol-blended gasoline (E-Gasoline) with emphasis on the following properties: - 9.5%-10% vol. ethanol - 3.5% oxygen content, max. • Requires marking/labeling on dispensing pumps for e-gasoline: - This e-gasoline contains 10% Bioethanol; and - Generally recommended for fuel injection engines
PNS/DOE QS 09:2007 – Kerosene Completed/ Promulgated: Aug. 24, 2007	• This standard is an update/review of PNS 32:1991 with improvements made only in the property of color and updating of test methods.

OISMD FILE: summary of PNS for FQ
ADTL/RSI/ega: 01.07.1

PROCESSING OF CERTIFICATE OF COMPLIANCE (COC)



18 WORKING DAYS

LEGEND	LIST OF REQUIREMENTS	** PROCESSING FEE	LEGAL BASIS
Applicant DOE		Php 500.00 Applicant will shoulder the cost of photocopying	E. O. 197 / 28

DEPARTMENT ORDER NO. 2003-10-014

CREATING A DOE GASOLINE STATION LOAN REVIEW COMMITTEE AND DEFINING THE FUNCTIONS THEREOF AND THOSE OF THE DOE BUREAUS/UNITS INVOLVED

WHEREAS, Department Circular No. 2003-06-007 (Further Amending Section 14 of Department Circular No. 98-03-004 entitled “Rules and Regulations Implementing Republic Act 8479, Downstream Oil Industry Deregulation Act of 1998,” as amended) and the Memorandum of Agreement entered into on January 23, 2003 by and among the Department of Energy (DOE), the Development Bank of the Philippines (DBP) and the Development Bank of the Philippines – Trust Services (DBP-TS), operationalized the Gasoline Station Lending and Financial Assistance Program (herein referred to as the Program);

WHEREAS, the Program, established under Section 10 of Republic Act 8479 and designed to provide credit assistance to New Industry Participants, as such term has been defined in said law, shall be implemented and administered by the DBP and the DBP-TS, respectively;

WHEREAS, the DOE, on the other hand, shall provide the necessary policy, technical and administrative support to facilitate the effective and efficient implementation of the Program;

WHEREAS, the DOE as part of its support to the Program recognizes the need to create a committee that would serve as the clearinghouse for all applications received under the Program;

NOW, THEREFORE, in view of the foregoing premises, the following is hereby issued.

SECTION 1. *Creation of DOE Review Committee.* –

Pursuant to Section 23 of Republic Act (R.A.) 8479, otherwise known as the *Downstream Oil Industry Deregulation Act of 1998*, and Section 11 of DOE Circular 2003-06-007, a DOE Review Committee (DOE-RC) is hereby created to serve as the clearing house for all applications of the Program.

SECTION 2. *Composition of the DOE Review Committee.* –

The DOE Review Committee shall be composed of the following:

Chairman –
Undersecretary
Vice-Chairman –
Director, Oil Industry
Management Bureau (OIMB)

Members: –
Director, Administrative Services
Director, Financial Services
Director, Legal Services

Chief, Retail Market Monitoring and Special Concerns Division

SECTION 3. *Functions.* –

The DOE Review Committee shall have the following functions:

- (a) Review the findings and recommendations submitted by the OIMB pertaining to loan applications filed with it under the Gasoline Station Training and Loan Fund (Loan Fund) provided by the Philippine Gaming and Amusement Corporation (PAGCOR) pursuant to Section 10 of Republic Act No. 8479;

- (b) Endorse to the DBP such applications which merit funding assistance;
- (c) Instruct DBP on relevant matters relating to the Loan Fund;
- (d) Represent the DOE in the executions of loan documents with the borrower/s; and
- (e) Perform such other functions as may be necessary to successfully implement the Program.

SECTION 4. Responsibilities of Bureaus/Units.

The following Bureaus/Units are hereby given the following responsibilities to assist the DOE Review Committee in the performance of its duties:

(a) Oil Industry Management Bureau

- (i) Receive and check the eligibility criteria and identification of applicants and their respective loan applications;
- (ii) Conduct initial evaluation of loan applications which includes, among others, the technical inspection of the proposed site;
- (iii) Submit the results of the initial evaluation and its recommendation to the DOE Review Committee for review;
- (iv) Inform the applicant of the actions taken by the DOE Review Committee on the application;
- (v) Inform the applicant of the final action on the application;
- (vi) For approved loan applications, send Notice of Approval to the DBP-TS to initiate fund release, copy furnished the DOE Administrative and Financial

Services;

- (vii) Coordinate the signing of the Loan Agreement with the borrower;
- (viii) Monitor progress of approved applications; and
- (ix) Perform such other functions that may be assigned to it by the DOE Review Committee.

(b) Administrative Services

- (i) Follow up monthly releases of Ten Million Pesos (Php 10 million) by PAGCOR to the DOE;
- (ii) Receive and collect the contribution from PAGCOR to the Loan Fund and deposit the amount available for loan (94% of the fund collected pursuant to Section 10 of R.A. 8479) to the DBP;
- (iii) Receive the proceeds of interest income from DBP-TS and deposit the same with the Bureau of Treasury;
- (iv) Provide updated status reports on the Loan Fund; and
- (v) Perform such other functions that may be assigned to it by the DOE Review Committee.

(c) Financial Services

- (i) Ensure the implementation of the accounting system in full compliance with existing government accounting and auditing laws, rules and regulations;
- (ii) Ensure the availability of Loan Funds pursuant to the terms of the February 21, 2002 Memorandum of Agreement between the DOE and PAGCOR;

- (iii) Ensure completeness of documentation of the disbursements of the Loan Funds;
- (iv) Conduct regular audits of the borrower's disbursements of the fund to ensure that the loan is properly utilized in accordance with Department Circular No. 2003-06-007;
- (v) Provide updated status reports on audits conducted; and
- (vi) Perform such other functions that may be assigned to it by the DOE Review Committee.

(d) Legal Services

- (i) Review and evaluate contracts, to be entered into between the DOE and the borrower/s;
- (ii) Review and endorse contracts to the OIMB for finalization prior to signing by the DOE of the same;
- (iii) Issue legal opinion on matters referred to it in connection with the

Loan Fund; and

- (iv) Perform such other functions that may be assigned to it by the DOE Review Committee.

SECTION 5. Meetings. –

The DOE Review Committee shall meet once every two (2) months or as the need may arise to ensure the effective implementation of the Gasoline Station Lending and Financial Assistance Program and this Order.

SECTION 6. Secretariat Support. –

Secretariat support for the DOE Review Committee shall be provided by the OIMB.

SECTION 7. Effectivity. –

This Department Order shall take effect immediately.

Fort Bonifacio, Taguig City, Matro Manila

October 14, 2003

VINCENT S. PEREZ, JR.
Secretary

DEPARTMENT CIRCULAR NO. 2007-02-002

PROVIDING FOR THE RULES AND REGULATIONS GOVERNING THE BUSINESS OF SUPPLYING, HAULING, STORAGE, HANDLING, MARKETING AND DISTRIBUTION OF LIQUEFIED PETROLEUM GAS (LPG) FOR AUTOMOTIVE USE

WHEREAS, the Department of Energy (DOE) in pursuance of its powers and functions under Section 5 of Republic Act (RA) No. 7638 otherwise known as the “Department of Energy Act of 1992”, establishes and administers programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;

WHEREAS, the DOE shall regulate private sector activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638: *Provided*, that the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

WHEREAS, RA 8479, otherwise known as the “Downstream Oil Industry Deregulation

Act of 1998”, shall apply to all persons or entities engaged in any and all activities of the domestic downstream oil industry including the LPG business for automotive use, and mandates the DOE to promote the entry of new industry participants;

WHEREAS, Section 14 (b) of RA 8479 empowers the DOE to monitor the refining and manufacturing of local petroleum products to ensure that clean and safe (environment and worker-benign) technologies are applied. The same shall also apply to the process of marketing local and imported petroleum products;

WHEREAS, Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865, and the Implementing Rules and Regulations therefor, define and penalize certain prohibited acts that are considered inimical to the public interest and national security, including illegal trading in petroleum and/or petroleum products, hoarding of petroleum products, adulteration and underdelivery, among others;

WHEREAS, the LPG Business for Automotive Use is subject to pertinent certifications, permits and licenses issued by government authorities such as, but not limited to, the Department of Trade and Industry, the Department of Environment and Natural Resources, the Bureau of Fire Protection, Bureau of Internal Revenue and Local Government Units;

WHEREAS, the downstream oil industry has adopted pertinent provisions of different national and international safety codes that cover the safe and proper handling, transport, storage, installation and use of equipment and facilities that are used in the industry;

WHEREAS, these pertinent provisions in the different national and international safety codes have been integrated and included in a National Standards on Health, Safety, and Quality for the petroleum products business;

WHEREAS, there is an urgent need to eliminate, illegal and unsafe operation of such business and to impose penalties on violations to health, safety and product quantity/quality standards in the industry in order to better protect the consuming public;

NOW, THEREFORE, in consideration of the foregoing premises, the following rules are hereby promulgated to govern the Business of LPG for Automotive Use.

Rule I

GENERAL PROVISIONS

SECTION 1. TITLE

This Department Circular shall be known and cited as **“The Rules and Regulations Governing the Business of Supplying, Hauling, Storage, Handling, Marketing and Distribution of LPG for Automotive Use”** or **“Auto-LPG Rules”**.

SECTION 2. COVERAGE

These Auto-LPG Rules shall apply to any Person engaged or intending to engage in the business of supplying, hauling, storage, handling, marketing and distribution of liquefied petroleum gas (LPG) for automotive use.

SECTION 3. DEFINITION OF TERMS

For the purpose of this Auto-LPG Rules, the following definitions shall apply:

- a. **“Auto-LPG Dispensing Station”** shall refer to an outlet, facility, or business establishment which retails Liquefied Petroleum Gas (LPG) for automotive fuel directly to individual end users or to the motoring public; The same may be stand alone or located within or operated with a LPPs Retail Outlet;
- b. **“Auto LPG Industry Participants”** shall refer to persons or entities engaged in the

business of supplying, hauling, storage, handling, marketing and distribution of liquefied petroleum gas (LPG) for automotive use.

- c. **“BFP”** shall refer to the Bureau of Fire Protection created under Republic Act No. 6975 as amended;
- d. **“Bulk Supplier”** shall refer to any person or entity who engages in the sale of LPG thru tankers, barges, tank trucks, trailers and lorries;
- e. **“Container”** or **“Auto-LPG Container”** shall refer to any portable pressure vessel with all its permanent support(s) and attachment(s) installed, used for the storage of LPG for automotive use;
- f. **“DENR”** shall refer to the Department of Environment and Natural Resources, created under Executive Order No. 192;
- g. **“DILG”** shall refer to the Department of Interior and Local Government, created under Republic Act No. 6975;
- h. **“DOE”** shall refer to the Department of Energy, created under Republic Act No. 7638, as amended;
- i. **“DOST”** shall refer to the Department of Science and Technology, created under Executive Order No. 128;
- j. **“DTI”** shall refer to the Department of Trade and Industry, created under Executive Order No. 292;
- k. **“Hauler”** shall refer to persons or entities engaged in the transport, distribution and carriage of LPG in bulk from the bulk supplier to the Auto-LPG Dispensing Station;
- l. **“LPP”** shall refer to Liquid Petroleum Products such as gasoline, diesel, and kerosene;

- m. **“LGU”** shall refer to the local government unit;
- n. **“OIMB”** shall refer to the Oil Industry Management Bureau of the Department of Energy;
- o. **“PNP”** shall refer to the Philippine National Police, created under Republic Act No. 6975;
- p. **“PNS” or Philippine National Standards** shall refer to the standards promulgated by the DTI-Bureau of Product Standards relating to product specifications, test methods, terminologies, and standardization procedures, guidelines or practices;
- q. **“Retailing”** shall refer to the act of selling, distributing, dispensing, storing, handling, transferring or dispensing LPG for automotive use directly to the individual end users or to the motoring public.

Rule II

MINIMUM STANDARDS AND REQUIREMENTS

SECTION 4. SUPPLYING/HAULING IN BULK

Any person who is operating or intending to operate a LPG bulk supply and/or hauling business for automotive use shall comply with the latest edition of the following:

- a. National Fire Protection Association (NFPA), Pamphlet 58 – *Liquefied Petroleum Gas Code*; and
- b. Philippine LPG Association (PLPGA) Safety Code

SECTION 5. RETAILING

Any person who is operating or intending to operate an Auto-LPG Dispensing Station shall comply with the following requirements of this Auto-LPG Rules:

- a. Auto-LPG Dispensing Stations shall conform to PNS/DOE FS 3:2006 and any amendments thereto.

Pursuant to PNS/DOE FS 3:2006, the retailing of LPG for automotive use shall be conducted in a dedicated Auto-LPG business premises with an initial minimum lot area of 250 square meters for stand-alone stations with single Auto-LPG Dispenser and above ground storage or 150 square meters for stand-alone stations with single Auto-LPG Dispenser and underground storage; such that vehicles being serviced shall at all times be inside the said business premises.

- b. Auto-LPG Dispensing Stations shall only refill LPG containers for automotive use which conform to the specifications of PNS04:2006 “Road Vehicles—Automotive LPG Components – Containers” and installed in the vehicle complying with PNS 05:1983 “Code of Practice for the use of Liquefied Petroleum Gas (LPG) System in Internal Combustion Engines”.
- c. Auto-LPG Dispensing Stations shall not be allowed to refill cylinders for household use.
- d. Operation of “self-serve” Auto-LPG Dispensing Station shall not be allowed.
- e. Auto-LPG Dispensing Stations shall conform to the minimum standards and requirements prescribed hereunder, and such other pertinent rules and regulations, and shall operate only with a valid SCC as described in Section 6 hereof.

SECTION 6. STANDARDS COMPLIANCE CERTIFICATE

The DOE, through the Oil Industry Management Bureau (OIMB), shall issue a Standards Compliance Certificate (SCC) upon the complete submission of and full compliance by the Auto-LPG Industry

Participant with the requirements provided in Section 9 hereof: *Provided*, that the issuance of the said SCC does not exempt such person or entity from securing DOE’s Certificate of Compliance (COC) for liquid fuels and any other permit or certificate of quality, health, safety, security, or environmental clearance from the concerned governmental agencies or instrumentalities: *Provided further*, that the Auto-LPG Industry Participant shall submit to the DOE-OIMB an authenticated copy of the business/mayor’s permit within thirty (30) days from the issuance of the SCC, otherwise the latter shall be deemed revoked.

No Auto-LPG Industry Participant shall operate until a SCC is secured from the DOE-OIMB. The Auto-LPG Industry Participant shall be deemed engaged in the ILLEGAL TRADING of LPG for automotive use if he/she operates without the SCC.

SECTION 7. CERTIFICATE OF NON-COVERAGE

Auto-LPG garage-based operation shall not be covered by this Auto-LPG Rules only upon issuance of a Certificate of Non-Coverage (CNC) by the DOE-OIMB. For purposes of this Auto-LPG Rules, a garage-based operation shall refer to the operation of a motor vehicle fleet with at least thirty (30) vehicle units; parked and serviced in a confined area or garage.

A Certificate of Non-Coverage shall be issued provided that the owner/operator shall ensure that:

- a. They file with the DOE-OIMB a duly acknowledged formal letter of request for a certificate of non-coverage under these Rules.
- b. They present pertinent LTO/LTFRB documents confirming their fleet with at least thirty (30) taxi units in operation.
- c. They do not render retailing services as defined and as provided for in Section 5 hereof.

- d. Their dispenser/s does not have “money wheels” or “price indicators”. For purposes of this Auto-LPG Rules, a “money wheel” is the price-indicating device of the LPG dispenser that indicates the amount corresponding to the volume of product dispensed from the nozzle.
- e. Their facility shall not be open for retail to the motoring public, hence, shall only be accessible to its own fleet vehicles through a controlled entry point.

Bulk suppliers shall ensure that their garage-based Auto-LPG clients/buyers have secured the necessary Certificate of Non-Coverage (CNC) from the DOE prior to engaging into contractual obligations, such as but not limited to supply agreements, with their clients or buyers.

The CNC does not preclude compliance with PNS/DOE FS 3:2006 “Auto-LPG Dispensing Stations” and with the requirements of other government agencies.

SECTION 8. NON-ISSUANCE, NON-RENEWAL OR REVOCATION OF STANDARDS COMPLIANCE CERTIFICATE

The following shall constitute grounds for non-issuance, non–renewal or revocation of SCC:

- a. Failure to comply with Sections 9, 10, and 11 hereof;
- b. Failure to present an authenticated Business/Mayor’s permit as prescribed in Section 6 hereof;
- c. Unjustified refusal to allow entry of authorized DOE-OIMB inspectors during inspections;
- d. Failure to pay fines imposed by the DOE-OIMB;
- e. Violation of these rules; and

- f. Failure to submit, show or present proof, papers or documents evidencing compliance with any requirement, existing laws, rules and regulations governing the Auto LPG Industry or any other related law.

SECTION 9. DOCUMENTARY REQUIREMENTS

No person or entity shall engage in the business of LPG for Automotive Use without first notifying the DOE-OIMB in writing his/her intention to engage in such activity and without first complying with the DOE requirements, including submission of documentary requirements. Such notification and documentary requirements shall be distinct and separate from the submissions relating to the other LPG and/or Liquid Petroleum Products activity and shall contain the following, *as applicable*:

- a. Prior to Engagement in Auto-LPG Business:
 - i. Business name, address, telephone/ fax number of the business office;
 - ii. Proposed location and complete address of Auto-LPG Dispensing Station;
 - iii. Project or business plan indicating the scope of operation/activity; and
 - iv. List of facilities and proof of availability of such facilities to support the proposed business.
- b. Prior to Commencement of Construction:
 - i. Department of Trade and Industry/ Securities and Exchange Commission registration;
 - ii. Environmental Compliance Certificate or applicable certificate/ permits/licenses issued by the DENR-EMB or LLDA;

- iii. Zoning/Locational Clearance;
 - iv. Building Permit; and
 - v. Barangay Clearance for the proposed location.
- c. Prior to Operation:
- i. File a notice to the OIMB of their official start of business at least five (5) days prior to the start of actual operations;
 - ii. Current Fire Safety Inspection Certificate (BFP);
 - iii. PNS Compliance Statement for Facility Design and Operation;
 - iv. List of Auto-LPG station personnel and proof of training and qualification;
 - v. List of dispensers, storage tanks, and bullet trucks/lorries with its corresponding Certificate of Approval or any other similar documents as provided by the equipment supplier/manufacturer; and
 - vi. Engineering layout plan and latest photograph of the Auto-LPG Dispensing Station. Such lay-out plan duly signed by a company designated project engineer shall indicate the following information, among others:
 - a. Number of tanks and type of installation;
 - b. Location and distances between building structures and facilities and equipment;
 - c. Ingress and Egress;
 - d. Perimeter wall/property boundaries; and
- e. Location and identification of dispensing unit/s including hose reach zone.
- d. Other requirements or information as may be required by the DOE-OIMB, such as, but not limited to, change of dealership or business name, expansion of LPG activity and temporary or permanent closure.
- Unless explicitly specified, certifications, permits and licenses for LPPs cannot be considered in compliance to the above requirements for Auto LPG Dispensing Stations.
- The documents enumerated in this Section must be accompanied by original documents for authentication purposes.
- ## SECTION 10. REPORTORIAL REQUIREMENTS
- All businesses engaged in the trade of LPG, such as but not limited to, Auto-LPG Dispensing Stations shall be required to submit the following reports:
- a. For Bulk Suppliers and/or Haulers
 - i. List of Auto-LPG buyers/clients such as, but not limited to, taxi companies, garage-based, fleet operators by company/entity and location;
 - ii. Quarterly report of sales to buyers/clients as specified in Item (a.i) above;
 - iii. List/number of LPG tankers, barges, tank trucks, trailers and lorries including its load capacities; and
 - iv. List of certified personnel.
 - b. For Auto-LPG Dispensing Station:
 - i. Quarterly Sales and Purchase Volume;

- ii. Applicable permits for any new, additional, renovated or refurbished facilities and/or changes in their respective operation within five (5) days prior to commissioning or decommissioning, as the case may be; and
- iii. List of qualified station personnel/ attendant as provided for in Section 9(c) of this Rules.

SECTION 11. CODE OF PRACTICE

In order to ensure the safe operation in the auto LPG business, the following operational guidelines and procedures shall be strictly observed at all times:

a. *For Bulk Suppliers and/or Haulers:*

Compliance to pertinent provisions of Section 3 (LPG Bulk Storage Facilities) and Section 4 (Vehicular Transport of LPG) of the PLPGA Safety Code of 2000.

b. *For Auto-LPG Dispensing Station Owner/ Operator:*

- i. Ensure that the emergency shut off valves for the dispensing unit and for the LPG storage tanks as provided under PNS/DOE FS 3:2006 are complied with and are fully operational.
- ii. Ensure that its personnel shall have undergone, as a minimum requirement, training and qualification conducted by the Philippine LPG Association (PLPGA) for the proper handling and retailing of Auto-LPG. Such proof of training shall be submitted to the DOE-OIMB prior to its initial operation and subsequent renewal of SCC. The same shall be made available upon demand by the DOE during inspection.

- iii. Ensure that only certified station personnel are allowed to dispense Auto-LPG with strict observance of the following:

- 1) Familiar with and knowledgeable of the emergency shutdown procedures observed by the auto-LPG dispensing station;
- 2) Compliance to pertinent provisions of Section on Consumer Safety and Informational Signs;
- 3) Only fixed and vehicle-mounted LPG containers are permitted for filling at LPG Stations. LPG cylinders for household use shall not be allowed for refill in a Auto-LPG Dispensing Station;
- 4) Display of the PS/Global Check mark or the equivalent import commodity clearance (ICC) mark on LPG container and container name plate which indicates, among others, its manufacturing/re-qualification/ retest date, as the case may be;
- 5) The Auto-LPG container, including its attachments, is adequately protected from damage by impact from objects being handled or carried by the vehicle; and
- 6) The remote fill valve is located outside the container/ baggage compartment and an appropriate external filler cap is provided.

- iv. A dedicated 9.1 kg. BC rated BPS certified fire extinguisher shall readily be accessible within the dispensing area.

- v. No part of the vehicle being filled shall be in a public place. For this purpose, a “public place” shall refer to sidewalks, streets, or public parking.
- vi. The following shall not be within the hose reach zone of the dispenser:
 - 1) Public place;
 - 2) Protected place e.g., place of worship, school, hospital, theater or any building or open area in which persons are accustomed to assemble in large numbers;
 - 3) An entry into a building;
 - 4) A pit or opening into a close drain; and
 - 5) Basement or an aboveground tank for flammable liquid.
- vii. The LPG tank truck entry and exit driveways should be located in such a manner that ensures that the tank truck has ready access to the site so as to reduce the time it may need to be exposed to traffic while entering or leaving the site.
- viii. The LPG tank truck unloading position shall be such that the LPG tank truck is positioned wholly within the site during unloading.
- ix. The unloading of an LPG tank truck shall only proceed when the exit is not obstructed and it is positioned in such a manner that it can leave the site without recourse to reversing.
- x. Vehicles shall be prevented from driving over the filling hose if the LPG tank truck parking area is away from the fill point.

SECTION 12. CONSUMER SAFETY AND INFORMATIONAL SIGNS

The following signs shall be prominently displayed by the owner and/or operator of the Auto-LPG Dispensing Station in strategic and appropriate locations within the premises of the said outlet for the awareness and information of the buying public and station personnel:

- a. Appropriately filled-up price display board indicating the updated price of the LPG product dispensed at the Auto-LPG Dispensing Station: *Provided* that the numeric entries shall be light blue in color and at least six (6) inches in height;
- b. Switching off of cellular phones and other electronic devices while filling;
- c. No smoking;
- d. Switching off of engines while filling; and
- e. Other safety signs as may be required by the DOE, other government agencies and concerned LGUs.

Failure to provide and display any of the above-mentioned requirements shall subject the owner or operator of the station to the fine or sanction provided in Section 22 of these Rules.

SECTION 13. ISSUANCE OF RECEIPTS

All transactions involving the LPG Business for Automotive Use must be evidenced by an official receipt bearing the registered name and address of the seller and indicating the quantity and price of the LPG product sold, the date of the transaction and such other information required by existing laws and rules on national internal revenue (or those implemented by the Bureau of Internal Revenue). Duplicate copies of official receipts shall be made available for verification by

DOE-OIMB inspectors/personnel.

Rule III

LPG DISPENSER CALIBRATION AND SEALING

SECTION 14. IN-SERVICE CALIBRATION AND SEALING OF LPG DISPENSERS

All LPG dispensers shall be calibrated quarterly or as often as possible or as deemed necessary by the calibrating entity. A dispenser that is not calibrated and sealed or goes off-calibration shall be clearly marked with an “*out of order*” sign and shall not be used until the said dispenser is calibrated and resealed by the authorized calibrating entity.

For the purpose of these Auto LPG Rules, the authorized calibrating entity is the Municipal or City Treasurer or, in its absence or incapacity, the DOST-ITDI, or, in its absence or unavailability, any other government agency authorized therefore or, in its absence, the representative of the Auto-LPG Dispensing Station’s bulk supplier duly authorized by the concerned LGU.

The owner/operator shall maintain an updated record of calibration and shall be made available upon demand by the DOE-OIMB inspectors.

Failure to provide the updated record of calibrations or properly sealed dispensing pumps shall give rise to the presumption that the Auto LPG dispenser is UNDERDELIVERING.

Rule IV

PETROLEUM PRODUCT STANDARDS

SECTION 15. PRODUCT QUALITY

Only LPG products for automotive use and complying with the Philippine National Standards PNS/DOE QS 005:2005, specifically Type 2B Propane Butane (C3-C4 Mixture) for Motor Fuels, shall be dispensed at the Auto-LPG Dispensing Stations.

The bulk supplier shall provide a Certificate of Quality (COQ) for such LPG products to the Auto-LPG Dispensing Station and shall be made available at all times for inspection.

SECTION 16. PRODUCT SAMPLING AND TESTING OF AUTO-LPG DISPENSING PUMPS

Duly authorized inspectors from the DOE-OIMB shall undertake random and unannounced inspections in the presence of the owner and/or operator of the Auto-LPG Dispensing Station or his duly authorized representative to conduct, among others, sample taking and testing of Auto-LPG dispensing pumps. The owner and/or operator of the Auto-LPG Station, or his/her duly authorized representative, shall allow said inspectors to inspect the Station and cooperate with them fully.

The owner and/or operator or his/her duly authorized representative shall allow the duly authorized DOE-OIMB inspectors to take samples of Auto-LPG which they are offering for sale, in volumes as required by DOE Issuances and Circulars on sample taking and as reflected in the Special Assignment covering the said inspection, for on-site product testing or quality tests at the DOE laboratory.

The Auto-LPG Dispensing Station shall retain a duplicate set of the samples obtained by the OIMB inspectors during the inspection and product quality verification.

Rule V

PROHIBITED ACTS

SECTION 17. ILLEGAL TRADING

The Owner or operator shall be deemed engaged in ILLEGAL TRADING under any of the following circumstances:

- a. Engaging in business without Standards Compliance Certificate;

- b. Non-issuance of receipts;
- c. Dispensing of LPG into household cylinders;
- d. Selling of Adulterated LPG for automotive use; and
- e. For bulk-suppliers, selling Auto-LPG to LPG Stations without SCC and to garage-based operators without DOE Certificate of Non-Coverage.

SECTION 18. REFUSAL TO ALLOW INSPECTION

The refusal to allow access or entry of authorized DOE-OIMB inspectors to the Auto-LPG Dispensing Station and/or to conduct the actual inspection and product sampling is prohibited and shall constitute *prima facie* evidence of ILLEGAL TRADING and shall be subject to the penalty provided in Section 22 hereof.

SECTION 19. UNDERDELIVERING

The quantity of LPG products for automotive use delivered by the LPG dispensers at the Auto-LPG Dispensing Stations shall be within the maximum permissible error (MPE) of +/- 1%.

Dispensers delivering more than the MPEs shall be deemed to be UNDERDELIVERING. The absence of an “out-of-order” sign or padlock, locking the dispenser shall be deemed an actual use for the conduct of retailing. A dispenser found with a broken or no seal shall be immediately padlocked by the DOE-OIMB and shall be subject to applicable penalties under Section 22 hereof.

SECTION 20. HOARDING

For purposes of these Auto LPG Rules, the following shall constitute *prima facie* evidence of HOARDING:

- a. The refusal of Auto-LPG Dispensing Stations to sell LPG products for automotive use shortly before a price increase or in times of tight supply, and in both instances if the buyer or consumer has the ability to pay in cash for the product; or
- b. The undue accumulation of Auto-LPG Dispensing Stations of LPG products for automotive use in times of tight supply or shortly before a price increase. For purposes of this Auto LPG Rules, “undue accumulation” shall mean the keeping or stocking of quantities of LPG products for automotive use beyond the inventory levels as required to be maintained by the Auto-LPG Dispensing Stations, for a period of thirty (30) days immediately preceding the period of tight supply or price increase.

SECTION 21. ADULTERATION

The possession of LPG products for automotive use, which do not meet the prescribed PNS, shall constitute *prima facie* evidence of ADULTERATION, and the distribution or transportation of the said LPG product for purposes of sale, exchange or barter of adulterated products shall constitute ILLEGAL TRADING.

Rule VI

ADMINISTRATIVE FINES AND SANCTIONS

SECTION 22. FINES/SANCTIONS AGAINST PROHIBITED ACTS

Any Person engaged in the LPG Business for Automotive Use who commits any of the prohibited acts defined or provided in this Department Circular such as ILLEGAL TRADING, ADULTERATION, UNDERDELIVERY, HOARDING, refusal of inspection and violation of the other provisions of this Department Circular shall be imposed for the first offense, a fine

of Ten Thousand Pesos (P10,000.00) for every prohibited act. An additional fine of Ten Thousand Pesos (P10,000.00) shall be imposed against such Person in the event the latter is found to have committed the same prohibited act a second time. Commission of the same offense a third time, by the same person shall mean cancellation or revocation of its SCC by the DOE.

Any person found operating without a SCC, the DOE shall cause the immediate cessation or suspension of the operation of the station and impose a fine of Sixty Thousand Pesos (P60,000.00) against the owner or operator. No SCC shall be granted or issued unless said fines are paid and after full compliance with the requirements of Section 6 hereof.

SECTION 23. REFUSAL OR FAILURE TO PAY FINE

The DOE-OIMB shall cause the immediate cessation or suspension of the operation or cancellation of the SCC of the owner/operator who refuses or fails to pay any administrative fine without prejudice to the filing of an appropriate criminal action if warranted.

SECTION 24. INITIATION OF ADMINISTRATIVE PROCEEDINGS

Any Person may initiate administrative proceedings against Persons committing any of the prohibited acts defined or provided in these Rules in accordance with Department Circular No. 2002-07-004 (“Rules of Practice and Procedure Before the Department of Energy”): *Provided*, that, the DOE may *motu proprio* proceed administratively against any Person who violates or does not comply with this Auto-LPG Rules pursuant to the said Department Circular No. 2002-07-004.

SECTION 25. INITIATION OF CRIMINAL ACTS

The initiation of an administrative action and/or the imposition of any fine against any Person who violates or does not comply

with this Rule shall be without prejudice to the filing of any criminal action against such person pursuant to Batas PambansaBlg. 33, as amended and R.A. 8479.

**Rule VII
FINAL PROVISIONS**

SECTION 26. TRANSITION PERIOD

All Persons engaged in the LPG business for automotive use that have fully complied with the prior notice requirements of the DOE pursuant to Department Circular No. 98-03-004 shall be given three (3) months from effectivity of this Auto LPG Rules to fully comply with the provisions hereof: *Provided*, that all persons intending to engage in Auto-LPG Business for Automotive use shall immediately comply with this Rules.

SECTION 27. REPEALING CLAUSE

All other DOE Issuances and Circulars not consistent with this Auto LPG Rules are hereby repealed or amended accordingly upon the effectivity of this Rules.

SECTION 28. SEPARABILITY CLAUSE

Should any provision herein be declared invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of the other provisions not so declared.

SECTION 29. EFFECTIVITY

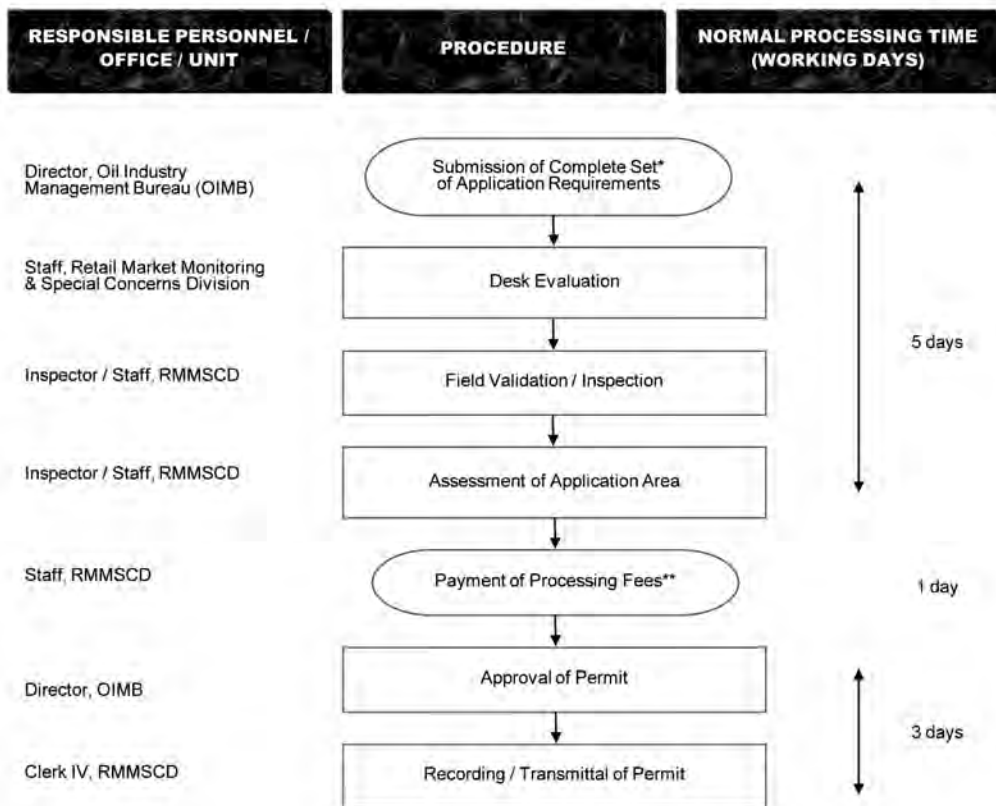
This Department Circular shall take effect fifteen (15) days from the date of its complete publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig City, February 13, 2007.

RAPHAEL P.M. LOTILLA
Secretary

CHARTS:

PROCESSING OF STANDARDS COMPLIANCE CERTIFICATE (SCC) & CERTIFICATE OF NON-COMPLIANCE (CNC)

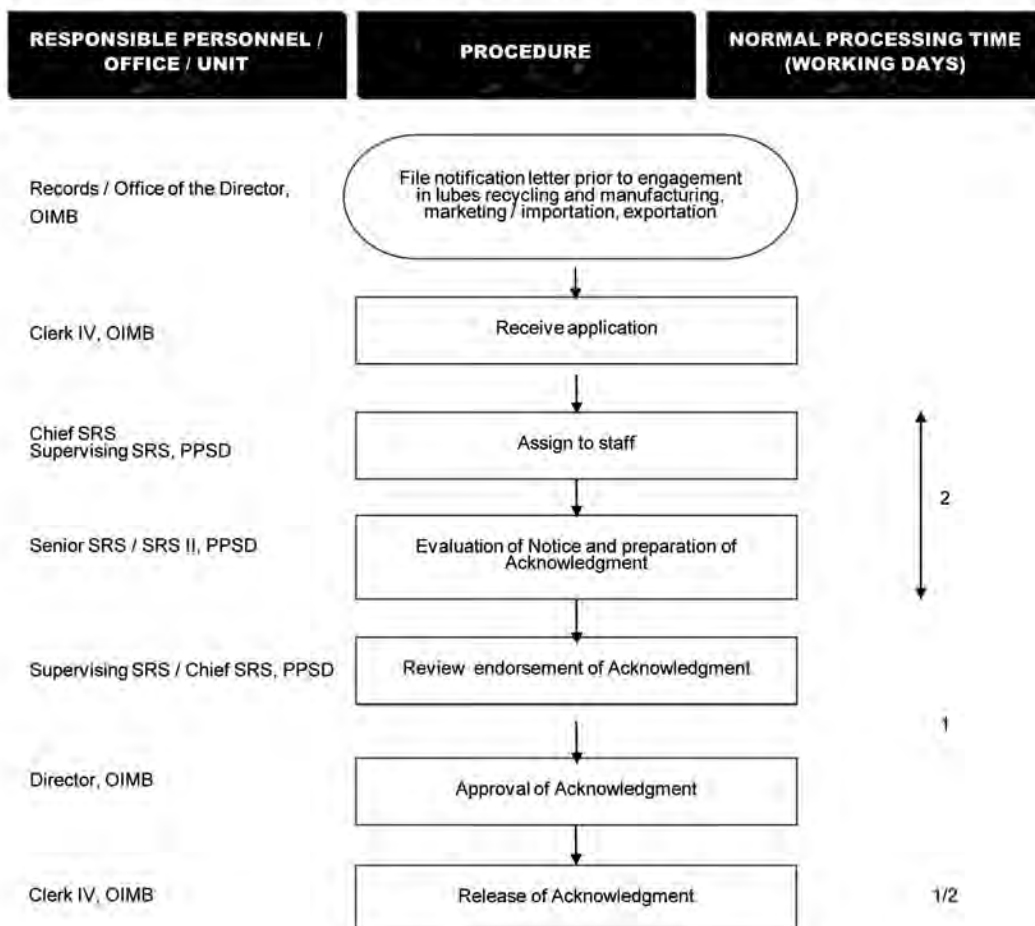


9 WORKING DAYS

LEGEND	LIST OF REQUIREMENTS	** PROCESSING FEE	LEGAL BASIS
○ Applicant □ DOE		Php 500.00 – WC / SCC / CNC	E.O. 197

ACKNOWLEDGMENT OF NOTICES

- Prior to engagement in lubes business manufacturing, recycling & marketing
- Prior to importation / exportation of lubes and special products



2

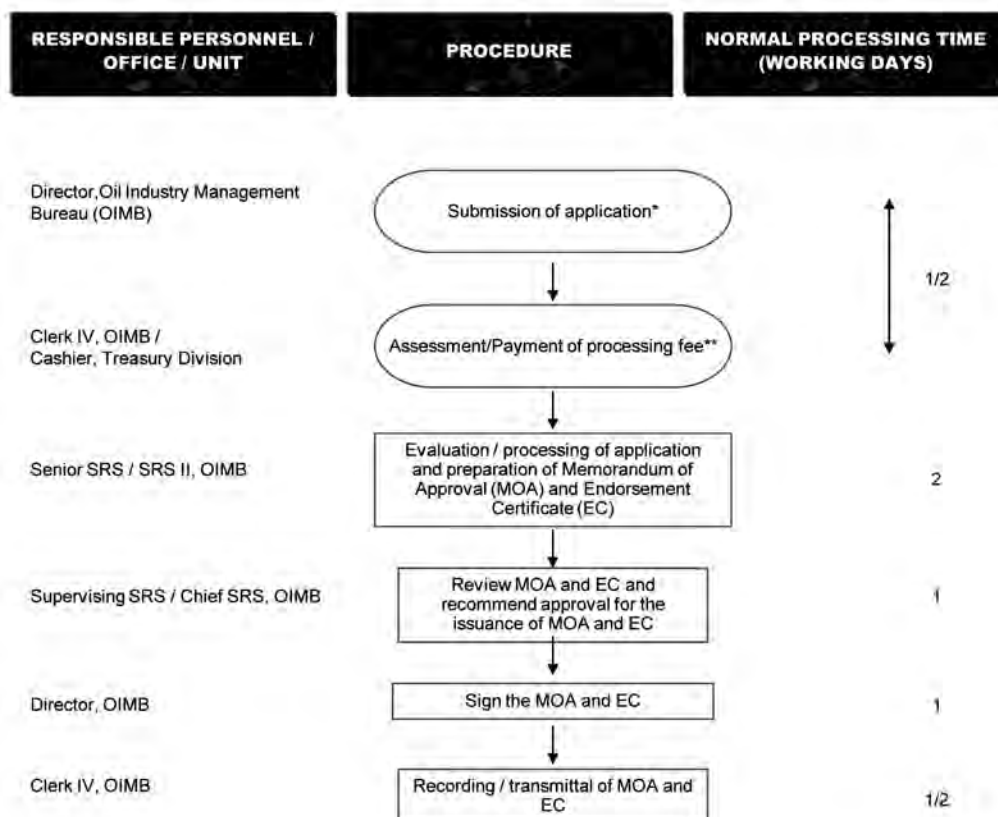
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1/2

3 1/2 WORKING DAYS

LEGEND	LIST OF REQUIREMENTS	** PROCESSING FEE	LEGAL BASIS
Applicant	For recycling/manufacture - Business permits - SEC/DTI registration - Business Plan, scope of activity, facility, process storage & production capacity - Clearances - Fire Safety Inspection Certificate	No fee	Sec: 6 of RA 8479
DOE	For initial importation/exportation: - Business Permit - SEC & DTI registration For succeeding importation/exportation: - Proforma invoice		

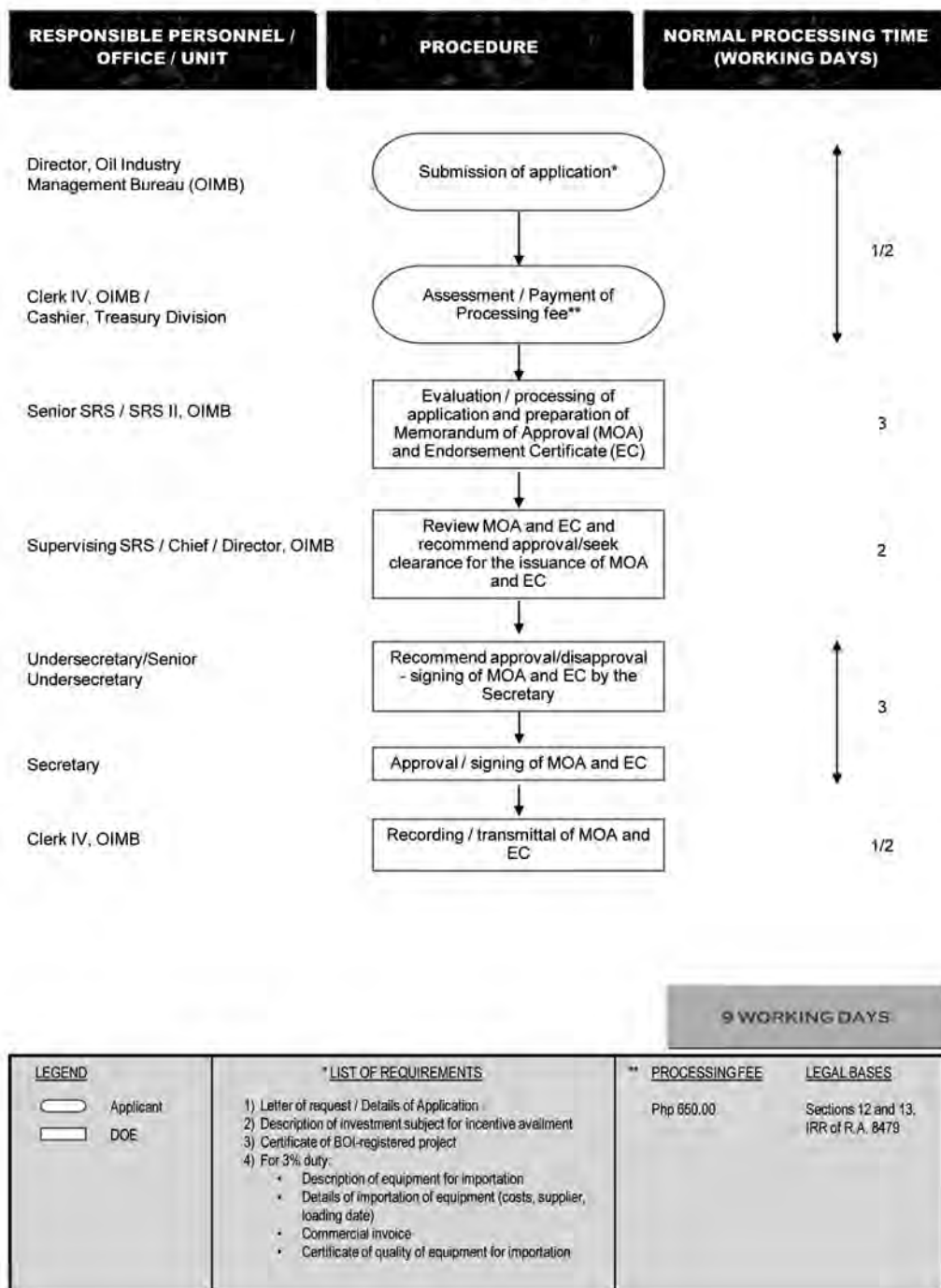
PROCESSING OF APPLICATION FOR DOE ENDORSEMENT FOR BOI REGISTRATION OF PROJECTS UNDER R.A. 8479



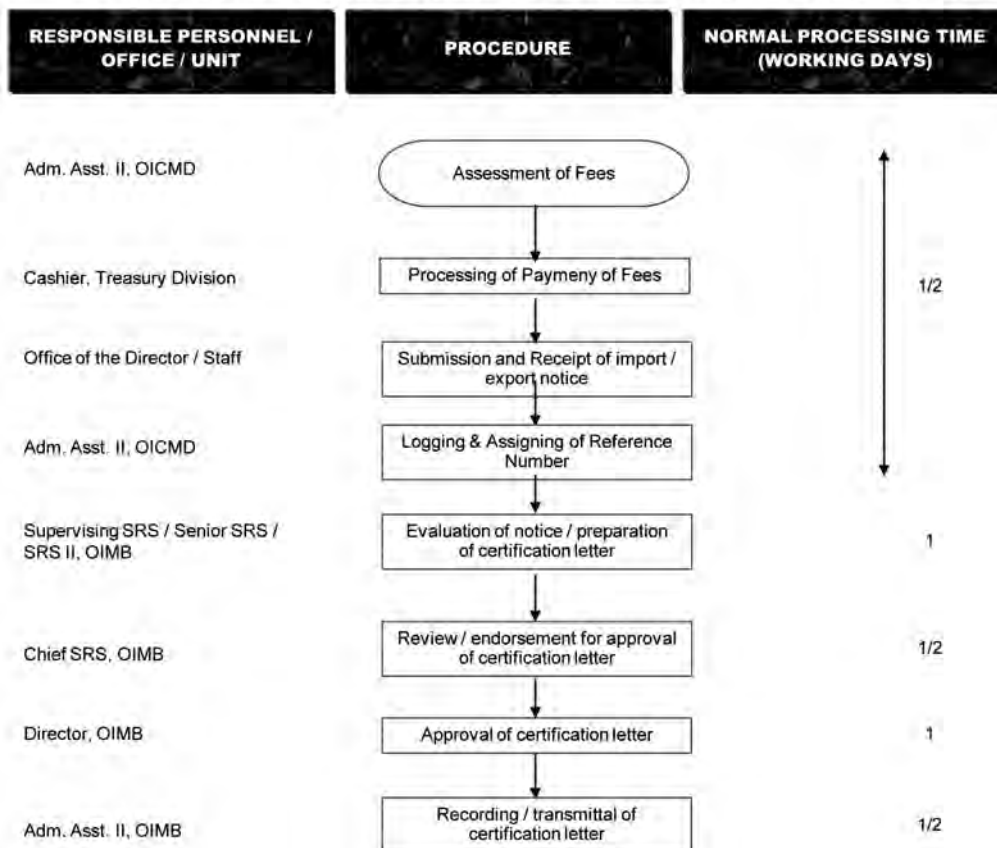
5 WORKING DAYS

LEGEND	* LIST OF REQUIREMENTS	** PROCESSING FEE	LEGAL BASES:
Applicant DOE DOE & Applicant	1) Company background 2) Detailed project study and description (timeframe, target date of operation) 3) Investment plan (project cost, list of equipment/machineries) 4) SEC registration and articles of incorporation or DTI registration	Php 650.00	Sections 5 and 12, IRR of R.A. 8479 E.O. 197

PROCESSING OF APPLICATION FOR DOE ENDORSEMENT TO AVAIL OF INCENTIVES FOR BOI-REGISTERED PROJECTS UNDER R.A. 8479



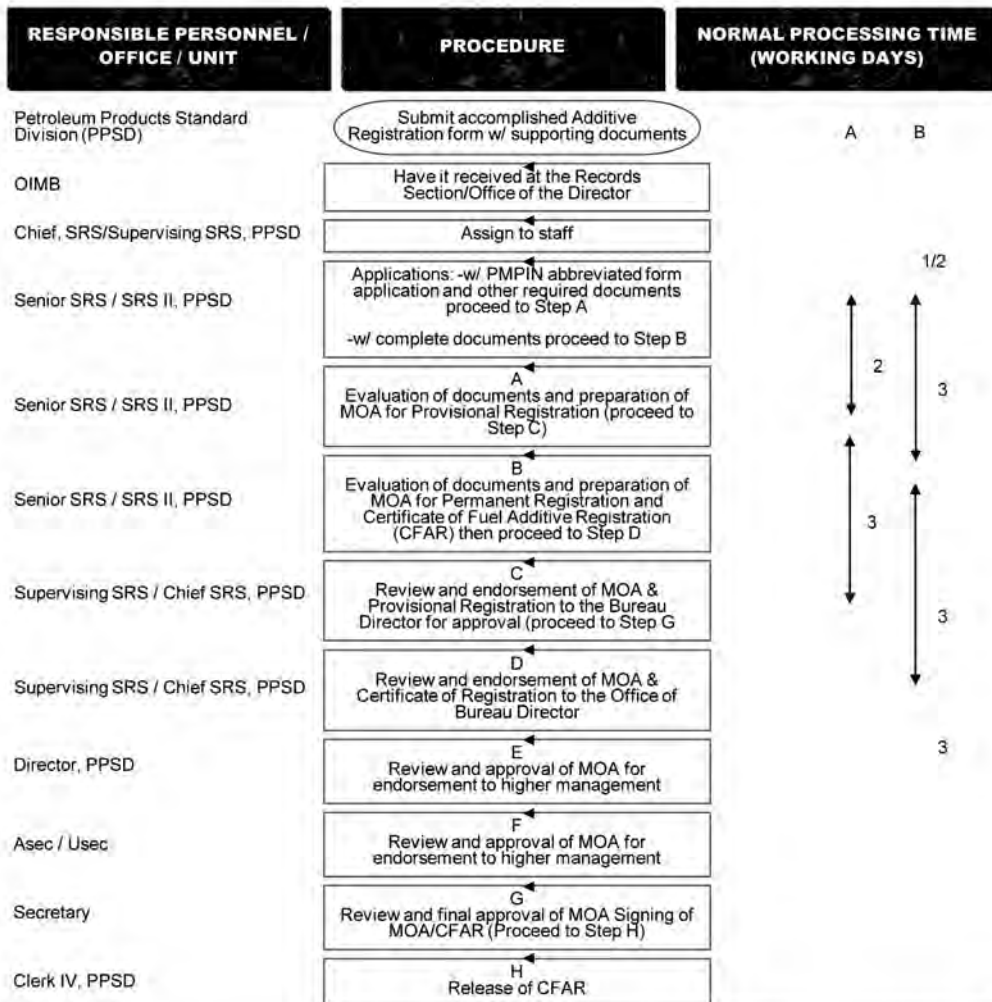
ISSUANCE OF CERTIFICATE OF COMPLIANCE FOR NOTICE OF IMPORTATION / EXPORTATION OF CRUDE OIL, FINISHED PETROLEUM PRODUCTS, LUBES AND SPECIALTY PRODUCTS



3 1/2 WORKING DAYS

LEGEND	* LIST OF REQUIREMENTS	PROCESSING FEE
Applicant DOE	For import Notices: (Must be submitted not later than 1 day prior to loading) - Letter of notification duly signed by the importer with details on name and address of the exporter and consignee, type and quantity of cargo, loading and discharge ports and dates, price (FOB \$/bbl) and vessels particulars with attached proforma invoice and guaranteed specification. For Export Notices: (Must be submitted not later than 10 days after the departure of shipment) - Letter of notification duly signed by the exporter with details of name and address of the exporter, type and quantity of cargo, loading and discharge ports and dates, price (FOB/CFR/CIF \$/bbl) and vessel particulars with attached Bill of Lading, Export Manifest and Release Certificate, Certificate of Quality	Php 250.00 /import notice
		<u>LEGAL BASIS</u> E.O. 197

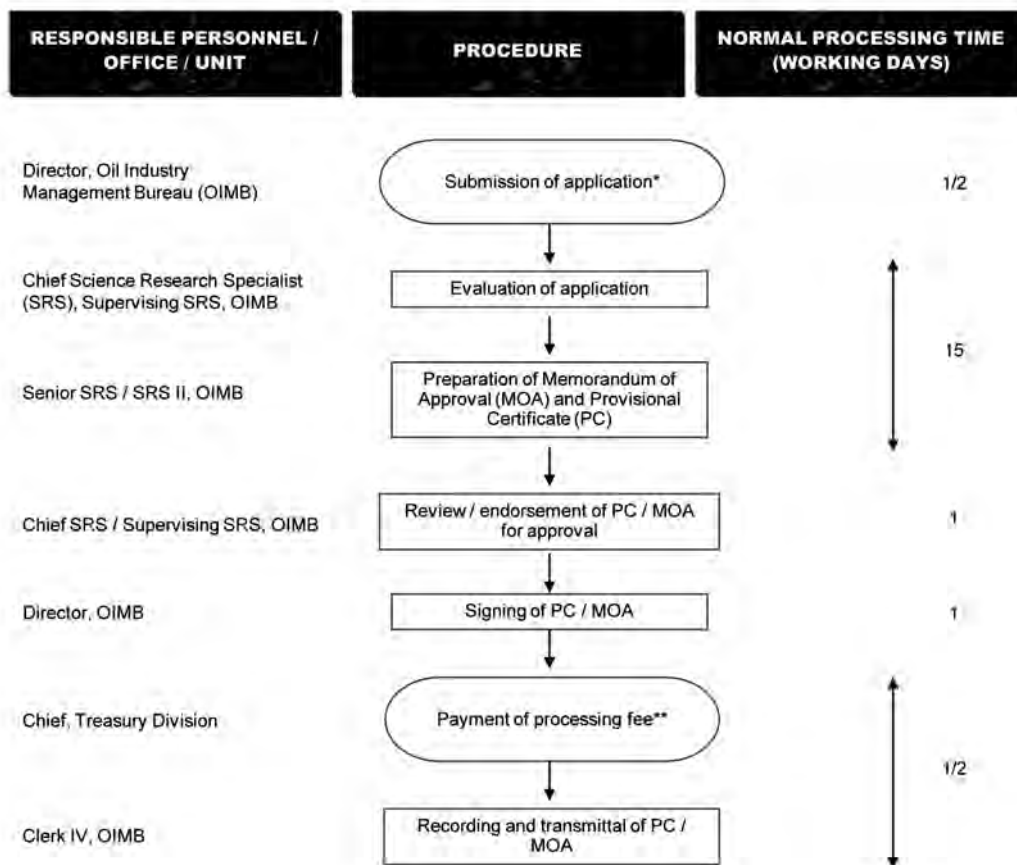
REGISTRATION OF FUEL ADDITIVES



A - 9 WORKING DAYS
B - 19 WORKING DAYS

LEGEND	LIST OF REQUIREMENTS	PROCESSING FEE	LEGAL BASES
Applicant DOE	1. Pre-Manufacturing & Pre-Importation (PMPIN) certificate 2. Materials Safety Data Sheet (MSDS) w/ ff information: • Chemical components • Percent composition • CAS registry no. • Physicochemical characteristics • Toxicity information • Regulatory status 3. Complete Product Info: Brochure, Analytical method/technique to detect its presence, Concentration limit, Emission results, Engine performance, Feasibility studies 4. Authenticated copies of government permits: SEC/DTI registration, Mayor Business Permits 5. PMPIN abbreviated application (if any)	Php 1,050.00 / type of additive	Sec. 27 of RA 8479 Sec. 12 of RA 8479

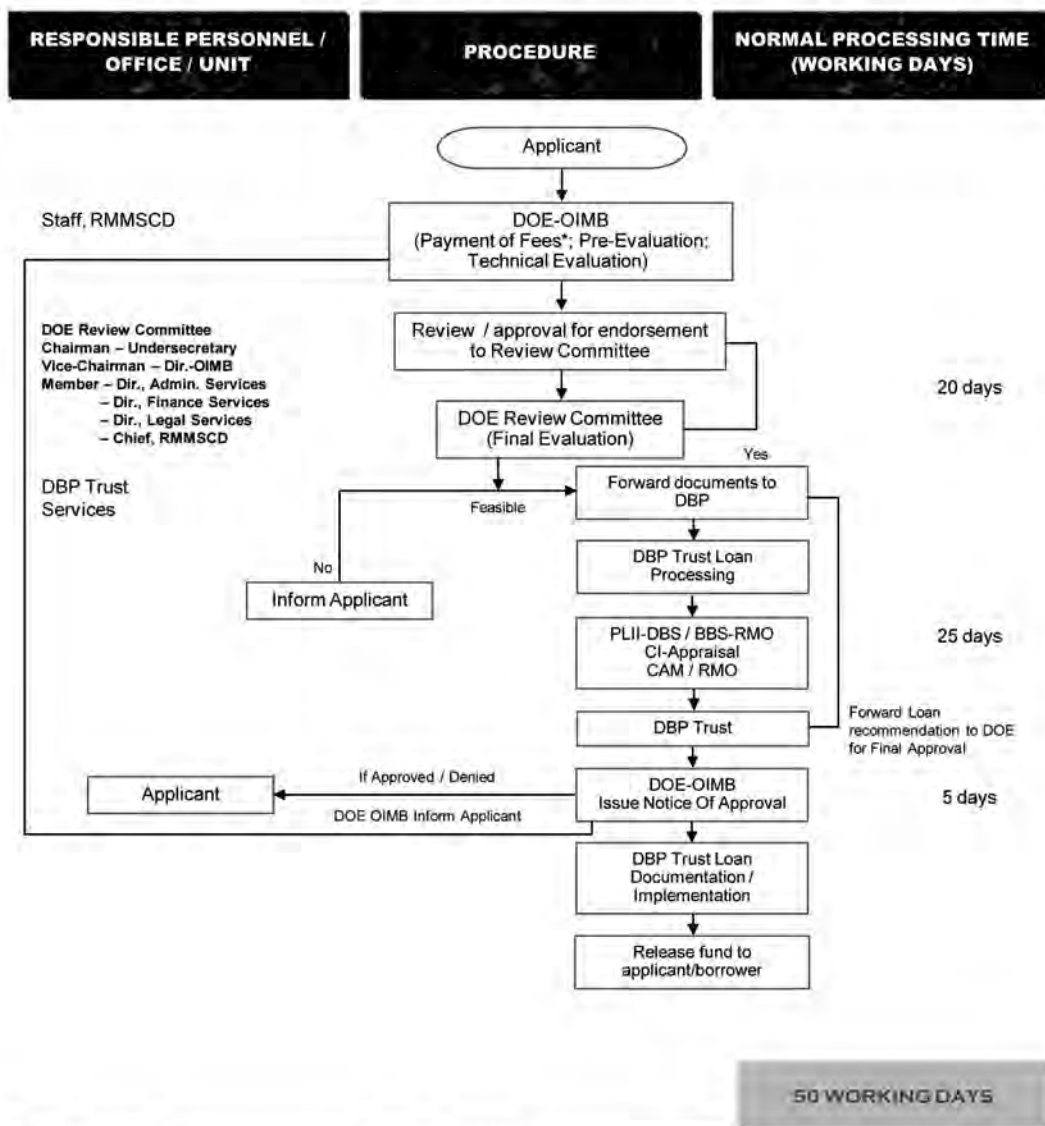
PROCESSING OF REGISTRATION OF FUEL ADDITIVES WITH INTERIM STATUS PERMIT (ISP)



18 WORKING DAYS

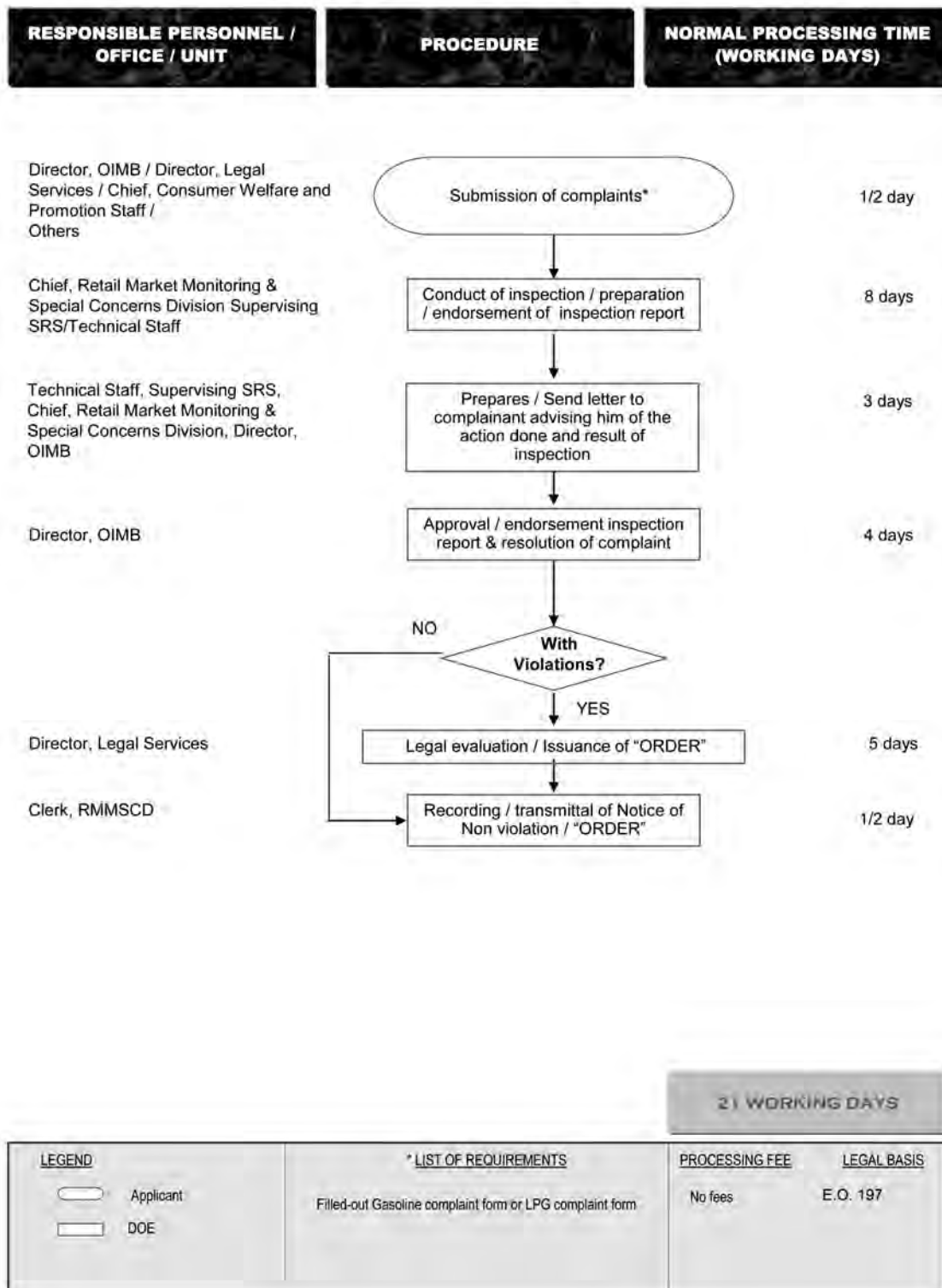
LEGEND	* LIST OF REQUIREMENTS	** PROCESSING FEE	LEGAL BASES
Applicant DOE	1) Accomplished DOE-OIMB Registration Form 2) Material Safety Data Sheet 3) Complete Product Identity/Information (chemical components, % composition, CAS registry number, physical and chemical properties) 4) Description and Analytical Techniques (purpose and recommended dosage, determination of concentration limit, toxicity test/result, emission characteristic/result, performance test results/feasibility studies e.g. octane increase, emission reduction, fuel efficiency, lubricity, etc) 5) Regulatory Status of Additive in other countries 6) Product bulletin/brochure 7) Authenticated copies of SEC/DTI registration, Mayor/business permit 8) EMB-DENR Interim Status Permit	Registration Certificate - Php 500 per additive	Sec. 16 of R.A. 8479 R.A. 6969

GASOLINE STATION LENDING & FINANCIAL ASSISTANCE PROGRAM



LEGEND	* LIST OF REQUIREMENTS	PROCESSING FEES	LEGAL BASES
Applicant DOE	1) Filled-out application form 2) Bio-data of applicant/major stockholders/officers 3) Certificate of completion of the two-fold training program 4) Certificate of registration of business/articles of partnership or incorporation/ by-laws 5) Feasibility study 6) Board resolution authorized the borrowing and designating authorized signatories for the loan 7) Certified list of stockholders and officers 8) Contact person & telephone number/address/authority to inspect 9) Income tax return (last 3 years) 10) Customer information report 11) ECC or letter of application to DENR for issuance of ECC	DOE Application Fee – Php 5,500.00 DBP Processing Fee – Php20,000.00	R.A. 8479 / DC 98-03-004

CONDUCT OF COMPLAINT - RELATED INSPECTIONS FOR ALL PETROLEUM PRODUCTS OF RETAIL OUTLETS (LPG AND GASOLINE STATIONS)



DEPARTMENT CIRCULAR NO. DC2013-09-0021

IMPLEMENTING NEW STANDARD SPECIFICATIONS FOR GASOLINE

WHEREAS, there is a regional / global thrust towards harmonizing fuel quality standard specifications for easier global / international trade;

WHEREAS, Section 5 (k) of Republic Act No. 7638 otherwise known as the “Department of Energy (DOE) Act of 1992,” empowers the DOE to promulgate necessary rules and regulations to implement the objectives of the Act among which is the integration and rationalization of the various programs of the Government towards self-sufficiency and enhanced productivity in power and energy without sacrificing ecological concerns;

WHEREAS, Section 26 of Republic Act No. 8749, otherwise known as the “Philippine Clean Air Act of 1999” directs the DOE, together with the Department of Environment and Natural Resources (DENR), Bureau of Product Standards (BPS), and the Department of Science and Technology (DOST) and other stakeholders, to set specifications for all types of fuel and fuel-related products and improve fuel composition;

WHEREAS, there is a regional / global thrust towards harmonizing fuel quality standard specifications for easier global / international trade;

WHEREAS, the Technical Committee on Petroleum and Products Additives (TCPA) has completed the review of the existing standards for the various gasoline grades, resulting in the formulation of a new set of specifications; and

WHEREAS, the Bureau of Product Standards of the Department of Trade and Industry has promulgated the new standard specifications for gasoline as PNS/DOE QS 008:2012.

NOW, THEREFORE, in consideration of all the foregoing, the DOE hereby requires all oil industry participants engaged in the retailing of petroleum products to comply with the following:

SECTION 1. Standard Implementation. All oil industry participants shall distribute and sell only E-gasoline fuels complying PNS/DOE QS 008:2012 E-Gasoline Fuel Specification in the country. The following specifications for gasoline shall apply

- Regular grade - 91 RON,
Minimum - green
- Premium grade - 95 RON,
Minimum – red
- Premium Plus grade - 97 RON,
Minimum - blue

SECTION 2. Pump Labeling. All gasoline dispensing pumps in all retail outlets shall be labeled with any one of the three (3) prescribed octane stickers illustrated in Annex A and the E-gasoline sticker in Annex B.

2.1 Octane Sticker. The RON value in the sticker shall reflect only any of the three (3) minimum limits provided in Section 1 above. Stickers with entries not fully compliant with the prescribed format may be allowed in the interim: Provided, That all the following basic sticker specifications (entries in yellow background) are still observed:

- Gasoline grade
- Product field
- Minimum Octane Number of the gasoline grade

- The word “minimum” in reference to the octane number of the gasoline grade

2.2 E-gasoline Sticker. The sticker shall indicate the phrase “This E-gasoline contains 10% Bioethanol.”

2.3 Any other octane promotional tools as supplementary label may be allowed as long as they are distinctly different from that prescribed in Annex A (or they are not in the form of the prescribed octane sticker) and shall not contradict with the standard RON label.

SECTION 3. Product Branding / Price Display Board. The use of the terms “unleaded”, “lead-free” and other similar brand names in the labeling at the display boards, pumps and other marketing tools to the public shall no longer be allowed to avoid the impression that the Philippines still has leaded gasoline.

Further, the Price Display Board pursuant to Section 8 (a) of Department Circular No. DC2003-11-010 with updated prices for each Liquid Petroleum Products sold in the Retail Outlet must still be observed.

SECTION 4. Information Campaign. The oil companies shall ensure that their gasoline station personnel are fully aware and conversant of the products that they sell/dispense at the retail stations. Moreover, the oil companies are enjoined to conduct IEC to their customers, especially on their new product brand name and octane ratings.

SECTION 5. Reporting. Oil industry participants shall submit the appropriate reportorial requirements pursuant to Republic Act No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”. Consistent with Section 3 of this Circular, the reports that shall be submitted to the DOE shall correspondingly reflect the new gasoline grades and shall not make

use of the terms ‘unleaded’, ‘lead-free’ and similar names. Moreover, a list of the brand names for each gasoline grade that the oil company carries, as well as sample sticker for each product grade shall be submitted to the Oil Industry Management Bureau of the DOE within 30 days from the effectivity of this Circular.

SECTION 6. Penalties / Sanctions. Any oil industry participant who fails to comply with the provisions of this Circular shall be subject to appropriate sanctions imposable under Republic Act No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998” its implementing rules and regulations as well as other related issuances: Provided, That oil industry participants are expected to comply with the new sticker design pursuant to this Circular not later than 01 January 2014.

SECTION 7. Separability Clause. If any provision of this Circular is declared unconstitutional, the remainder of this Circular or the provisions not otherwise affected shall remain valid and subsisting.

SECTION 8. Repealing Clause. Any department circular or issuance, contrary to or inconsistent with these Rules is hereby repealed, modified or amended accordingly.

SECTION 9. Effectivity. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

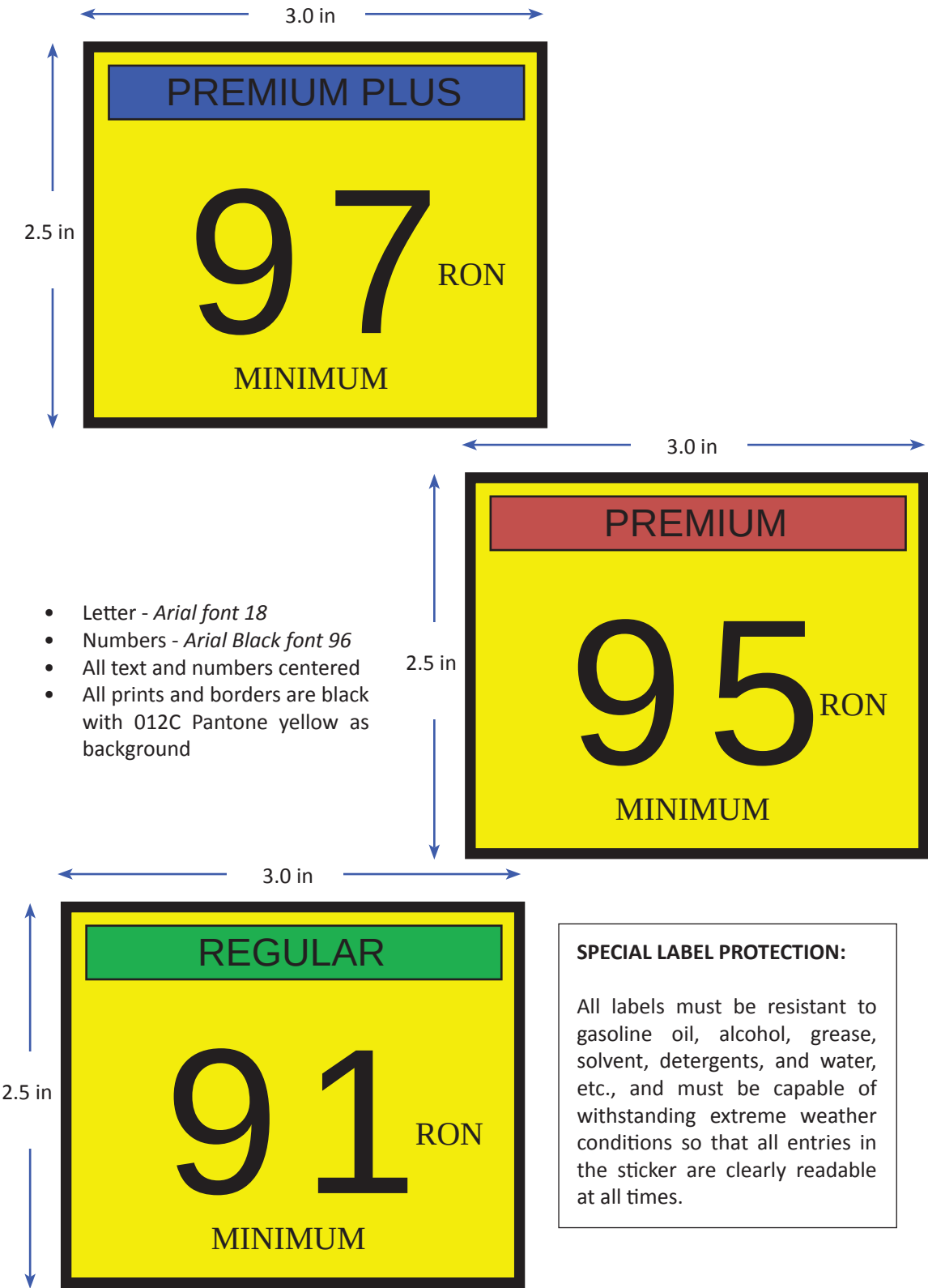
Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

Signed by:

CARLOS JERICHO L. PETILLA
Secretary

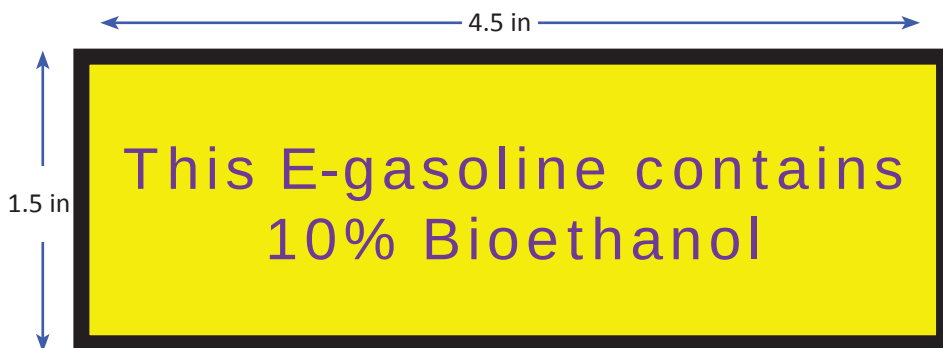
September 19, 2013

ANNEX A
OCTANE POSTING AT THE PUMP



ANNEX B

Minimum Specification/Dimension For E-Gasoline Pump Labeling



- Prints are violet while borders are black with pantone yellow as background
- Font type is Aria Black with size 22 in two lines

LABEL PROTECTION:

All labels must be resistant to gasoline, alcohol, oil grease, solvent, detergents, and water and must be capable of withstanding extreme weather conditions so that all entries in the sticker are clearly readable at all times.

DEPARTMENT CIRCULAR NO. DC2014 -08-0015

IMPLEMENTING THE SPECIFICATION FOR PNS/DOE QS 004:2012 AND THE GENERAL STICKER LABELING REQUIREMENT FOR DISPENSING PUMPS OF FAME-BLENDED DIESEL OILS

WHEREAS, Republic Act No. 7638, “An Act Creating the Department of Energy (DOE)”, tasks the DOE to formulate rules and regulations as may be necessary to guide the operators of both government and private entities involved in energy supply and distribution;

WHEREAS, Republic Act No. 8749, otherwise known as the “Philippine Clean Air Act of 1999”, mandates the use of environmentally clean fuels which meet specified emission standards to ensure a clean and healthy air for the citizenry and to contribute to the global effort of reducing Greenhouse Gases and directs the DOE, together with the Department of Environment and Natural Resources (DENR), Bureau of Product Standards (BPS), and the Department of Science and Technology (DOST) and other stakeholders, to set specifications for all types of fuel and fuel-related products and improve fuel composition;

WHEREAS, Section 5.2 of DENR Administrative Order No. 2010-23 provides that starting January 01, 2016, all new passenger and light duty motor vehicle types to be introduced in the market shall comply with EURO 4 emission limits subject to EURO IV fuel availability;

WHEREAS, the above premise on the Euro IV fuel availability necessitates prior setting of a Euro IV diesel specification as Philippine National Standard (PNS) which shall be used as the basis by the oil companies in the introduction of the said fuel.

NOW, THEREFORE, in consideration of all the foregoing, the DOE hereby issues, adopts and promulgates the following:

SECTION 1. Standard Implementation. All oil companies shall distribute and sell in the country only diesel fuels complying with PNS/DOE QS 004:2012 FAME-blended diesel oils Specification and labeled accordingly.

SECTION 2. Pump Labeling. All diesel dispensing pumps in all retail outlets shall be labeled with the prescribed sticker illustrated in Annex A. The sticker shall indicate the Biodiesel blend (Bx) and the phrase “This diesel contains X% CME”, where X shall refer to the % biodiesel in the fuel. This labeling requirement shall be mandatory after six months from the effectivity of this Circular.

SECTION 3. Products Branding/Price Display Board. The term “biodiesel” and/or other similar brand names appearing at the display board, pumps and other marketing tools shall no longer be used to refer to a diesel type in order to avoid confusion and to differentiate biodiesel from a diesel that is blended with FAME (pure methyl ester).

The requirement on Price Display Board pursuant to Section 8 (a) of Department Circular No. DC2003-11-010 indicating updated prices for each Liquid Petroleum Products sold in the Retail Outlet shall be strictly observed.

SECTION 4. Reporting Requirements. Oil industry participants shall submit the appropriate reportorial requirements pursuant to RA No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, and its implementing rules and regulations.

SECTION 5. Information Campaign. The oil companies shall ensure that their gasoline

retail outlets' personnel are fully aware and conversant about the products that they sell/dispense at the retail stations. Moreover, the oil companies are enjoined to conduct Information Education Campaign (IEC) to their customers, especially on their new product brand.

SECTION 6. Penalties / Sanctions. Any person who fails to comply with the provisions of this Department Circular shall be subject to appropriate sanctions imposed under applicable laws and implementing rules and regulations of the DOE.

SECTION 7. Separability Clause. Should any provision herein be declared invalid or

unconstitutional by a court of competent jurisdiction, the other provisions not so declared shall not be affected thereby.

SECTION 8. Effectivity and Publication. This Circular shall be effective upon its publication in a newspaper of general circulation and shall remain in effect until revoked.

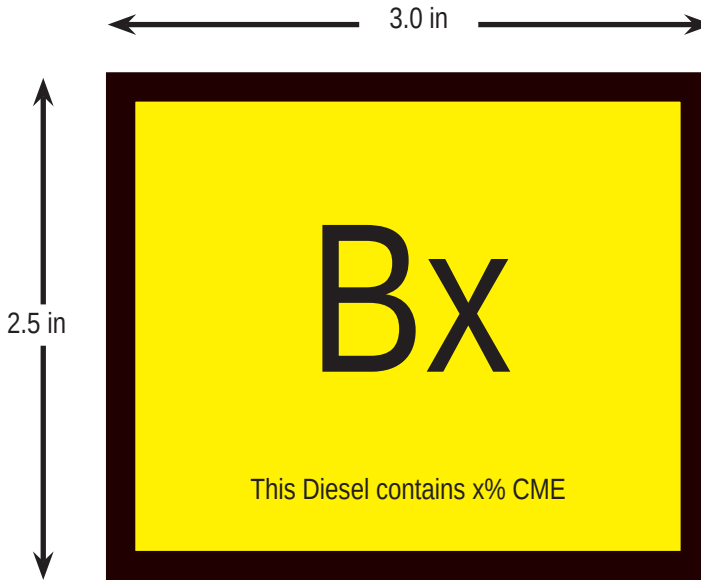
Fort Bonifacio, Taguig City, Metro Manila,
August 01, 2014.

Signed by:

CARLOS JERICHO L. PETILLA
Secretary

ANNEX A

Minimum Specification/Dimension for FAME-blended Diesel Pump Labeling



- Prints and borders are black with pantone yellow as background
- Font type is is Arial Narrow in size 80 while the line in size 14

LABEL PROTECTION:

All labels must be resistant to diesel, biodiesel, oil grease, solvent, detergents and water and must be capable of withstanding extreme weather conditions so that all entries in the sticker are clearly readable at all times.

DEPARTMENT CIRCULAR NO. DC 2015 -06-0006

PROVIDING FOR THE GUIDELINES IN THE CONDUCT OF INSPECTION USING MOBILE MONITORING AND TESTING LABORATORY

WHEREAS, Republic Act No. 8479 otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, applies to all persons or entities engaged in any and all activities of the domestic downstream oil industry and mandates the Department of Energy to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high quality petroleum products;

WHEREAS, Section 14 of RA 8479 empowers the DOE and DOE Secretary to monitor the quality of petroleum products and stop the operation of businesses involved in the sale of petroleum products which do not comply with the national standards of quality that are aligned with the national standards/protocols of quality;

WHEREAS, RA 9367, otherwise known as the “Biofuels Act of 2006” mandates that all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components and empowers the DOE to stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under the Act, Philippine National Standards (PNS) and corresponding issuances of the DOE;

WHEREAS, Department Circular No. 2007-05-0006 (Rules and Regulations Implementing RA No- 9367) and the Joint Administrative Order No. 2008-1, Series of 2008 define the sale and possession of biofuel and biofuel blends which do not conform to the PNS as a prohibited act;

WHEREAS, DOE Department Circular Nos. 2003-11-010, 2007-05-06, 2011-02-0001 and 2013-09-0021, prescribe the rules and regulations governing the quality of liquid fuels and the minimum standards per type of liquid fuels;

WHEREAS, based on the regular monitoring of the DOE, there is a continuous proliferation of liquid fuels in the market which are non-compliant with the PNS;

WHEREAS, the DOE’s programs to protect the public against off-specs, non-compliant and adulterated liquid fuels can be fully complemented through the use of a mobile monitoring and testing laboratory (MMTL); and

WHEREAS, the DOE through the OIMB, in its effort to have an accurate outputs for the MMTL has correlated its results to a laboratory-based results of the oil companies.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE shall use its mobile monitoring and testing laboratory and shall implement the following guidelines:

RULE I

PRODUCT SAMPLING, RETENTION, TESTING AND RESULTS GENERATION

SECTION 1. Product Sampling and Retention.

The OIMB and its Field Offices’ counterparts, known here as Inspectors, shall be allowed to gather samples of liquid fuels being offered for sale by the gasoline station in such volume prescribed under DOE issuances or as indicated in the Special Assignment covering the said inspection. A certain volume shall be taken from the gathered samples and placed

in a separate container which shall be turned over to and retained by the dealer/owner or responsible person.

SECTION 2. Product Testing and Result Generation. The Inspectors shall test, process and analyze the gathered sample/s in the MMTL for purposes of determining compliance with the PNS on the minimum biofuel-blend by volume, more specifically on FAME and Ethanol contents. These shall be witnessed by the dealer/owner or responsible person.

In the event that the dealer/owner or responsible person opts not to be present or witness the testing and analysis, the testing shall proceed and the Inspectors shall note such refusal in the Inspection and Testing Report (ITR). Results of the test shall be recorded in the ITR. A copy of the ITR, complete with the results of the inspection, both quantity and quality, signed by Inspectors shall be provided to the dealer/owner or responsible person.

If the results of the test show that the gathered samples of liquid fuels comply with the PNS on the minimum biofuel-blend by volume, more specifically on FAME and Ethanol contents, no further action shall be made.

If the results of the test show that the gathered samples of the liquid fuels do not comply with the PNS on the minimum biofuel-blend by volume, more specifically on FAME and Ethanol contents, the gasoline station shall be guilty of Adulteration and the following sections shall be applied.

The results of the test and analysis in the MMTL, for purposes of determining compliance with the PNS on the minimum biofuel-blend by volume, shall be deemed to be conclusive.

RULE II

ACTIONS AGAINST OFF-SPECS/NON-COMPLIANT/ADULTERATED LIQUID FUELS

SECTION 3. “Padlocking” of Dispensing Pump/s. The Inspectors, upon serving the Show Cause Order (SCO) reflected at the back of the ITR, shall immediately stop the sale of off-spec/non-compliant/adulterated liquid fuels to the public by posting/ pasting/ placing a sticker with the word “PADLOCKED” on all dispensing pump/s connected to the source underground tank (UGT).

The sticker shall not be removed unless with the express authorization from the DOE Legal Services through Inspectors.

The DOE shall have the right to confiscate off-spec/non-compliant/adulterated liquid fuels. In the absence of DOE’s logistics and disposal procedures for confiscated off-spec/ non-compliant/ adulterated liquid fuels, the same shall be impounded on-site for corrective measures.

SECTION 4, Recording of Dispensing Pump Totalizer and Dipstick Reading. The Inspectors shall record in a separate sheet the current/last reading in the dispensing pump/s’ totalizer/s with “PADLOCKED” sticker and dipstick reading on the source UGTs for the determination of the remaining volume of off-spec/ non-compliant/adulterated liquid fuels, as witnessed by the dealer/owner or responsible person.

The Inspectors shall likewise require the dealer/owner or responsible person to provide the following documents/information:

- a. Name/address of the supplier/s
- b. Invoice of the last two deliveries
- c. Copy of the Certificate of Quality of the last two deliveries, if any.
- d. Record of last inventory prior to OIMB inspection

These information shall also be written and attached on the said sheet and shall be attested to and countersigned again by the dealer and/or his/her authorized representative.

SECTION 5. Off-Spec/Non-Compliant/Adulterated Liquid Fuels' Removal and Replacement or Conduct of Corrective Measures. In the event that the liquid fuel is determined to be off-spec/ non-compliant/adulterated as provided in Section 2 hereof either one of the following shall be made;

- a. dealer and/or his/her authorized representative shall ensure immediately to have the remaining off-spec/non-compliant/adulterated liquid fuels in the source UGT removed and replaced with a compliant liquid fuels, A certified true copy of the Certificate of Quality for the replacement liquid fuels shall be provided to the Inspectors and the latter shall have the right to verify it from the supplier.
- b. dealer and/or his/her authorized representative shall ensure immediately to conduct corrective measures on the remaining off-spec/non-compliant/adulterated liquid fuels in the source UGT,

The Inspectors shall conduct re-testing of the replaced or corrected liquid fuels.

RULE III ADMINISTRATIVE PROCEEDINGS

SECTION 6. Issuance of the Show Cause Order (SCO). The Inspectors by the authority of the concerned Director has to issue the Show Cause Order to the dealer and/or his/her authorized representative right after the completion of the inspection.

Issuance of the SCO by the Inspectors shall start the administrative proceedings,

The Inspectors in consultation with the DOE Legal Services shall schedule the hearing. The dealer and/or his/her authorized representative shall attend the hearing with the DOE Legal Services on the date, time and venue agreed upon.

SECTION 7. Securing Relevant Information/Evidences. The Inspectors shall gather the information and require the documents listed in Rule II, Section 4 hereof. Such information and documents shall serve as additional evidences to pursue the case.

SECTION 8. Conduct of Hearing, The DOE Legal Services shall conduct the hearing, if and when necessary, to give chance for the dealer and/or his/her authorized representative to explain his/her side. This is also the mechanism for the DOE - Legal Services to verify and validate the truthfulness and accuracy of the submitted responses, if any.

SECTION 9. Resolution/Completion of the Administrative Proceedings. The DOE Legal Services shall prepare the draft Resolution or Order to be signed by the Secretary or his Authorized Representative. The Signed Resolution shall be provided to the Inspectors and to the dealer and/or his/her authorized representative.

SECTION 10. Removal of Padlocked Sticker. The Inspectors shall remove the "Padlocked" sticker only upon instruction or receipt of the signed Resolution from the DOE Legal Services.

SECTION 11. Coordination with Concerned DOE Units and Other Government Agencies. The Inspectors shall immediately report the result of the MMTL test specifically those that failed the FAME and Ethanol to the DOE Secretary, if so requires, to the DOE Legal Services and concerned government agencies such as the concerned LGUs, the BOC, among others, for their appropriate actions.

RULE IV
FINES, PENALTIES AND SANCTIONS

SECTION 12, Imposition of Fines, Penalties and Sanctions. This Circular shall implement the applicable prohibited acts and corresponding sanctions stipulated in the Joint Administrative Order (JAO) No. 2008-1, Series of 2008 as follows:

Under Chapter VIII, Section 1 of JAO No. 2008-1. Series of 2008, "A fine of Two Hundred Thousand Pesos (P200,000.00) shall be imposed by the DOE upon any person or entity that has been found to be have committed any of the following acts:

XXX

- b. Sale of biofuels and biofuel blends which fail to conform with the PNS. A person or entity that commits this prohibited act shall be guilty of the act of Adulteration. The possession of biofuel blends which does not conform to the PNS shall prima facie constitute Adulteration.

The DOE shall likewise cause the cessation of the operation of such business found to have committed a prohibited act upon compliance with the administrative procedures provided under Section 36 of the Act's IRR.... An additional fine of Ten Thousand Pesos (10,000.00) per day shall be imposed in case such person continues to operate after an Order or Notice of cessation of operation of business has been issued by the DOE.

Provided, That a fine of Three Hundred Thousand Pesos (P300,000.00) shall be imposed against a person or entity who is found to have committed the same prohibited act for the second time and shall be a ground for the revocation of the Accreditation or Registration granted to such person."

Other Prohibited Acts in the same Chapter shall be applied, to include:

XXX

- b. Failure to issue a Certificate of Quality accompanying the delivered biofuels and/or biofuel blends shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00). All biofuels and biofuel blends deliveries must be accompanied by a Certificate of Quality to be issued by the Biofuel Producer, Distributor or Seller indicating the properties of the delivered biofuels and biofuel blends, and to the effect that the delivered products are in compliance with the PNS; and
- c. Refusal to allow inspection by the DOE or other concerned government agency shall be penalized with a fine of Fifty thousand Pesos (50,000.00), The DOE or other concerned government agency shall have the right to enter, within reasonable hours of the day, a plant or any distribution or retail station to conduct actual inspection and product sampling. Any person or entity that refuses to allow access — shall be subject to the sanctions ... against the entity refusing such access.

XXX

Provided, That a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed against a person or entity that is found to have committed the same prohibited act for the second time. The DOE shall order the immediate cessation of the operation of the business of such person found to have committed any of

the abovementioned prohibited acts

A fine of Two Hundred Thousand Pesos (P200,000.00) shall be imposed against a person who is found to have committed the same prohibited act for the third time and such violation shall be a ground for the revocation of the Accreditation of Registration granted to such person.”

In addition to the administrative penalties, the DOE shall revoke the Certificate of Compliance of the gasoline station found to be committing Adulteration

Under Chapter IV Section 1 of the JAO No. 2008-1, Series of 2008, “In the event that an oil company’s retail stations, carrying it’s name, company-operated, dealer-owned, and/or dealer owned, are found to be selling biofuel blends that do not conform with the PNS, the oil company shall be equally responsible with such retail stations for the violation of the Guidelines.”

RULE V
FINAL PROVISIONS

SECTION 13. Separability Clause. Should any provision herein be declared invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of the other provisions not so declared.

SECTION 14. Effectivity. This Department Circular shall take effect immediately upon the date of its complete publication in two (2) newspapers of general circulation.

Issued at Energy Center, Bonifacio, Global City Taguig City.

Signed by:

CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC 2017 - 11 - 0011

PROMULGATING A REVISED RULES AND REGULATIONS GOVERNING THE BUSINESS OF RETAILING LIQUID FUELS

WHEREAS, Republic Act (RA) 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, mandates the Department of Energy (DOE) to promote fair trade practices, monitor marketing processes and quality of Liquid Fuels and stop the operation of businesses involved in the sale of Liquid Fuels not complying with the national standards of quality.;

WHEREAS, Batas Pambansa Blg. (BP) 33, as amended by Presidential Decree No. (PD) 1865, and the Implementing Rules and Regulations therefore, define and penalize certain prohibited acts that are considered

inimical to national interest and public safety, including illegal trading in petroleum or Liquid Fuels, hoarding of Liquid Fuels, adulteration and underdelivering, among others;

WHEREAS, DOE Department Circular Nos. 20 03 -11 -010 and 2013-09-0021 establish the minimum requirements for operation of Retail Outlets and prescribe the rules and regulations governing the quality of Liquid Fuels;

WHEREAS, Republic Act No. 9367, otherwise known as the Biofuels Act of 2006, and its Implementing Rules and Regulations,

specifically Department Circular No. DC 2007-05-0006, Department Circular No. DC 2011-02-0001, DC 2015 - 06 -0007 and Joint Administrative Order No. 2008-1, Series of 2008, direct the use of biofuels, including the sale and distribution thereof, and define and prescribe the fines and penalties for violation thereof;

WHEREAS, there are persons engaged in the Retailing of Liquid Fuels that do not comply with safe and appropriate technologies, including the use of containers such as in “bote-bote”, aboveground storage tanks and mobile Liquid Fuels dispensing pump;

WHEREAS, the Retailing of Liquid Fuels is subject to pertinent permits and licenses issued by government authorities including not limited to, Department of Environment and Natural Resources, Bureau of Fire Protection, Bureau of Internal Revenue and Local Government Units;

WHEREAS, the safe and proper handling, transport, storage, installation and use of equipment and facilities in the downstream oil industry are governed by the pertinent provisions of the different national and international safety codes observed and adopted by the industry;

WHEREAS, the continued use of unsafe and substandard methods of retailing Liquid Fuels {i) exposes the consuming public to fire, danger, health and environmental risks; (ii) denies the public the proper quality and quantity of the Liquid Fuels they purchase; (iii) constitutes unfair competition and unduly deprives legitimate Retail Outlets of additional sales volume; (iv) deprives the government of revenue derived from licensing fees, local business taxes and pump calibration charges, among others; and (v) encourages the marketing of Liquid Fuels sourced from illegal activities such as smuggling, pilferage, theft and the like;

WHEREAS, emerging technologies and economic developments are expanding the nature of the business of retailing of Liquid Fuels which may include electric vehicle (EV) charging, battery swapping, among others;

WHEREAS, Department Circular No. 2003-11-010 and certain provisions of Department Circular No. 98-03-004, otherwise known as the Rules and Regulations Implementing RA 8479 , and the Rules and Regulations in the Implementation of BP 33, as amended by PD 1865, need to be further clarified, supplemented, updated and amended and/or repealed, particularly in the conduct of the Liquid Fuels Retailing business;

NOW, THEREFORE, in consideration of the foregoing premises, the following Rules are hereby promulgated to govern the Retailing of Liquid Fuels.

RULE I

GENERAL PROVISIONS

SECTION 1. Title. This Department Circular shall be known and cited as “Promulgating a Revised Rules and Regulations Governing the Business of Retailing Liquid Fuels” or “Revised Retail Rules”.

SECTION 2. Coverage. The Revised Retail Rules shall apply to all persons engaged or intending to engage in the business of Retailing Liquid Fuels.

SECTION 3. Definition of Terms. Except as provided below, the terms used in these Revised Retail Rules shall have the same meaning as the terms used in Department Circular No. 98-03- 004, as amended (Implementing Rules and Regulations of the Downstream Oil Industry Deregulation Act of 1998):

- a. **API** - shall refer to the American Petroleum Institute;
- b. **Appropriate container** - shall refer to portable containers that adhere to

any existing international standard specifically American Society for Testing Materials (ASTM) such as, Designation: F852-9 9, Standard Specification for Portable Gasoline Containers for Consumer Use and Designation: F 976-02, Standard Specification for Portable Kerosene and Diesel Containers for Consumer Use, as well as the designs to be subsequently established and issued by the Department;

- c. **BFP** - shall refer to the Bureau of Fire Protection;
- d. **Bote-bote** - shall refer to the manner of retailing and dispensing of Liquid Fuels using soda bottles, plastic containers, jugs, aboveground tanks, portable tanks, road tankers or vehicles or other similar portable containers not intended for storage of flammable Liquid Fuels, and/or to the manner of retailing and dispensing of Liquid Fuels using the said containers;
- e. **Calibration** - shall refer to the process of checking, adjusting, .or determining by comparison with a standard the condition of the dispensing pump to ensure delivery of accurate quantity of Liquid Fuels;
- f. **Company** - as used in this Circular, shall refer to an oil company or an entity, engaged in any or a combination of activities in the Downstream Oil Industry, other than purely operating a Retail Outlet;
- g. **Dispensing** - shall refer to the act of transferring Liquid Fuels from the dispensing pump or “bote-bote” containers to the vehicles of motorists, end users or other consumers;
- h. **Dispensing pump** - shall refer to an equipment used to deliver or dispense Liquid Fuels and which is installed in a forecourt/curb area within the Retail

Outlet which is composed of a dispensing nozzle and a volumetric meter;

- i. **DENR** -shall refer to the Department of Environment and Natural Resources;
- j. **DOE** -shall refer to the Department of Energy ;
- k. **Field Offices**- shall refer to the DOE Field Offices in Pangasinan (Luzon Field Office), Cebu (Visayas Field Office) and Davao (Mindanao Field Office) and to other field offices that may subsequently be created;
- l. **LGU** - shall refer to Local Government Unit;
- m. **Liquid Fuels** - shall refer to gasoline, diesel, and kerosene;
- n. **NML** - shall refer to the National Metrology Laboratory of the Department of Science and Technology - Industrial Technology Development Institute;
- o. **OIMB** - shall refer to the Oil Industry Management Bureau of the Department of Energy;
- p. **Person** - shall refer to any person, whether natural or juridical, who is engaged in any activity of the downstream oil industry;
- q. **PNS** - shall refer to the Philippine National Standard;
- r. **Retailing** - shall refer to the act of selling and/or dispensing Liquid Fuels by the Retail Outlet directly to the motorists, end-users or other consumers;
- s. **Retail Outlet** - shall also refer to a dispensing station, refilling station facility or business establishment which sells or dispenses Liquid Fuels directly to motorists, end users or other consumers;

- t. **Retail Outlet Official** - shall refer to the dealer, operator, owner or proprietor of the Retail Outlet or in their absence, the manager, supervisor, team leader or any responsible person acting as such;
- u. **Tank Truck** - shall refer to any single self-propelled motor vehicle with or without a trailer, equipped with a cargo tank mounted thereon or built as an integral part thereof, and used for the transportation or handling of ,Liquid Fuels; otherwise known as lorry and road tanker;
- v. **Test Measure** - shall refer to a calibration bucket that is used to measure the quantity of Liquid Fuels; and
- w. **UGT** - shall refer to underground storage tank.

RULE II

Certificate of Compliance and Certificate of Non- Coverage

SECTION 4. Issuance of Certificate of Compliance (COC) and Certificate of Non- Coverage (CNC).

- a. No person shall engage or operate the business of Retailing Liquid Fuels without first securing a valid Certificate of Compliance (COC) from the Oil Industry Management Bureau (OIMB) or its counterparts in the Field Offices.

Those engaged in the business but have not secured or have not submitted the complete requirements necessary for the issuance of a valid COC under the DOE DC 2003-11-010 shall be considered as new applicants and shall be covered by this Rules.

The OIMB or the Field Offices shall issue a COC for each Retail Outlet upon the complete submission of and full compliance by the Retail Outlet with the

requirements provided in the provisions of this Rules and payment of the required fees.

The OIMB or the Field Offices shall have the authority to verify, validate, authenticate and inspect all documents and information required from, given by or obtained from such person for compliance with all applicable laws, rules and regulations.

The OIMB or the Field Office may conduct field validation to a new Retail Outlet prior to the issuance of the COC.

- b. In situations where an LGU shall require a COC as a prerequisite to a Mayor's or Business Permit, a Certification may be issued to a new Retail Outlet solely for that purpose of obtaining the Mayor's or Business Permit : Provided, That an authenticated copy of the Mayor's or Business Permit is submitted to the OIMB or the Field Offices within thirty (30) days from issuance of the Certification, otherwise the latter shall be deemed automatically revoked and the Retail Outlet shall immediately cease to operate. Provided, further, that, a Certification may be renewed should there be a delay in the issuance of the Mayor's or Business Permit.
 - c. Storage and dispensing of Liquid Fuels that are for own-use operation shall not be covered by this Revised Retail Rules only upon issuance of a Certificate of Non-Coverage (CNC) by the DOE. For purposes of this Revised Retail Rules, own-use operation shall refer to the operation of a motor vehicle fleet.
- A CNC shall be issued provided that the establishment or entity shall ensure that:
- 1. They file with the OIMB or the Field Offices a duly-acknowledged formal letter request for a CNC under these Rules;

2. They present a Feasibility Study indicating, among others, number of vehicles and financial viability of putting up such establishment;
3. They submit valid Membership Agreement and latest Supply Agreement or Certification issued by an OIMB-registered distributor and/or supplier;
4. They present pertinent LTO/LTFRB/LGU documents confirming their fleet;
5. They do not provide retailing services as defined and as provided for in Section 3 hereof;
6. Their dispenser/s does not have “moneywheels” or “price indicators”. For purposes of this Revised Retail Rules, a “money wheel” is the price-indicating device of the Liquid Fuels dispensing pump that indicates the amount corresponding to the volume of product dispensed from the nozzle; and
7. Their station shall only dispense Liquid Fuels to the vehicles of their members as identified through a distinguishing mark in their vehicles and membership identification cards.

Storage and Dispensing of Liquid Fuels for Own-use shall be subject to the extended responsibility of the Liquid Fuels distributor and supplier. The distributor and supplier of Liquid Fuels shall ensure compliance of the storage tanks and dispensing pump to existing international and local standard.

Notwithstanding the issuance of a CNC, the OIMB and the Field Offices can, at their discretion, monitor and conduct verification

and validation on the operation of the establishment. The CNC does not preclude compliance with PNS/DOE FS 1-1:2005 “Petroleum Products - Retail Outlet - Health, Safety and Environment” and with the requirements of other government agencies.

SECTION 5. Validity of the coc. The COC shall have a validity of five (5) calendar years reckoned from the date of its effectivity and shall be in full force and effect unless sooner revoked or suspended pursuant to the provisions of this Circular.

SECTION 6. Documentary Requirements. A prior notice, through an application for the issuance of COC for each Retail Outlet, shall be accomplished under oath and filed with the OIMB or the Field Offices by the applicant and shall contain the following information and supporting documents which shall be submitted in their original forms for verification, or if the submission of the original copy is not possible or warranted, in duly-certified true copies by the issuing agency. Only applications with complete and valid supporting documents shall be accepted and processed.

In the event that the applicant has a proof of a pending application to other government agencies, the OIMB and the Field Offices may accept and process the application. The corresponding coc shall only be issued upon submission of the government permits/clearances.

a. Application

1. Filled-up duly -notarized application form complete with the following information:
 - a) Business name, address, telephone/fax number and e-mail address of the business office;

- b) Location and complete address of the Retail Outlet; and
 - c) Name of dealer or retailer in case of single proprietorship, or partners in case of partnership, or authorized representative in case of corporation.
2. A Notice of Undertaking on liability in case of violations committed by dealer, operator, owner or proprietor.

b. Supporting Documents

1. Certification from distributor/supplier/dealer's agreement;
2. Notarized Statement that the facility design and operation of the Retail Outlet is PNS-compliant signed by the Engineering Procurement Construction Contractor and Dealer/Owner of the Retail Outlet;
3. List of dispensing pumps/hoses and underground storage tank/s with corresponding capacity/ies;
4. Scaled lay-out plan showing the island/dispensing pumps, underground storage tanks, cashier's booth and other facilities;
5. Accomplished DOE Form on Undertaking;
6. Latest photographs (in SR size) showing the full/front, right, and left side views including price display boards, safety informational signs and required stickers/labels for RON, E-10, B-2, am on g others;
7. DOE SCC/COC Clearance of No Pending Case, as applicable; and
8. Payment of fee.

c. Reportorial Requirements. Any Person or entity who is engaged in the retailing business of Liquid Fuels shall submit every 30th day of January, under oath, copies of the following:

1. Data on Purchase and Sales Volume per Retail Outlet ; and
2. Authenticated copy of distributor/supplier/dealer's agreement, if previous is expired.

Failure to comply with the Documentary Requirements shall constitute a violation of this Section and punishable under Section 29 of this Rules.

SECTION 7. Renewal of COC.

- a. The Retail Outlet shall file the application for the renewal of the COC not later than one (1) month before the expiration date. The following shall be submitted to the OIMB or the Field Offices:
 1. Photocopy of previous COC;
 2. DOE SCC/COC Clearance of No Pending Case, as applicable;
 3. Payment of fee; and
 4. A Notice of Undertaking on resumption of liability in case of violations committed by previous dealer, operator, owner or proprietor.

After the expiration of the COC, any application to operate the Retail Outlet shall be treated as new application.

- b. A change in the dealership, retailership, ownership or proprietorship of a Retail Outlet shall not automatically transfer the COC of the previous Retail Outlet Official to the new one. The new Retail Outlet Official shall file for a new COC, submit

the pertinent documents pursuant to this and pay the required fees.

SECTION 8. Non-Issuance, Non-Renewal, Revocation or Suspension of COC. The OIMB or the Field Offices shall have the authority to deny the issuance or renewal of a COC or to revoke or suspend the same on any of the following grounds:

- a. Refusal to allow inspection by OIMB or the Field Offices;
- b. Failure to present required records during inspection, or upon order by the OIMB or the Field Offices e.g., calibration record, record of product deliveries to the Retail Outlet/showing the distributor/supplier(s), product details and date;
- c. Submission of falsified documents;
- d. Failure to pay fines imposed by the DOE;
- e. Commission of the same prohibited act for at least a second time; or
- f. Failure to comply with circulars and administrative issuances promulgated by the DOE; or
- g. Failure to present related government permits/clearances such as, Mayor's/ Business Permit, Locational/Zoning Clearance, Fire Safety Inspection Certificate and Environmental Compliance Certificate, if applicable.

An order of Suspension or Revocation and Termination may be issued when any of the circumstances upon which the COC was issued no longer exists, modified or voided, become impossible, or any analogous circumstances.

A Retail Outlet that continues to operate/engage in the business of retailing Liquid Fuels after an Order of Revocation or Suspension of business will be recommended to the concerned Local Government Unit for

revocation or suspension of its Mayor's or Business Permits.

SECTION 9. Posting of coc. The COC shall be prominently displayed in the Retail Outlet in a conspicuous location for easy viewing/inspection by its customers and the public. The failure to post COC shall constitute Illegal Trading.

SECTION 10. Requirements for Haulers for Own - Use. A dealer, operator, owner or proprietor of the Retail Outlet who owns a tank truck to transport Liquid Fuels for its retailing business, whether by land or via sea-cargo vessel from their sources directly to their own Retail Outlet shall be issued with a Certification by the OIMB or the Field Offices for that purpose. Such Certification shall be issued upon submission of a completely filled-out application form that indicates:

- a. LTO Registration OR/CR;
- b. DOST Calibration Report;
- c. Permit to Transport Flammable Liquids by Tank Truck or Conveyance Permit;
- d. Copy of COC of Retail Outlet, as applicable; and
- e. Payment of fee.

**RULE III
STANDARDS AND REQUIREMENTS**

SECTION 11. Mandatory Standards and Requirements for New Retail Outlets. The applicant for COC shall strictly comply with all the standards and requirements prescribed in the PNS specifically on the following features:

- a. **Fixed and Permanent Dispensing Pump**
 - 1. Dispensing pumps shall be located six (6) metres from any potential source of ignition;
 - 2. There shall be no open flame within 15 metres unless provided with an adequate safety barrier/

enclosure, such as but not limited to glass enclosure and perimeter wall, separating the open flame from the dispensing pump and comply with the requirements under the Republic Act 9514 otherwise known as the "Fire Code of the Philippines of 2008";

3. Dispensing hose shall have a maximum length of 5.5 metres (18 ft.); and
4. Dispensing pump shall accurately display both the volume of Liquid Fuels dispensed (in litres) and the corresponding amount (in Pesos), up to two (2) decimal places.

b. Forecourt

1. Pump Island (Single pump)
 - a) Minimum dimension shall be 3.5 metres x 1.2 metres;
 - b) Lane-oriented pump should have a minimum distance of 0.05 metres from fixed object; and
 - c) Pump guard, or its equivalent (e.g. column post), serving as safety barrier and can withstand vehicular impact for the dispensing devices shall be present.

Edge to edge distance between pump islands shall be 6 metres measured along the lane and 6 metres from side to side;

2. Ingress and Egress
 - a) The minimum width of the ingress and egress for the Retail Outlet shall be 7 metres (23 ft.), for each, based on the standard car and large vehicle turning radii; and

- b) At any given time, the Retail Outlet shall only serve the vehicles and tank trucks it can accommodate within its premises.

c. Facilities

1. There shall be Office/ Cashier's booth;
2. Canopy shall have a minimum height of 4.5 metres from floor line to canopy ceiling;
3. Boundary walls shall be made of hollow concrete blocks or cyclone fence;
4. A master switch shall be installed at a central control point that will disconnect the electric power to all dispensing pumps in case of emergency; and
5. There shall be clean Restrooms adequately provided with toiletries and running water. Restrooms must accommodate the motorists for as long as the station is open for business.

d. Signages and Labels

1. Outlet's identification shall display the oil company's brand or trade name and trademark;
2. Price display board shall contain and display updated prices of each Liquid Fuels sold in the Retail Outlet, pursuant to Rufe V, Section 18a (1) of Department Circular No. 98-03-004;
3. Pump labels on Liquid Fuels type such as RON, E10 and Bx, where X shall refer to the % biodiesel in the fuel, shall be posted;

4. Consumer safety and informational signs shall be displayed and posted; and
5. Other safety signs as may be required by the OIMB, other government agencies and relevant LGUs shall be posted and displayed.

e. Underground Storage Tank (UGT). All Liquid Fuels shall be stored in UGTs, along with a fire sump and monitoring wells.

1. Distance to property line and adjoining structure shall not be less than 1.0 metre; and
2. Vent lines (3.65 metres minimum), monitoring wells and fire sump (rain tight) shall be present.

SECTION 12. Retail Outlet Categories. The following are the Categories of Retail Outlets based on the number of pump Islands, dispensing pumps and other facilities and services.

- a. **Category 1 - Retail Outlet with 1-2 pump islands and at least 1-2 dispensing pumps per island installed.**
 1. With clean restroom
 2. Provision for free tire pressure air filling
 3. Sufficient water for radiator
 4. First aid kits
- b. **Category 2 - Retail Outlet with 3-4 pump islands and at least 3-4 dispensing pumps installed.**
 1. With clean restroom
 2. Provision for free tire pressure air filling
 3. Sufficient water for radiator
 4. Basic mechanical services

5. First aid kits

c. **Category 3 - Retail Outlet with 5 or more pump islands installed.**

1. With clean restroom
2. Provision for free tire pressure air filling
3. Sufficient water for radiator
4. Basic mechanical services
5. First aid kits
6. With designated evacuation assembly area

Retail Outlets may install electric vehicle charging facilities in any of the above-mentioned outlet categories, provided that safety controls are in place, and without prejudice to any agreement, rules, and guidelines that may be issued by the Department, or any government agency and instrumentality, for the operation of the electric vehicle charging facilities.

Payment of application and renewal fees shall be in accordance to these categories.

SECTION 13. Minimum Facility Requirements for Existing Retail Outlets. All existing and operating Retail Outlets prior to the issuance of this Revised Retail Rules shall comply with the following mandatory requirements:

- a. Dispensing pump shall be fixed and permanent;
- b. Product deliveries and retailing of Liquid Fuels shall be conducted only within the premises of the Retail Outlet; and
- c. All Liquid Fuels shall be stored in underground storage tanks, along with a tank sumpable to contain spills and leakage.

SECTION 14. Fuel Storage, Handling, Transfer and/or Dispensing. The storage, handling,

transfer and/or dispensing of Liquid Fuels shall be subject to the following:

- a. Liquid Fuels shall be delivered, received and dispensed at all times only within the business premises of a Retail Outlet;
- b. Liquid Fuels shall be transferred only from UGT by means of fixed dispensing pumps designed and equipped to allow the controlled flow of the Liquid Fuels and prevent leakages or accidental discharges;
- c. Liquid Fuels shall only be dispensed to appropriate containers as defined in Rule I Section 3. The use of appropriate container may be allowed provided the Liquid Fuels Retail Outlet shall provide appropriate containers;
- d. with the condition that it is for emergency and not for commercial purposes;
- e. Liquid Fuels shall be sold in appropriate containers;
- f. Liquid Fuels shall not be discharged into any street, highway, drainage canal or ditch, storm drain or flood control channel, lake or tidal waterway, or directly into the ground;
- g. Liquid Fuels shall be sold and dispensed to customers regardless of quantity and amount, directly to the vehicles' fuel tank;
- h. An official receipt shall be issued after every sale of Liquid Fuels; and
- i. Liquid Fuels shall be sold consistent with the price indicated in the dispensing pump and the price display board.

In addition, a Retail Outlet or company or any entity/person who supplies Liquid Fuels to any person selling or dispensing such Liquid Fuels through the use of drums, barrels,

bottles, or "bote-bote", shall be deemed to be committing Illegal Trading. However, the use of drums may be allowed for customer's own use in pre-identified situations and where a duly-notarized certification attesting to the fact is presented.

RULE IV OTHER TYPES OF RETAIL OUTLET AND THEIR REQUIREMENTS

SECTION 15. Types and Facility Requirements.

As may be necessary and practicable, the following types of Retail Outlets may be exempted by the DOE from compliance with the mandatory standards and requirements provided in Section 11:

- a. A Marine Retail Outlet , which is constructed near the shoreline and intended exclusively to serve the fuel requirements of marine vessels such as small motor boats and bancas. It shall cater exclusively to marine vessels and it shall be exempted from the UGT requirement, provided that the aboveground storage tank shall be constructed using materials and technology that can withstand seawater or corrosive atmosphere and actions of waves on the shoreline, enclosed with bund walls on all sides with an enclosure volume of at least 120% of the net capacity of the largest tank and the bund walls should be made of corrosion-resistant material (i.e., concrete), and compliant with designs established and to be subsequently issued by the Department.
- b. Technology-Solution Retail Outlet, which is a result of emerging technologies that address the requirement of Liquid Fuels. The materials are manufactured in accordance to the facilities and product safety certifying bodies such as, UL-listed and equivalent NRTL safety marks (USA), CE marking (UK and EU), RCM, regulatory compliance mark (Australia), PSE (Japan), among others.

However, the said Retail Outlet shall observe the following requirements:

1. Shall address the fuel requirements of those catered by the “bote-bote” retailing in the area applied for, as certified by the concerned LGU;
2. A distance of 1 kilometre radius from another Retail Outlet shall be observed;
3. No other commercial establishment shall be installed/constructed within the Retail Outlet other than those necessary for its operation;
4. The vehicle being serviced and the delivery of the Liquid Fuels by the Tank Truck shall at all times be inside the business premises;
5. One (1) metre set back distance shall be maintained in the following:
6. Cashier’s booth or dispensing pump to firewalls; and
7. During the supply operation of Tank Truck, there should be one (1) metre working distance that should be maintained from the Tank Truck to firewalls.

The Marine Retail Outlet and Technology-Solution Retail Outlet are not exempted from applying for a COC and compliance to other government requirements.

- c. Temporary Emergency Retail Outlet.** Upon written notice to OIMB with endorsement from the LGU, the Temporary Emergency Retail Outlet may operate for a period of 15 days, in areas declared as under a state of calamity/emergency and where no Retail Outlet can serve as a result of the prevailing circumstances under emergency or calamity. The designs shall be compliant with established standards to be subsequently issued by the Department.

A request for renewal and extension shall be covered by Special Permit from the O1MB upon receipt of justification by OIMB from the Retail Outlet, and an endorsement by the LGU. The LGU may set its own criteria and conditions for this type of Retail Outlet to operate.

RULE V

OIMB MONITORING AND INSPECTION

SECTION 16. Conduct of Inspection. Duly-authorized inspectors from the OIMB or the Field Offices shall undertake random and unannounced inspections to conduct, among others, checking/testing of dispensing pumps, sample taking and product testing on-site or at the DOE laboratory.

The Retail Outlet Official shall maintain a responsible person who shall be present in the Retail Outlet at all times and, for this purpose, the Retail Outlet Manager, Supervisor, Team Leader or any person acting as such shall be considered as a responsible person before whom the duly authorized inspectors can present their proper identifications and under whose authority the inspection shall proceed.

SECTION 17. Sample Taking by the OIMB or by the Field Offices for Testing at the DOE Laboratory.

- a. Authorized inspectors from the O1MB or the Field Offices shall be allowed to gather one

(1) litre sample of Liquid Fuels per product which the Retail Outlet is offering for sale directly from the dispensing pumps, for product quality testing at the DOE laboratory to ensure compliance with quality standards.
- b. Laboratory test results indicating non-compliance with quality standards pursuant to the PNS and the Biofuels Act of 2008 and its Implementing

Rules and Regulations shall constitute ADULTERATION.

SECTION 18. Sample Taking by the OIMB or by the Field Offices for On-site Product Sampling and Testing. On-site sampling and testing of Liquid Fuels samples using the DOE's Mobile Monitoring and Testing Laboratory and the consequent penalties and sanctions shall be governed by the provisions of DC No, DC-2015-06 -0006.

SECTION 19. Retention of Product Samples. The Retail Outlet Official shall retain its own duplicate samples of the samples obtained and duly sealed by the inspectors from the OIMB or the Field Offices during the inspection for purposes of its own product quality testing. It shall be responsible for providing his own sampling bottle.

SECTION 20. Discrepancy in Results of Testing and Resolution Thereof. In case the Retail Outlet Official and/or Retail Outlet opts to contest the results of the DOE laboratory, or to subject its retained fuel samples to a simultaneous testing, it may do so at its own expense within the three (3) months validity period of the retained fuel samples reckoned from the date the samples are endorsed/turned over to the DOE laboratory, and with an accredited testing laboratory acceptable to the DOE and in the industry. The results of the test and analysis, for purposes of determining compliance with the PNS shall be deemed to be conclusive. The 3rd party laboratory result will only be used for appeal purposes.

Analytical laboratory equipment to be used for testing of contested Liquid Fuels should be calibrated and/or correlated with the DOE laboratory equipment (GRTL/MMTL). Liquid Fuels samples should be tested using the reference test methods prescribed in PNS/DOE QS.

SECTION 21. Underdelivering in Dispensing Pumps.

- a. The quantity of Liquid Fuels delivered by dispensing pumps at Retail Outlets as measured by the dispensing pump meter shall not be less than the actual quantity by more than fifty (50) milliliters for every ten (10) liters as measured by the DOE Test Measure certified and sealed by the DOST-ITDI.

The Test Measure shall be filled to the ten (10)-liter mark three (3) times at low, medium and fast flow rates and the average quantity as measured by the pump meter shall constitute the quantity to be compared with the actual quantity of ten (10) liters.

- b. The Retail Outlet Official shall have the right to examine that the DOE Test Measure has the updated seal and issued by the NML.
- c. The particular dispensing pump shall be immediately closed by the inspectors of OIMB or by the Field Offices by posting an "Out-of-Order" sign or installing a padlock to prevent the said pump from further dispensing products to the public until it is recalibrated. The said sign or padlock can only be removed by the Authorized Calibrating Entity as provided in Section 24 of this Rules.

In the event that an "Out-of-Order" sign is posted by the Retail Outlet, such must be supplemented by a notice/request for recalibration to the LGU or by the Authorized Calibrating Entity.

- d. The unauthorized removal of an "Out-of-Order" sign or padlock locking the pump that is found underdelivering shall constitute a presumption that the pump is actually being used to sell Liquid Fuels and shall be deemed committing the offense of ILLEGAL TRADING. A dispensing pump found with broken or no seal and with no "Out-of-Order" sign or padlock placed/posted/pasted on it shall constitute ILLEGAL TRADING.

In addition, the absence of an “Out-of-Order” sign or padlock shall give rise to the presumption that the Retail Outlet is actually selling Liquid Fuels and shall be deemed committing the offense of ILLEGAL TRADING.

SECTION 22. Posting of Signages and Labels.

- a. Retail Outlet shall have posted or displayed prominently and conspicuously and at the immediate sight of the motorist the following signages and labels:
 - 1. Price display board with updated prices for each Liquid Fuels;
 - 2. Price display board with the same updated prices in the dispensing pump. For special promotions, a designated lane must be assigned and the announcement of such promotion is prominently displayed in the Retail Outlet;
 - 3. Product quality label, such as RON, E10 and Bx, posted at the dispensing pumps;
 - 4. Biodiesel blend (Bx) and the phrase “This diesel contains X% CME”; and
 - 5. E-Gasoline Fuel specifications
 - a) Regular grade - 91 RON, Minimum - Green
 - b) Premium grade - 95 RON, Minimum - Red
 - c) Premium plus grade - 97 RON, Minimum - Blue
- b. The use of the terms “unleaded”, “lead-free”, and other similar brand names in the labeling at the display boards, pumps, and other marketing tools to the public shall no longer be allowed to avoid the impression that the Philippines still has leaded gasoline.

- c. Retail Outlet shall likewise have posted in strategic and appropriate locations within the premises of the Retail Outlet the following consumer safety and informational signs:
 - 1. Do not use cellular phone while filling;
 - 2. No smoking;
 - 3. Switch-off engine while filling;
 - 4. No straddling (motorbike/tricycle); and
 - 5. Other safety signs as may be required by the 01MB and other government agencies.

RULE VI

LIQUID FUELS QUANTITY STANDARD

SECTION 23. Calibration and Sealing of Dispensing pumps. To ensure that facilities and equipment used in the operation of Retail Outlets remain accurate, calibration shall be mandatory. All dispensing pumps used in Retail Outlets to dispense Liquid Fuels sold to the public must be properly calibrated once every ninety (90) days, and after calibration immediately sealed by an authorized entity. Immediate calibration shall also be conducted if the dispensing pump is found underdelivering, as provided under Section 21 or during the weekly calibration verification, as provided under Section 25.c.

The failure of the Retail Outlet Official and of Retail Outlet to have the dispensing pumps calibrated shall constitute UNDERDELIVERING notwithstanding the fact that the dispensing pumps are actually not underdelivering.-

SECTION 24. Authorized Calibrating Entities and its Roles. The authorized calibrating entities are the City or Municipal Treasurer, or in their absence or incapacity, the National Metrology Laboratory (NML) of the Industrial Technology Development Institute (ITDI), Department of Science and Technology (DOST) or, in its absence, the oil company or a third party contractor.

In case that calibration shall be done by the oil company or a third party contractor, it shall obtain a certification from the City or Municipal Treasurer or NML ITDI DOST that the latter are unavailable or incapable of doing the calibration.

SECTION 25. Test Measure Requirement in All Retail Outlets.

- a. OIMB or the Field Offices shall inspect and verify the dispensing pump using a valid Test Measure to check for possible underdelivering.
- b. All Retail Outlets shall maintain a 10-litre Test Measure, which must be inspected, calibrated, verified, adjusted, as necessary and resealed once every twelve (12) months by the NML of the ITDI, DOST and DOST regional calibration laboratories.
- c. The Retail Outlet Official shall verify the accuracy of the dispensing pump using a valid Test Measure and keep a written record or logbook of its weekly readings. The periodic calibration by the Retail Outlets shall guide them as to whether they have to request for the LGU calibration earlier than their schedule. The written record or logbook shall be duly-signed by the authorized calibrating entity and countersigned by the Retail Outlet Official or his authorized representative and shall be maintained at all times in the Retail Outlet premises and presented to OIMB or the Field Offices and to the public upon demand thereof.
- d. The Retail Outlet Official shall ensure that the authority performing the calibration shall install a seal after calibration to guard against unauthorized adjustment of the dispensing pump meter, which seal shall not be broken until the next calibration by an authorized entity. Breaking the seal for the purpose of calibration by an entity other than the

LGU shall have prior authorization by the LGU otherwise, unauthorized breaking of the seal shall constitute the offense of **ILLEGAL TRADING**.

Failure to maintain a NML calibrated and sealed Test Measure, or the duly documented and dispensing pumps are not actually underdelivering shall constitute **ILLEGAL TRADING**.

SECTION 26. Sealing of the Dispensing Pump by the LGU.

- a. Only the LGU or the authorized persons enumerated in Section 24 can affix the seal after the calibration, and conversely to break the seal. Calibration and the breaking of the seal by an entity other than the LGU or those enumerated in Sec. 23 shall constitute **UNDERDELIVERING**.
- b. The seal shall be installed either in the metering unit and mechanical or electronic adjustment device by the authorized persons performing the calibration to guard against the unauthorized adjustment of the dispensing pump.
- c. The Retail Outlet or Retail Outlet Official shall ensure to sell and dispense Liquid Fuels to customers regardless of quantity and amount, directly to their vehicles' fuel tank.

**RULE VII
LIQUID FUELS QUALITY STANDARDS**

SECTION 27. Product Quality. Only Liquid Fuels complying with the Philippine National Standard (PNS) and Biofuels Law shall be sold in a Retail Outlet.

SECTION 28. Testing and Retention of Samples of Liquid Fuels by the Retail Outlet. In order to protect against the delivery of adulterated products, a Retail Outlet may do either of the following:

- a. The Retail Outlet shall take at least one (1) litre sample from the Tank Truck of each Liquid Fuels delivered to his Outlet. The samples shall be placed in clear bottles and sealed in the presence of the Tank Truck driver who shall verify the taking of the sample by signing on the invoice. The sample shall be safely stored by the Retail Outlet for at least five (5) days or until the next delivery thereafter, whichever is shorter. A record of the Certificate of Quality per delivery of Liquid Fuels shall also be maintained.

The Retail Outlet shall provide its own sampling bottle for purposes of retaining a

duplicate sample for its own product quality testing for verification for every delivery from its supply source and for OIMB's or the Field Offices' inspection and sampling.

RULE VIII

PROHIBITED ACTS, ADMINISTRATIVE FINES AND SANCTIONS

SECTION 29. Fines/Sanctions Against Prohibited Acts. In addition to the right and authority of the OIMB or the Field Offices to suspend and revoke the COC as provided in this Circular, the Retail Outlet Official and/or Retail Outlet that commits the prohibited acts shall be imposed the following penalties:

Prohibited Act	Penalty		
	1st Offense	2nd Offense	3rd Offense
A. ILLEGAL TRADING			
1. Engaging in the Business without a COC, where the Retail Outlet Official and/or Retail Outlet engages in business without securing a COC, or continues to operate the Retail Outlet upon expiration of the COC, or after being directed by the DOE or OIMB or the Field Offices to cease and desist in operating the Retail Outlet	PI0,000.00 with directive to comply.	PI0,000.00 and Recommend revocation of the permit or license to LGU.	
2. Non-compliance with Section 11 Rule III on Mandatory Standards and Requirements (Fixed and permanent dispensing pump, forecourt, facilities, signages and labels, underground storage tank)	PI0,000.00 with directive to comply.	PI0,000.00 and Recommend revocation of the permit or license to LGU	
3. Non-compliance with Section 12 Rule III on Minimum Facility Requirements for Existing Retail Outlets (Fixed and permanent dispensing pump, deliveries and retailing conducted only within the premises, fuels stored in underground storage tanks)	PI0,000.00 with directive to comply.	PI0,000.00 and Recommend revocation of the permit or license to LGU.	
4. Non-compliance with Section 13 Rule III on Liquid Fuels Storage, Handling, Transfer and/or Dispensing The storage, handling, transfer and/or dispensing of Liquid Fuels shall be subject to the following:			

Prohibited Act	Penalty		
	1st Offense	2nd Offense	3rd Offense
a. Liquid Fuels shall be delivered, received and dispensed at all times only within the business premises of a Retail Outlet ; b. Liquid Fuels shall be transferred only from UGT by means of fixed dispensing pumps designed and equipped to allow the controlled flow of the Liquid Fuels and prevent leakages or accidental discharges; c. Liquid Fuels shall only be dispensed to appropriate containers as defined in Rule I Section 3; d. Liquid Fuels shall not be dispensed into drums, barrels, bottles or “bote-bote”, or such similar containers; e. Liquid Fuels shall not be sold in drums, barrels, bottles or “bote bote”, or such similar containers; f. Liquid Fuels shall not be discharged into any street, highway, drainage canal or ditch, storm drain or flood control channel, lake or tidal waterway, or directly into the ground; g. Liquid Fuels shall be sold and dispensed to customers regardless of quantity and amount, directly to the vehicles’ fuel tank; and h. Liquid Fuels shall be sold consistent with the price indicated in the dispensing pu_mp and the price display board. The use of appropriate container may be allowed with the condition that it is only for transporting the Liquid Fuels to their place of use/consumption and not for long term and constant use to store Liquid Fuels. The Liquid Fuels Retail Outlet shall provide appropriate containers given the cited condition. In addition, a Retail Outlet or company or any entity/ person who supplies Liquid Fuels to any person selling or dispensing such Liquid Fuels through the use of drums, barrels, bottles, or “bote-bote”, shall be deemed to be committing Illegal Trading.	PI0,000.00 with directive to comply.	PI0,000.00, Revocation of coc and Recommend revocation of the permit or license to LGU.	
5. Non-compliance with Section 15 Rule IV on Types and Facility Requirements	PI0,000.00 with directive to comply.	PI0,000.00 and Revocation of COC and Recommend revocation of the permit or license to LGU	

Prohibited Act	Penalty		
	1st Offense	2nd Offense	3rd Offense
6. Non-submission or misrepresentation or misdeclaration of Documentary Requirements as stipulated in Section 6(c)	PI0,000.00 with directive to comply.	PI0,000.00 and Recommend revocation of the permit or license to LGU	
7. Failure to Post COC in a conspicuous place, where a Retail Outlet does not or fails, or refuses to post the COC in the premises.	Warning with directive to post within 30 days. A penalty of PI0,000.00 shall be imposed for failure to comply within the said period.	PI0,000.00 with directive to comply	PI 0,000.00, Revocation of COC and Recommend revocation of the permit or license to LGU
8. Non-compliance with Section 22 Rule V on posting requirements a. Non-posting of RON, EIO and Bx stickers at the dispensing pump b. Posting of wrong RON c. Posting the terms "unleaded", "lead-free", and other marketing tools to the public d. Posting of updated prices in price display board for each Liquid Fuels e. Posting of conflicting prices in the dispensing pump and in price display board f. Non-posting of consumer safety and informational signs in the business premises	Warning with directive to post within 30 days. A penalty of PI0,000.00 shall be imposed for failure to comply within the said period.	PI0,000.00 with directive to comply.	PI0,000.00, Revocation of COC and Recommend revocation of the permit or license to LGU
9. Non-issuance of official receipt after every sale of Liquid Fuels	P50,000.00 with directive to comply.	PI00,000.00 with Cease and Desist Order.	P200,000.00, issuance of closure Order, Revocation of COC and Recommend revocation of the permit or license to LGU.
10. Refusal or Failure to Pay Fine/Penalty within the period prescribed by DOE	Amount of fine/ penalty imposed, issuance of closure Order, Revocation of COC and Recommend revocation of the permit or license to LGU.		

Prohibited Act	Penalty		
	1st Offense	2nd Offense	3rd Offense
11. Absence and/or unauthorized removal of an “Out-of-Order” sign or padlock	Amount of fine/penalty imposed, Closure of RO and reiteration of Notice of Violation to oil company/ supplier and LGU.		
12. Failure to maintain a calibrated and sealed dispensing pump 13. A dispensing pump with a broken or with no seal 14. Failure to comply with Test Measure Requirements 15. Failure to maintain a written record or logbook 16. Sale of Liquid Fuels from dispensing pump with broken or no seal and with no “Out-of-Order” sign or padlock installed	PI0,000.00 with directive to comply.	PI0,000.00 Revocation of COC and Recommend revocation or suspension of the permit or license to LGU.	
B. ADULTERATION. The possession and sale of Liquid Fuels that do not conform with quality standards pursuant to the PNS and Biofuels Law shall be governed and sanctioned by that Act and its Implementing Rules and Regulations	P200,000.00 with Cease and Desist Order.	P300,000.00, Revocation of COC, issuance of Closure Order and Recommend revocation or suspension of the permit or license to LGU.	
C. UNDERDELIVERING. Quantity of Liquid Fuels delivered by dispensing pumps is less than the actual quantity by more than fifty (50) - millilitres for every ten (10) litres as measured by a calibrating bucket	PI 0,000.00 per dispensing pump	PI0,000.00 per dispensing pump, Revocation of COC and Recommend revocation or suspension of the permit or license to LGU.	
D. REFUSAL/ OBSTRUCTION OF INSPECTION AND SAMPLING, where a Retail Outlet refuses, prevents or obstructs the inspection of its premises, facilities and records, as well as sampling of Liquid Fuels. In addition, failure by the Inspectors from the OIMB or the Field Offices to conduct inspection despite reasonable efforts to secure the consent of the Retail Outlet Official to do so, or the circumstances described in Section 16, shall be deemed as Refusal of Inspection. Such refusal shall likewise constitute prima facie evidence of the commission of the Prohibited Acts of this Circular.	PS0,000.00 With the presumption that there is sale of adulterated products.	PI00,000.00 with Cease and Desist Order, and with the presumption that there is sale of adulterated products.	P200,000.00 issuance of Closure Order, Revocation of COC and Recommend revocation of the permit or license to LGU.

Prohibited Act	Penalty		
	1st Offense	2nd Offense	3rd Offense
E. HOARDING which is committed when, before a price increase or in times of tight supply: 1. Retail Outlet refuses, or fails to sell the Liquid Fuels to the general public even when supply is available, and customer offers to pay in cash; or 2. Retail Outlet has unjustifiable increase in inventory, which stocks are fifty percent (50%) higher than his usual inventory as reckoned from the third (3rd month) immediately preceding the date that the said Retail Outlet refuses or fails to sell.	PI0,000.00	P 10,000.00 , Revocation of COC and Recommend revocation or suspension of the permit or license to LGU.	
F. Continuing to operate after an Order or Notice of cessation of operation of business has been issued by the DOE	PI0,000.00 per day of operation.	PI0,000.00 per per day of operation, Revocation of COC and Recommend revocation or suspension of the permit or license to LGU.	

SECTION 30. Initiation of Administrative Proceedings. Any individual or group may initiate administrative proceedings with the DOE against the Retail Outlet Official and/or Retail Outlet committing any of the prohibited acts defined or provided in this Department Circular in accordance with DOE Circulars; *Provided:* That, the DOE may, motu proprio, proceed administratively against any Retail Outlet who does not comply with this Department Circular pursuant to said DOE Circulars.

SECTION 31. Initiation of Criminal Action. The initiation of an administrative action or the imposition of any fine against any Retail Outlet who violates or does not comply with this Department Circular shall be without prejudice to the filing of any criminal action against such Retail Outlet pursuant to BP 33, as amended and RA 8479, and other applicable laws, rules and regulations.

RULE IX FINAL PROVISIONS

SECTION 32. Transitory Clause. All existing Retail Outlets that have fully-complied with

the prior notice requirements of the DOE pursuant to Department Circular 98-03-004 shall be given six (6) months from effectivity of these Retail Rules to fully comply with the provisions hereof.

Taking into consideration public safety, the DOE reserves the right to issue appropriate and separate regulations relative to the conduct of EV charging stations, battery swapping and other similar activities. Any Retail Outlet may only engage in such activities after notification to the DOE.

SECTION 33. Review Clause. In light of the dynamic nature of the industry, the DOE shall periodically review, update and issue the necessary rules relative to the operation of the sector. OIMB shall coordinate with the Energy Utilization Management Bureau (EUMB) for EV related activities.

SECTION 34. Separability Clause. Should any provision herein be declared invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of the other provisions not so declared.

SECTION 35. Repealing Clause. DOE Circular No. 2003-11-010 is hereby deemed repealed. All other DOE Circulars, issuances, and rules and regulations inconsistent with this Circular or any part hereof, are hereby deemed repealed or modified accordingly.

SECTION 36. Effectivity. This Department Circular shall take effect fifteen (15) days from

the date of its complete publication in two (2) newspapers of general circulation.

Done this _____
Energy Center, Bonifacio Global City,
Taguig City.

ALFONSO G. CUSI
Secretary

DOE FORM - UNDERTAKING
Effective as of December 13, 2017

AFFIDAVIT OF UNDERTAKING

I, We, _____ with residential address at _____
NAME
_____ under oath, hereby depose
ADDRESS
and state that;

1. I am the owner of _____, with Business Permit
BUSINESS NAME
No. _____ and/or Department of Trade and Industry (DTI) Registration No. _____
_____, and office address at _____
BUSINESS ADDRESS
2. Pursuant to Section 6(b) of Department Circular No. 2017-11-0011, otherwise known as the the "Revised Retail Rules," I hereby commit to comply with all the requirements provided for by said circular for a Certificate of Compliance (COC);
3. I likewise UNDERTAKE and ASSUME full and complete responsibility for all consequences which may arise in connection with said registration/application; and
4. I am executingf this affidavit in compliance with the requirements for the issuance of Certificate of Compliance (COC) pursuant to the said department circular.

IN WITNESS WHEREOF, I/We hereby set my/our hand/s this _____ of day _____
in _____.

Affiant

SUBSCRIBED AND SWORN to before me this _____ day of _____ at _____.
Affiant having exhibited to me his/her _____ (Government ID) issued
at _____ on _____.

Doc. No. _____
Page No. _____
Book No. _____
Series of _____

NOTARY PUBLIC

APPLICATION FOR SECURING CERTIFICATE OF COMPLIANCE (COC)

Business Name: _____

Complete Address of Establishment: _____

Telephone No./Cell Phone No.: _____

Fax No./Email address: _____

Type of Ownership:

☐

Single Proprietorship

☐

Partnership

☐

Corporation

(Please write **COMPLIED** or **NOT COMPLIED** in the space provided)

_____ Compliance to environmental laws by DENR-EMB

_____ Compliance to Local Zoning Ordinance

_____ Compliance to Fire Code of the Philippines

_____ Above-ground tank(s)

_____ Dispensing fuels through the use of prescribed dispenser(s), with no
bote-bote or similar containers in use

_____ Compliance to local Building Code

Do you think Tank Truck(s) for Hauling Liquid Fuels?

☐

Yes

☐

No

(If YES, please attach additional requirements)

Supplier(s): _____

In case of Corporation, Authorized Representative(s) _____

Name of Owner/Partner _____

Address: _____

Contact Details: _____

Telephone No./Cell Phone No.: _____

Email Address: _____

Name and Signature of Applicant

Before me, the undersigned authority, on this day personally
appeared _____, (name), of _____,
known to me to be the person who name is subscribed to the foregoing instrument, consisting
of ___ attachments including this page on which this acknowledgement is written, and upon his/
her oath acknowledged to me that he/she executed the same for the purposes and consideration
therein

CHECKLIST OF REQUIREMENTS
FOR HAULER (OWN-USE)
FOR SECURING CERTIFICATE OF COMPLIANCE
as provided under DOE Circular DC2017-11-0011
(RMMSCD)

DOCUMENTARY REQUIREMENTS		Remarks
I. Application Form		
1. Filled-up and notarized application form complete with the following information: a. Business name, address, telephone, fax number and e-mail address of the business office; b. Location and complete address of the Retail Outlet; and c. Name of dealer in case of single proprietorship, or partners in case of partnership, or authorized representative in case of corporation		
II. Supporting Documents		
1. LTO Registration OR/CR		
2. DOST Calibration		
3. Permit to Transport Flammable Liquid by Tank Truck of Conveyance Permit		
4. Copy of COC of Retail Outlet, as applicable		
5. Payment of fee		
ORIGINAL COPIES OF THE ABOVE DOCUMENTS TO BE PRESENTED		
III. Corresponding Charges/Fees		
1. Acknowledgement of Notice/Engagement on the DOI : P 500.00 2. COC for Hauler for 5 years (New Application) : P 3,000.00 3. COC for Hauler for 5 years (Renewal) : P 2,500.00 If Mailed, We only accept: Postal Money Order (PMO) / Manager's Cheque (MC) payable to the Department of Energy (DOE)		

Processed by:

Date:

Noted by:

Notes:

All applications must be addressed to:
 Director, Oil Industry Management Bureau
 Department of Energy
 3rd Floor, PNOC Bldg. 5, Energy Center
 Rizal Drive, Bonifacio Global City, Taguig, NCR
 Tel. Nos., 840-2130/840-2184/479-2900 Local 376

CHECKLIST OF REQUIREMENTS
FOR SECURING CERTIFICATE OF COMPLIANCE
as provided under DOE Circular DC2017-11-0011
(RMMSCD)

DOCUMENTARY REQUIREMENTS		Remarks
I. Application Form		
1. Filled-up and notarized application form complete with the following information: a. Business name, address, telephone, fax number and e-mail address of the business office; b. Location and complete address of the Retail Outlet; and c. Name of dealer in case of single proprietorship, or partners in case of partnership, or authorized representative in case of corporation 2. A Notice of Undertaking on liability in case of violations committed by Dealer, operator, owner or proprietor		
II. Supporting Documents for 1st Issuances		
1. Certification from distributor/supplier/dealer's agreement:		
2. Notarized Statement that the facility design and operation of the Retail Outlet is PNS-compliant signed by the designated Engineering Procurement Construction Contractor and Dealer/Owner of the Retail Outlet		
3. List of Dispensing pumps/hoses and underground storage tank/s with corresponding capacity/ies.		
4. Scaled lay-out plan showing the island/dispensing pumps, underground storage tanks, cashier's booth and other facilities		
5. Accomplished DOE Form on Undertaking		
6. Latest photographs (in 5R size), showing the full/front, and left side views including price display boards, safety informational signs and required stickers/labels for RON, E-10, B-2 among others.\		
7. DOE SCC/COC Clearance of No Pending Case, as applicable		
8. Payment of fee		
III. Supporting Documents for Renewal		
1. Photocopy of previous COC		
2. DOE SCC/COC Clearance of No Pending Case, as applicable		
3. Payment of fee		
4. A Notice of Undertaking on resumption of liability in case of violations committed by Dealer, operator, owner or proprietor		
5. Certification from distributor/supplier/dealer's agreement		
ORIGINAL COPIES OF THE ABOVE DOCUMENTS TO BE PRESENTED		
IV. Corresponding Charges/Fees		
1. Acknowledgement of Notice/Engagement on the DOI : P 500.00 2. COC for Gasoline Station for 5 years (New Application) : P 3,000.00 3. COC for Gasoline Station for 5 years (Renewal) : P 2,500.00 If Mailed, We only accept: Postal Money Order (PMO) / Manager's Cheque (MC) payable to the Department of Energy (DOE)		

Processed by: _____

Date: _____

Noted by: _____

Notes:

All applications must be addressed to:
 Director, Oil Industry Management Bureau
 Department of Energy
 3rd Floor, PNOC Bldg. 5, Energy Center

Chapter III

EXECUTIVE ORDER NO. 134

REQUIRING OIL COMPANIES AND BULK SUPPLIERS TO MAINTAIN A SUFFICIENT MINIMUM INVENTORY OF PETROLEUM, FOR PURPOSES OF ENSURING CONTINUITY, ADEQUACY AND STABILITY OF CRUDE AND FUEL SUPPLY

WHEREAS, the Philippines has, pursuant to a program of diversifying fuel sources for power generation, reduced its dependence on fossil fuels for power requirements;

WHEREAS, the above development notwithstanding, the country is still largely dependent on imported oil for the transportation sector;

WHEREAS, recent and prevailing domestic and international events, such as the escalating tensions and conflicts obtaining in Middle Eastern countries, have highlighted the need for the country to adopt and implement prudent initiatives to ensure continuous, adequate and stable supply of petroleum products in response to imminent and actual threats to our petroleum supply;

WHEREAS, under the Downstream Oil Industry Deregulation Act of 1998 (RA 8479), in relation to the Department of Energy Act of 1992 (RA 7638), the Secretary of Energy is authorized to exercise such powers concomitant with the policy of ensuring continuous, adequate and stable supply of energy, in respect of the conservation, stockpiling and storage of energy resources.

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the

Philippines, by virtue of powers vested in me by law, do hereby order:

SECTION 1. All oil companies and bulk suppliers operating in the country, shall maintain a minimum inventory of petroleum stock in the amount sufficient to ensure a continuous, adequate and stable supply of petroleum products should domestic and international events, such as, but not limited to terrorist attacks, armed conflicts in the Middle East and in other regions whence the Philippines draws or secures its petroleum supply, threaten or restrict the supply of petroleum to the Philippines.

SECTION 2. To comply with the requirements under Section 1 of this Order, the Secretary of Energy is hereby directed to:

- determine the existence of the circumstances envisaged in Section 1 that would trigger the application of the minimum inventory requirements; the types and mix of petroleum products to be stocked by the oil companies and bulk suppliers, the appropriate levels of minimum petroleum inventory of oil companies and bulk suppliers; and the commencement and duration of compliance by the oil companies and bulk suppliers therewith;

- promulgate appropriate issuances, directives and orders to implement this Order; and
- perform any and all acts necessary and appropriate to carry out the purposes of this Order.

SECTION 3. Pursuant to Section 15 (b) of Republic Act of 8479, all oil companies and bulk suppliers shall provided the Department of Energy with a weekly report, under oath, of compliance with the minimum Inventory requirement and such other matters required for the duration specified by the Secretary of Energy, in accordance with Section 2 hereof.

SECTION 4. All orders, issuances, rules and regulations, or parts thereof, which are inconsistent with this Order, are hereby repealed or modified accordingly.

SECTION 5. This Executive Order shall take effect immediately upon its publication in a newspaper of general circulation in the Philippines.

Done in the City of Manila, this 14th day of October in the year of our Lord, Two Thousand and Two.

DEPARTMENT CIRCULAR NO. 2003-01-001

GUIDELINES IMPLEMENTING THE MINIMUM INVENTORY REQUIREMENTS OF OIL COMPANIES AND BULK SUPPLIERS AS PROVIDED UNDER EXECUTIVE ORDER NO. 134

Pursuant to Executive Order No. 134 issued by the President of the Republic of the Philippines on 14 October 2002, Republic Act No. 7638, otherwise known as “An Act Creating the Department of Energy” and Republic Act No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, the Department of Energy hereby adopts the following guidelines to implement the minimum inventory requirement of all Oil Companies and Bulk Suppliers operating in the country, to ensure a continuous, adequate and stable supply of Petroleum Crude Oil and Products in cases where domestic and international events threaten or restrict the supply of Petroleum Crude Oil and Products to the Philippines such as, but not limited to, terrorist attacks, armed conflict in the Middle East and in other regions from which the Philippines draws or transits its supply of Petroleum Crude Oil and Products, and other similar events.

ARTICLE I GENERAL PROVISIONS

SECTION 1. *Title.* – These guidelines shall be known as the “Implementing Guidelines for the Minimum Inventory Requirements of Petroleum of Oil Companies and Bulk Suppliers” and shall be hereafter referred to as the “Guidelines”.

SECTION 2. *Scope and Coverage.* – These Guidelines shall apply to all Oil Companies and Bulk Suppliers engaged in any activity of the Downstream Oil Industry in the Philippines.

SECTION 3. *Definition of Terms.* – For purposes of these Guidelines the following terms shall have the following meanings:

- (a) *Bureau* refers to the Energy Industry Administration Bureau of the Department of Energy or its successor;

- (b) *Bulk plant/terminal/depot* refers to an intermediate distribution facility where delivery of Petroleum Products to and from the facility is undertaken by tank trucks, tankers/barges, pipes and other modes of transport in large quantities;
- (c) *Bulk Sales/Supply* refers to cargoes which are transported through tank trucks, tankers/barges, pipes and other modes of transport in large quantities;
- (d) *Bulk Supplier* refers to any Person engaged in the sale of Petroleum Products in bulk sourced through direct importation;
- (e) *BPS* means the Bureau of Product Standards of the Department of Trade and Industry;
- (f) *Crude Oil* refers to oil in its natural state before the same has been refined or otherwise treated, and excludes water, bottoms, sediments and foreign substances;
- (g) *Days Supply* refers to the equivalent number of days of in-country stocks of Petroleum Crude Oil and Products based on the average daily sales or liftings for the past six (6) months;
- (h) *DOE* refers to the Department of Energy of the Republic of the Philippines;
- (i) *Downstream Oil Industry* refers to the business of importing, exporting, reexporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling of Crude Oil, gasoline, diesel, Liquefied Petroleum Gas (LPG), kerosene and other Petroleum Products;
- (j) *Liquefied Petroleum Gas or LPG* refers to commercial propane gas or commercial butane gas or a mixture of the said two gases, with properties conforming to the specifications set by the BPS;
- (k) *Minimum Inventory Level* refers to the minimum level of supply of Petroleum Crude Oil and Products to be stored by Oil Companies and Bulk Suppliers in their respective bulk plants, terminals or depots and stocks in-transit within the country,
- (l) *Oil Company* refers to any Person who refines/manufactures/processes and/or imports/exports and stores, distributes and sells Petroleum Products;
- (m) *Person* refers to any person, whether natural or judicial, who is engaged in any or a combination of activities in the Downstream Oil Industry;
- (n) *Petroleum* refers to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax and all other similar or naturally associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits;
- (o) *Petroleum Products* refers to products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvents, kerosene, aviation fuels, diesel oils, fuel oils, waxes and petroleums, asphalts, bitumens, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, that the resultant product contains not less than fifty percent (50.0 %) by weight of such Petroleum Products;

(p) *Refiner* refers to any Person who locally refines Petroleum through distillation, conversion and treatment thereof.

ARTICLE II

MINIMUM INVENTORY REQUIREMENTS

SECTION 4. *Application of Minimum Inventory Requirements.* – In cases where domestic and international events may threaten or restrict the supply of Petroleum Crude Oil and Products to the Philippines such as, but not limited to terrorist attacks, armed conflict in the Middle East and in other regions from which the Philippines draws or transits its Petroleum Crude Oil and Products supply, and other similar events, the Secretary of Energy shall require Oil Companies and Bulk Suppliers to maintain a minimum inventory of Petroleum Crude Oil and Products, to ensure the continuous, adequate and stable supply of Petroleum Crude Oil and Products in the country.

SECTION 5. *Minimum Inventory Level.* – All Oil Companies, except Refiners operating in the country, and Bulk Suppliers shall maintain a minimum inventory equivalent to fifteen (15) Days Supply of Petroleum Products, excluding LPG, which shall have to be maintained at seven (7) Days Supply.

Refiners on the other hand, shall maintain a minimum inventory equivalent to thirty (30) Days Supply consisting of Petroleum Crude Oil and refined Petroleum Products.

The required minimum inventories shall include Petroleum Crude Oil and product stock, on shore and en route to stockpoints within the country, but shall exclude importations still in-transit to the country during the period specified in Section 7 of these Guidelines.

SECTION 6. *Product Type/Mix to be Stocked.* – For purposes of Section 4 of these Guidelines, the type and mix of Petroleum Products to be

stocked may vary for each Oil Company and Bulk Supplier: *Provided*, that priority shall be given to the stockpiling of diesel and gasoline which are used, in the transport sector, LPG for household consumption and fuel oil for power generation.

SECTION 7. *Commencement of Minimum Inventory Level Requirement and Duration of Compliance.* – The Minimum Inventory Level requirement shall commence upon a determination by the Secretary of Energy of the existence of circumstances enumerated in Section 4 of these Guidelines that would require its imposition. The requirement of Minimum Inventory Level shall continue until such time that the Secretary of Energy makes a determination that the circumstance/s warranting the application thereof no longer exists. The Oil Companies and Bulk Suppliers shall be notified in writing of the commencement and termination of the Minimum Inventory Level requirement.

ARTICLE III

MONITORING

SECTION 8. *Reportorial Requirements.* – To ensure full compliance with E.O. 134 and these Guidelines, and for DOE's effective monitoring of the country's inventory level of supply of Petroleum Crude Oil and Products, all Oil Companies and Bulk Suppliers, shall submit to the Bureau weekly reports, prepared under oath, of their inventory on a per crude and per product basis including their actual and projected importations and local purchases and such other matters required for compliance with these Guidelines for the duration to be specified by the Secretary of Energy pursuant to Section 6 of these Guidelines.

The Bureau shall conduct, and the Oil Companies and Bulk Suppliers shall cooperate with, periodic inventory checks on the storage facilities, bulk plants, terminals or depots to reconcile actual submissions.

**ARTICLE IV
FINAL PROVISIONS**

SECTION 9. *Penalties.* – Failure to comply with the provisions of these Guidelines shall constitute a violation of Section 12 of Republic Act No. 8479, in relation to Section 15 of Republic Act No. 8479, and Section 5 (c) of Republic Act No. 7638, and shall be punishable in accordance therewith.

SECTION 10. *Effectivity.* – These Guidelines shall take effect upon complete publication in a newspaper of general circulation.

Issued in Fort Bonifacio, Taguig this 20th day of January 2003.

VINCENT S. PÉREZ
Secretary

**Republic of the Philippines
DEPARTMENT OF ENERGY**

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that, as shown by our records, Department Circular No. **DC 2003-01-001**, entitled: **“GUIDELINES IMPLEMENTING THE MINIMUM INVENTORY REQUIREMENTS OF OIL COMPANIES AND BULK SUPPLIERS AS PROVIDED UNDER EXECUTIVE ORDER NO. 134,”** issued on **January 20, 2003** was published in the **22 January 2003, Wednesday** issue of Today.

Section 10 of said Department Circular provides that it shall take effect upon complete publication in a newspaper of general circulation. Pursuant to this provision, Department Circular No. **DC 2003-01-001**, therefore, took effect on **22 January 2003**.

THIS IS TO CERTIFY FURTHER that, in compliance with Section 3, Chapter 2, Book VII of the *Administrative Code of 1987* (E.O. 292), which provides:

“SEC. 3. Filing. – (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it.

Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.”

three (3) certified copies of the Department Circular issued on **20 January 2003** had been filed with the University of the Philippines Law Center on **29 January 2003**.

Done this 30th day of January, 2003, at the Department of Energy, Merritt Road, Fort Bonifacio, Taguig, Metro Manila.

MANUEL L. OCAMPO
OIC, Office of the Director
Information Technology and Management Services

DEPARTMENT CIRCULAR NO. 2003-03-002

PROVIDING FOR THE RELAXATION OF THE MINIMUM INVENTORY REQUIREMENTS OF ALL OIL COMPANIES AND BULK SUPPLIERS OPERATING IN THE COUNTRY

WHEREAS, under the Downstream Oil Industry Deregulation Act of 1998 (RA 8479), in relation to the *Department of Energy Act of 1992* (RA 7638), the Secretary of Energy is authorized to exercise such powers concomitant with the policy of ensuring continuous, adequate and stable supply of energy, in respect of the conservation, stockpiling and storage of energy resources;

WHEREAS, Executive Order No. 134 requires the Oil Companies and Bulk Suppliers to maintain a sufficient minimum inventory of petroleum, for purposes of ensuring a continuous, adequate and stable supply of Petroleum Crude Oil and Products, in cases where domestic and international events threaten or restrict the supply of Petroleum Crude Oil and Products to the Philippines such as, but not limited to, terrorist attacks, armed conflict in the Middle East and in other regions from which the Philippines draws or transits its supply of Petroleum Crude Oil and Products, and other similar events;

WHEREAS, Section 5 of Department Circular No. 2003-01-001, requires all Oil Companies, except Refiners operating in the country, and Bulk Suppliers to maintain a minimum inventory equivalent to fifteen (15) Days Supply of Petroleum Products, excluding LPG, which shall be maintained at seven (7) Days Supply.

WHEREAS, the same Section provides that Refiners shall maintain a minimum inventory equivalent to thirty (30) Days Supply consisting of Petroleum Crude Oil and refined Petroleum Products;

WHEREAS, Section 7 of the same Circular provides for the Secretary of the Department

of Energy to make a determination as to the commencement and duration, of the compliance of the Minimum Inventory Level Requirement;

WHEREAS, with the outbreak of the US-Iraq war, current crude prices in the world market started to soften and the country has recorded a high level of inventory of in-country stocks of petroleum;

NOW THEREFORE, the following rules are hereby promulgated, relaxing the minimum inventory level requirement to all Oil Companies and Bulk Suppliers operating in the country.

SECTION 1. *Minimum Inventory Level.* –

All Oil Companies, except Refiners and Bulk Suppliers operating in the country, shall maintain a minimum inventory equivalent to seven (7) Days Supply of Petroleum Products, excluding LPG, which shall also be maintained at seven (7) Days Supply.

Refiners, on the other hand, shall maintain a minimum inventory equivalent to fifteen (15) Days Supply consisting of Petroleum Crude Oil and refined Petroleum Products.

The required minimum inventories shall include Petroleum Crude Oil and Products stock, on shore and en route to stockpoints within the country, but shall exclude importations still in-transit to the country during the period specified in Section 7 of Department Circular 2003-01-001.

SECTION 2. *Product Type/Mix to be Stocked.* –

The type and mix of products to be stocked shall still be in accordance to Section 6 of Department Circular 2003-01-001.

All other provisions of the same Circular, particularly Sections 7, 8 and 9 shall still be in effect upon effectivity of this Circular.

SECTION 3. *Effectivity.* –

These Guidelines shall take effect upon complete publication in a newspaper of general circulation.

Issued in Fort Bonifacio, Taguig this 21st day of March 2003.

VINCENT S. PÉREZ
Secretary

Chapter IV

REPUBLIC ACT NO. 9367

AN ACT TO DIRECT THE USE OF BIOFUELS, ESTABLISHING FOR THIS PURPOSE THE BIOFUEL PROGRAM, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

SECTION 1. *Short Title.* – This Act shall be known as the “Biofuels Act of 2006.”

SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and natural ecosystems consistent with the country’s sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

- (a) develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;
- (b) mitigate toxic and greenhouse gas (GHG) emissions;
- (c) increase rural employment and income; and
- (d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

SECTION 3. *Definition of Terms.* – As used in this Act, the following terms shall be taken to mean as follows:

- (a) *AFTA* – shall refer to the ASEAN Free Trade Agreement initiated by the Association of Southeast Asian Nations;
- (b) *Alternative Fuel Vehicles/Engines* – shall refer to vehicles/engines that use alternative fuels such as biodiesel, bioethanol, natural gas, electricity, hydrogen and automotive LPG, instead of gasoline and diesel;
- (c) *Bioethanol* – shall refer to ethanol (C_2H_5OH) produced from feedstock and other biomass;
- (d) *Biodiesel* – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines, with quality specifications in accordance with the Philippine National Standards (PNS);
- (e) *Bioethanol Fuel* – shall refer to hydrous or anhydrous bioethanol suitably denatured for use as motor fuel, with quality specifications in accordance with the PNS;
- (f) *Biofuel* – shall refer to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive,

thermal and power generation, with quality specifications in accordance with the PNS;

- (g) *Biomass* – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and the biodegradable component of solid waste;
- (h) *DA*– shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;
- (i) *Diesel* – shall refer to refined petroleum distillate, which may contain small amounts of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristics, suitable for compression ignition engine and other suitable types of engines with quality specifications in accordance with the PNS;
- (j) *DENR* – shall refer to the Department of Environment and Natural Resources created under Executive Order No. 192, as amended;
- (k) *DOE* – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;
- (l) *DOLE* – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;
- (m) *DOF* – shall refer to the Department of Finance created under Administrative Order Nos. 127 and 127-A;
- (n) *DOST* – shall refer to the Department of Science and Technology created under Republic Act No. 2067;
- (o) *DOTC* – shall refer to the Department of Transportation and Communications

created under Executive Order No. 125-A, as amended;

- (p) *DTI* – shall refer to the Department of Trade and Industry created under Executive Order No. 133;
- (q) *Feedstock* – shall refer to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;
- (r) *Gasoline* – shall refer to volatile mixture of liquid hydrocarbon, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines with quality specifications in accordance with the PNS;
- (s) *Motor fuel* – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles;
- (t) *MTBE* – shall refer to Methyl Tertiary Butyl Ether;
- (u) *NBB or Board* – shall refer to the National Biofuel Board created under Section 8 of this Act;
- (v) *Oil Company* – shall refer to any entity that distributes and sells petroleum fuel products;
- (w) *Oxygenate* – shall refer to substances, which, when added to gasoline, increase the amount of oxygen in that gasoline blend;
- (x) *PNS* – shall refer to the Philippine National Standards; consistent with Section 26 of R.A. No. 8749, otherwise known as the “Philippine Clean Air Act of 1999”;
- (y) *Renewable Energy Sources* – shall refer to energy sources that do not have an

upper limit on the total quantity to be used. Such resources are renewable on a regular basis; and

- (z) *WTO* – shall refer to the World Trade Organization.

SECTION 4. *Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates.* – Within six months from the effectivity of this Act, the DOE, according to duly accepted international standards, shall gradually phase out the use of harmful gasoline additives such as, but not limited to, MTBE.

SECTION 5. *Mandatory Use of Biofuels.* – Pursuant to the above policy, it is hereby mandated that all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components as follows:

5.1. Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume: *Provided*, That the ethanol blend conforms to PNS.

5.2. Within four years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country.

In the event of supply shortage of locally-produced bioethanol during the four-year period, oil companies shall be allowed to import bioethanol but only to the extent of the shortage as may be determined by the NBB.

5.3. Within three months from the effectivity of this Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel engine fuels sold in the country: *Provided*, That the biodiesel blend conforms to PNS for biodiesel.

Within two years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.

SECTION 6. *Incentive Scheme.* – To encourage investments in the production, distribution and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules and regulations, the following additional incentives are hereby provided under this Act.

(a) Specific tax

The specific tax on local or imported biofuels component, per liter of volume shall be zero (0). The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.

(b) Value Added Tax

The sale of raw material used in the production of biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

(c) Water Effluents

All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and for other agricultural purposes are

considered “reuse”, and are therefore, exempt from wastewater charges under the system provided under Section 13 of R.A. No. 9275, also known as the *Philippine Clean Water Act: Provided, however,* That such application shall be in accordance with the guidelines issued pursuant to R.A. No. 9275, subject to the monitoring and evaluation by DENR and approved by DA.

(d) Financial Assistance

Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or entities, at least sixty percent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling and transport of biofuel and biofuel feedstock, including the blending of biofuels with petroleum, as certified by the DOE.

SECTION 7. Powers and Functions of the DOE. – In addition to its existing powers and functions, the DOE is hereby mandated to take appropriate and necessary actions to implement the provisions of this Act. In pursuance thereof, it shall within three months from the effectivity of this Act:

- (a) Formulate the implementing rules and regulations under Section 15 of this Act;
- (b) Prepare the Philippine Biofuel Program consistent with the Philippine Energy Plan and taking into consideration the DOE’s existing biofuels program;
- (c) Establish technical fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;

- (d) Establish guidelines for the transport, storage and handling of biofuels;
- (e) Impose fines and penalties against persons or entities found to have committed any of the prohibited acts under Section 12 (b) to (e) of this Act;
- (f) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of this Act, the PNS and corresponding issuances of the Department; and
- (g) Conduct an information campaign to promote the use of biofuels.

SECTION 8. Creation of the National Biofuel Board (NBB). – The National Biofuel Board is hereby created. It shall be composed of the Secretary of the DOE as Chairman and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA, and the SRA, as members.

The DOE Secretary, in his capacity as Chairperson, shall, within one month from the effectivity of this Act, convene the NBB.

The Board shall be assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE. It shall be headed by a Director to be appointed by the Board. The number of staff of the Technical Secretariat and the corresponding positions shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and existing civil service rules and regulations.

SECTION 9. Powers and Functions of the NBB. – The NBB shall have the following powers and functions:

- (a) Monitor the implementation of, and evaluate for further expansion, the National Biofuel Program (NBP) prepared by the DOE pursuant to Section 7 (b) of this Act;

(b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval of the Secretary of DOE. For this purpose:

- (1) The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels, in a format to be prescribed for this purpose; and
- (2) The NBB shall determine availability of locally-sourced biofuels and recommend to DOE the appropriate level or percentage of locally-sourced biofuels to the total annual volume of gasoline and diesel sold and distributed in the country.

(c) Review and recommend to DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally-sourced biofuel: *Provided*, That the minimum blend may be decreased only within the first four years from the effectivity of this Act. Thereafter, the minimum blends of five percent (5%) and two percent (2%) for bioethanol and biodiesel, respectively, shall not be decreased;

(d) Recommend to DOE a program that will ensure the availability of alternative fuel technology for vehicles, engines and parts in consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels, including other biofuels;

(e) Recommend to DOE the use of biofuel-blends in air transport taking into account safety and technical viability; and

(f) Recommend specific actions to be executed by the DOE and other appropriate government agencies concerning the implementation of the

NBP, including its economic, technical, environment and social impact.

SECTION 10. *Security of Domestic Sugar Supply.* – Any provision of this Act to the contrary notwithstanding, the SRA, pursuant to its mandate, shall, at all times, ensure that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

To this end, the SRA shall recommend and the proper agencies shall undertake the importation of sugar whenever necessary and shall make appropriate adjustments to the minimum access volume parameters for sugar in the Tariff and Customs Code.

SECTION 11. *Role of Government Agencies.* – To ensure the effective implementation of the NBP, concerned agencies shall perform the following functions:

(a) The DOF shall monitor the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC);

(b) The DOST and the DA shall coordinate in identifying and developing viable feedstock for the production of biofuels;

(c) The DOST, through the Philippine Council for Industry and Energy Research and Development (PCIERD), shall develop and implement a research and development program supporting a sustainable improvement in biofuel production and utilization technology. It shall also publish and promote related technologies developed locally and abroad;

(d) The DA through its relevant agencies shall:

- (1) Within three months from the effectivity of this Act, develop a national program for the production of crops for use as feedstock supply.

For this purpose, the Administrators of the SRA and the PCA, and other DA-attached agencies shall, within their authority, develop and implement policies supporting the Philippine Biofuel Program and submit the same to the Secretary of the DA for consideration;

- (2) Ensure increased productivity and sustainable supply of biofuel feedstocks. It shall institute a program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production; and
 - (3) Publish information on available and suitable areas for cultivation and production of such crops.
- (e) The DOLE shall:
- (1) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;
 - (2) Ensure the access of workers to productive resources and social protection coverage; and
 - (3) Recommend plans, policies and programs that will enhance the social impact of the NBP.
- (f) The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements; and
- (g) The local government units (LGUs) shall assist the DOE in monitoring the distribution, sale and use of biofuels and biofuel-blends.

SECTION 12. *Prohibited Acts.* – The following acts shall be prohibited:

- (a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in this Act;
- (b) Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume in violation of the requirement under Section 5 of this Act;
- (c) Distribution, sale and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;
- (d) Noncompliance with the established guidelines of the PNS and DOE adopted for the implementation of this Act; and
- (e) False labeling of gasoline, diesel, biofuels and biofuel blended gasoline and diesel.

SECTION 13. *Penal Provisions.* – Any person, who willfully aids or abets in the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation.

The commission of an act enumerated in Section 12, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from a minimum of One Million Pesos (P1,000,000.00) to Five Million Pesos (P5,000,000.00).

In addition, the DOE shall confiscate any amount of such products that fail to comply with the requirements of Sections 4 and 5 of this Act, and implementing issuances of the

DOE. The DOE shall determine the appropriate process and the manner of disposal and utilization of the confiscated products. The DOE is also empowered to stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under this Act.

Further, the DOE is empowered to impose administrative fines and penalties for any violation of the provisions of this Act, implementing rules and regulations and other issuances relative to this Act.

SECTION 14. Appropriations. – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual *General Appropriations Act*.

SECTION 15. Implementing Rules and Regulations (IRR). – The DOE, in consultation with the NBB, the stakeholders and other agencies concerned, shall within three months from the effectivity of this Act, promulgate the IRR of this Act: *Provided*, That prior to its effectivity, the draft of the IRR shall be posted at the DOE website for at least one month, and shall be published in at least two newspapers of general circulation.

SECTION 16. Congressional Oversight Committee. – Upon the effectivity of this Act, a Congressional Committee, hereinafter referred to as the Biofuels Oversight Committee, is hereby constituted. The Biofuels Oversight Committee shall be composed of fourteen (14) members, with the Chairmen of the Committees on Energy of both Houses of Congress as co-chairmen. The Chairmen of the Committees on Agriculture and Trade and Industry shall be *ex officio* members. An additional four members from each House, to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority

shall be entitled to pro-rata representation but shall have at least one representative in the Biofuels Oversight Committee.

SECTION 17. Benefits of Biofuel Workers. – This Act shall not in any way result in the forfeiture or diminution of the existing benefits enjoyed by the sugar workers as prescribed under R.A. No. 6982, or the Sugar Amelioration Act of 1991, in case sugarcane shall be used as feedstock.

The NBB shall establish a mechanism similar to that provided under the Sugar Amelioration Act of 1991 for the benefit of other biofuel workers.

SECTION 18. Special Clause. – This Act shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO₂) and greenhouse gases (GHG) emission reductions by means of biofuels use.

SECTION 19. Repealing Clause. – The provisions of Section 148 (d) of R.A. No. 8424, otherwise known as the Tax Reform Act of 1997, and all other laws, presidential decrees or issuances, executive orders, presidential proclamations, rules and regulations or parts thereof inconsistent with the provisions of this Act, are hereby repealed, modified or amended accordingly.

SECTION 20. Separability Clause. – If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 21. Effectivity. – This Act shall take effect fifteen (15) days after its publication in at least two newspapers of general circulation.

Approved, January 12, 2007

(signed)

GLORIA MACAPAGAL-ARROYO
President of the Philippines

DEPARTMENT CIRCULAR NO. DC2006-08-0011

INTERIM GUIDELINES FOR THE ACCREDITATION OF OIL INDUSTRY PARTICIPANTS IN THE FUEL BIOETHANOL PROGRAM

WHEREAS, under Section 2(a) of Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992” (the “Act”), it is declared the policy of the State to develop the country’s indigenous energy resources taking into consideration the active participation of the private sector in the various areas of energy resource development;

WHEREAS, under Section 5(b) of the Act, the Department of Energy (“DOE”) is mandated to develop and update the existing Philippine energy program which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly indigenous, and low-cost sources of energy;

WHEREAS, bioethanol is an energy resource that is environment-friendly, renewable and has significant prospects to be produced locally such that, if blended with petroleum products, would support the Government’s five-point energy independence package as well as the DOE’s thrusts towards the development of indigenous and renewable energy resources and increased use of alternative fuels for the transport sector;

WHEREAS, in 2005, the DOE has adopted the Fuel Bioethanol Program (the “Program”) to promote the use of bioethanol as a blending component to gasoline under certain terms and conditions particularly in view of the fact that the Program is on a voluntary basis and currently there is no local source or production of bioethanol;

WHEREAS, there are pending legislations expected to be passed soon by Congress that

aim to promote and/or mandate the use of bioethanol in the transport sector which includes a package of incentives intended to encourage the local production of bioethanol within the next few years;

WHEREAS, there is a need for the DOE to provide and set out an interim accreditation process for the effective monitoring and implementation of the Program while at this phase where sources are limited to importation of bioethanol and related products, in anticipation also and in preparation for a smooth transition to a nationwide, legislated bioethanol or biofuels program;

NOW, THEREFORE, in consideration of these premises, these Interim Guidelines for the accreditation of participants in the Program are hereby promulgated in accordance with the provisions of this Department Circular.

SECTION 1. Scope

This Department Circular shall apply to and provide the accreditation only of Oil Industry Participants, as defined below, engaged in or intending to engage in any one of the following set of activities:

1.1 Full scale Bioethanol activity. Importation of Anhydrous Bioethanol, denaturing to local sale of Fuel Bioethanol, blending Fuel Bioethanol to gasoline, and retail sale of E-gasoline;

1.2 Bioethanol importation to retail sale. Importation of Anhydrous Bioethanol, denaturing and blending of Fuel Bioethanol to gasoline, and retail sale of E-gasoline;

1.3 *Full scale Fuel Bioethanol activity.* Importation and local sale of Fuel Bioethanol, blending of Fuel Bioethanol to gasoline, and retail sale of E-gasoline;

1.4 *Fuel Bioethanol Importation/Local purchase to retail sale.* Importation and/or local purchase of Fuel Bioethanol, blending of Fuel Bioethanol to gasoline, and retail sale of E-gasoline; and

1.5 *E-Gasoline Purchase and retail sale.* Local purchase and retail sale of E-gasoline.

SECTION 2. Definition of Terms

2.1 *Accreditation* - refers to the process of certification of an Oil Industry-Participant for determination that the latter complied with the prescribed qualification criteria for the conduct of activities set forth in Section 1 of these Interim Guidelines and the documentary requirements of the DOE under its Fuel Bioethanol Program.

2.2 *Bioethanol* - refers to ethanol (C₂H₅OH) produced from biomass resources.

2.3 *E-gasoline* - refers to unleaded gasoline blended with Fuel Bioethanol.

2.4 *Certificate of Accreditation* - refers to the certification issued by the Department, through the OIMB, in favor of the Oil Industry-applicant pursuant to these Interim Guidelines as confirmation of the latter's qualification to participate in the Fuel Bioethanol Program and engage in the activities set forth in Section 1 of these Interim Guidelines.

2.5 *Certificate of Quality or COQ* - refers to the certification issued by the supplier, either local or foreign, or by an independent or third-party surveyor on the quality of the goods transported and consigned in favor of the Oil Industry-Participant for use in the Fuel Bioethanol Program

2.6 *Fuel Bioethanol* - refers to the suitably denatured bioethanol, for use as blending component to gasoline to produce E-gasoline.

2.7 *Notice of Importation* - refers to the written notice filed by an Oil Industry Participant in accordance with Section 4.2(a) hereof.

2.8 *Oil Company/ies* - refers to such person/s or entity/ies recognized/acknowledged by the OIMB as a player in the Philippine Downstream Oil Industry, whose activities include retailing of petroleum products in gasoline station.

2.9 *Oil Industry Management Bureau or OIMB* - refers to the unit within the Department of Energy that is in charge of monitoring the activities of players in the Philippine Downstream Oil Industry.

2.10 *Oil Industry Participant* - refers to an oil Company duly authorized and accredited by the Department, in accordance with the requirement and process provided herein, to engage in the activities provided in Section 1 hereof.

2.11 *Request for Accreditation* – refers to the written application filed by Oil Company intending to engage in the activities governed by these Interim Guidelines, in accordance with Section 4.1 hereof, that commences the Accreditation process.

SECTION 3. Criteria for Accreditation of an Oil Industry Participant

The Oil Industry Management Bureau (OIMB) shall adhere to the following guidelines for the Accreditation of Oil Industry Participants and the issuance of the appropriate Certificate of Accreditation as an Oil Industry Participant applicable and specific to the nature of the activities that each participant shall engage and undertake.

3.1 Oil Companies of good standing. Only Oil Companies of good standing shall be allowed to apply and participate in the Fuel Bioethanol Program under these Interim Guidelines. Accordingly, an applicant must demonstrate its full compliance with the pertinent rules and regulations of the Department, including such notice and reportorial requirements.

3.2 Active marketing or retail business. The Oil Company-applicant must be actively engaged in the business of retailing gasoline.

3.3 Technical and logistics capability. The Oil Company-applicant must submit proof of its technical and physical or logistical capability to handle bioethanol products appropriate and commensurate to the scope of activity applied for DOE accreditation, e.g. provision of dedicated storage tanks and/or especially modified/retrofitted retail outlets where bioethanol-blended products shall be marketed, in accordance with the procedure and requirements set forth in Section 4 hereof.

SECTION 4. Documentary Requirements

4.1 Accreditation prior to any activity. The Oil Company-applicant shall file with the OIMB a Request for Accreditation relative to its intent to participate in the Fuel Bioethanol Program under these Interim Guidelines. The Request for Accreditation shall state the set of activities, as indicated in Section 1 herein, that the applicant intends to undertake. In addition, the Request for Accreditation shall provide the following information:

- (a) Timetable of product launching or introduction of product into the market;
- (b) Location, tank ID number and capacity (MB) of dedicated storage

tanks duly approved by the Bureau of Internal Revenue (BIR) and/or the Bureau of Customs (BOC), as the case may be, subject to issuances or regulations of said agencies.

- (c) List, including addresses, of its retail outlets marketing E-gasoline, and the corresponding work, maintenance and/or retrofitting program to be undertaken to ensure compatibility of the retail outlet equipment/facility to handle and dispense E-gasoline products.

Within ten (10) days from the effectivity of this Circular, the OIMB shall publish at the DOE website the timeline and process flow of the Request for Accreditation. Receipt by the OIMB of the Request for Accreditation, with the complete documentary attachments and information, shall commence the Accreditation. The process shall terminate upon the issuance of the Certificate of Accreditation in favor of the Oil Company Applicant.

4.2 Post-Accreditation obligations. All Oil Industry Participants shall submit the following reports to the OIMB:

- (a) Notice of Importation - This shall be filed at least one (1) day prior to loading of every shipment of Bioethanol imported by the Oil Industry Participant and strictly intended for use in the Program, with the following details:
 - i. Type and quantity of cargo;
 - ii. Certificate of Quality (COQ) for the product, to include among others the properties per PNS for anhydrous bioethanol; denaturant used and dosage, provided by the product supplier, original or notarized copy;
 - iii. Vessel particulars, loadport and discharge, ETL/ETA;

- iv. Supplier of cargo, FOB price, freight and insurance costs; and
- v. Proforma invoice.

The OIMB shall correspondingly issue an Acknowledgement of Notice of Bioethanol Importation for every qualified application filed before the Bureau by an Oil Industry Participant.

For purposes of qualifying and to avail of applicable tax and duty privileges consequent to its participation to the Program, the Oil Industry Participant must be ready to present its valid Certificate of Accreditation as an Oil Industry Participant issued by the Department together with the Acknowledgement of Notice of Bioethanol Importation to the BOC and/or BIR, subject to issuances and regulations of said agencies.

- (b) Monthly Reports - These shall include information on products covered by this Circular, as warranted and due on the fifteenth (15th) day of the succeeding month, subject to other information as the DOE-OIMB may require:

- i. Schedule II – Imports

Names and address of foreign suppliers, dates, volume and price of actual importation of Bioethanol, Fuel Bioethanol, and gasoline, as applicable (for verification against the Notices of Importation).

- ii. Schedule IV C – Local Purchases Report/Receiving Reports

On a per supplier basis, the names and addresses of the suppliers of products covered by this Circular, and the volume of Fuel Bioethanol and E-gasoline received (for verification against the Product Movement Reports).

- iii. Schedule IV D - Sales Reports/ Removal Reports

On a per customer basis, the names and addresses of customers/ consignees, the volume of Bioethanol and/or Fuel Bioethanol sold/transferred and the volume of E-Gasoline sold/transferred. The report shall also include (for verification against the Product Movement Reports) the details on the actual movement from and to other depots/storage facilities owned and operated by the Oil Industry Participant and/or sale or transfer to other Oil Industry Participant of products covered by this Circular occurring in the immediately preceding month.

- iv. Schedule V - Inventory Summary Reports

On a per company basis, the inventory stocks including in-transit volume of Bioethanol, Fuel Bioethanol and E-gasoline.

- (c) Further, the Oil Industry Participant shall submit a copy of the BIR approval for every product movement to and from the BIR-approved dedicated storage tanks within two (2) days after receipt of approval from the BIR.

SECTION 5. Other Provisions

5.1 Product Quality. The Oil Industry Participant shall sell only products, i.e. fuel bioethanol and E-gasoline, conforming to the Philippine National Standards. For purposes of ensuring quality, products imported and/or sourced locally have to be accompanied by a COQ from the supplier, which shall be verified through spot testing on certain properties.

5.1.1 For the anhydrous bioethanol, the properties to be determined shall be: ethanol content, water content and density

5.1.2 For unleaded gasoline to be used as a denaturant, the density property shall be determined and the Certificate of Quality for the product shall be submitted.

5.1.3 For fuel bioethanol directly imported and/or produced locally by entities other than the Oil Industry Participant, the properties to be determined are: ethanol content, denaturant type and content, water content, and density.

Sampling at the BIR-approved shore tanks shall be conducted by the representatives from the DOE, BIR, and BOC, along with the importer/Oil Industry Participant. The testing at the importer's laboratory and/or DOE/BIR laboratories shall be witnessed by the same parties. Testing may also be conducted by an independent third party laboratory, in which case all the properties in the PNS shall have to be tested, and at the cost of the importer.

5.2 *Marketing.* Subsequent re-sale or trading of domestically purchased Fuel Bioethanol by an Oil Industry Participant to another entity including accredited Oil Industry Participant(s) is not allowed,

5.3 *Pump Labels.* All E-gasoline dispensing pumps must be labeled indicating bioethanol blend, as follows: "This gasoline contains 10% Bioethanol." and "Generally recommended for fuel-injection engines."

5.4 *Assignability.* The Certificate of Accreditation issued pursuant to these Interim Guidelines shall not be assigned, transferred or otherwise conveyed to or used by such person other than the Oil

Industry Participant to which the same was issued.

5.5 *Compliance with other government requirements.* Oil Industry Participants shall at all times be in compliance with pertinent government rules and regulations including among others the BIR/BOC, as a requisite for availment of and continuous access to incentives under the Fuel Bioethanol Program.

5.6 *Compliance to standards and practices.* Oil Industry Participant shall at all times adhere to the Philippine National Standards, or in its absence to industry-accepted standards and practices in the storage and handling of bioethanol, fuel bioethanol and E-gasoline products. The Oil Industry Participant shall develop and maintain its own internal Code of Practice or Manual consistent with its DOE-accredited nature of activity under the Fuel Bioethanol Program.

SECTION 6. Term of Certificate and Transition Clause

6.1 *Term.* The Certificate of Accreditation issued pursuant to these Interim Guidelines shall have a term of one (1) year from the date of issuance, unless earlier revoked or terminated by the DOE. Oil Industry Participants may renew or obtain a new Certificate of Accreditation by complying with the criteria and process set forth in Sections 3 and 4 hereof.

6.2 *Transition Clause.* All certifications related to the Program issued by the DOE prior to the effectivity of this Circular shall be valid only for a period of thirty (30) days after the effectivity of this Circular. Thereafter, only those Oil Industry Participants duly accredited or that have commenced the Accreditation process pursuant to these Interim Guidelines shall be allowed to engage in such activities and avail of the incentives and benefits of the Program.

SECTION 7. Penalty Provisions

Failure to fully comply with all the above requirements as provided under Sections 4 and 5 herein shall constitute a violation of the criteria for Accreditation provided in Section 3 and shall be a ground for the automatic revocation of the Certification of Accreditation issued.

Any person/entity who engages in any of the activities under Section 1 of this Interim Guidelines without the appropriate Certificate of Accreditation as an Oil Industry Participant under the Fuel Bioethanol Program of the Department shall suffer the appropriate penalty as indicated under existing laws, rules and regulations.

SECTION 8. Separability Clause

If for any reason, any section or provision of this Interim Guidelines is declared

unconstitutional or invalid, such parts not affected shall remain in full force and effect.

SECTION 9. Effectivity and Term

This Circular shall take effect immediately after its publication in a newspaper of general Circulation and shall remain in effect until revoked or modified by the Secretary of Energy, or upon issuance of the final and comprehensive guidelines for accreditation of all participants in the Fuel Bioethanol Program.

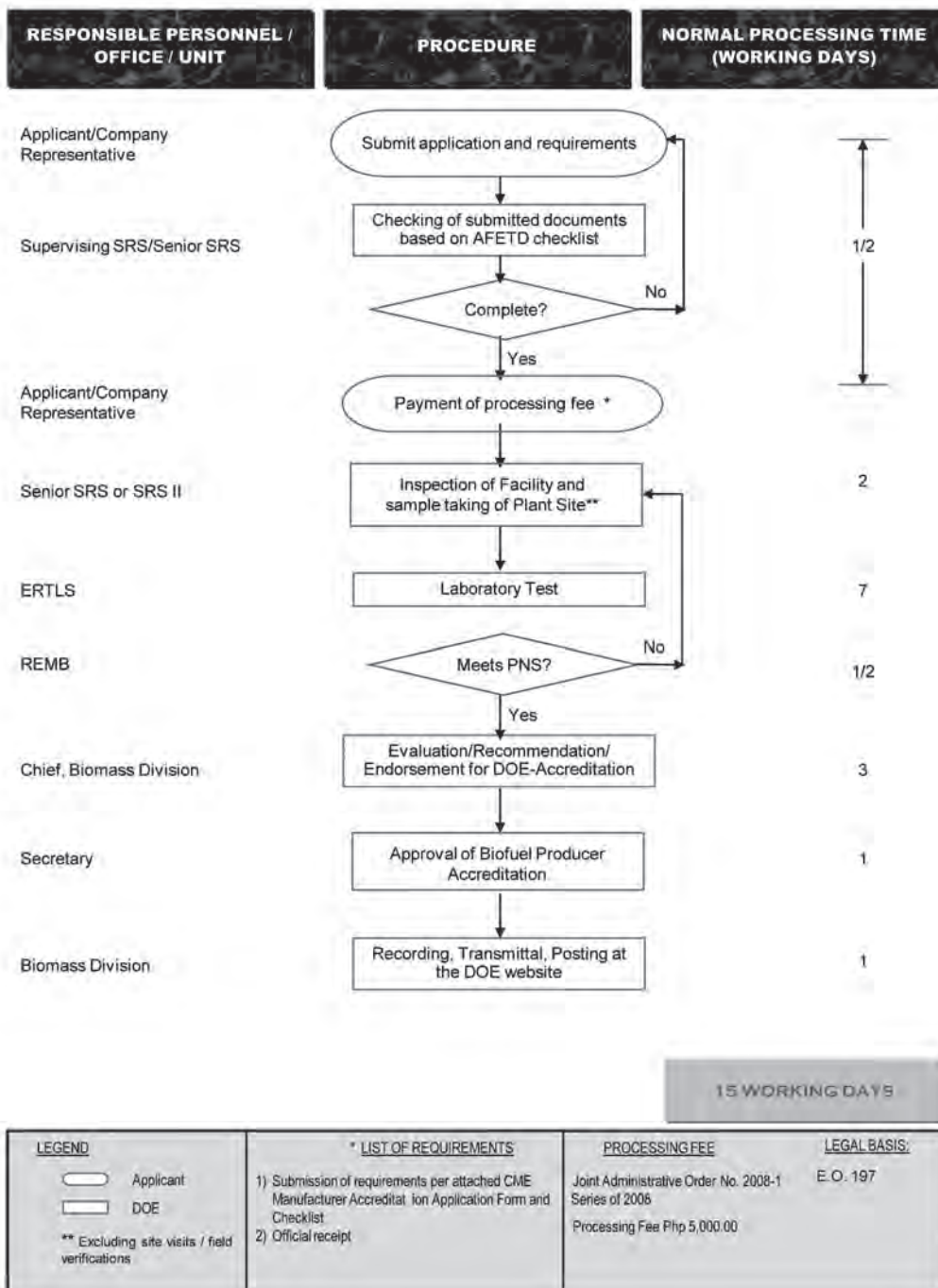
Energy Center, Fort Bonifacio, Taguig City,
Metro Manila, 30 August, 2006.

(sgd.)

RAPHAEL P. M. LOTILLA

Secretary

PROCESSING OF APPLICATION FOR ACCREDITATION OF A BIOFUEL MANUFACTURER



DEPARTMENT CIRCULAR NO. 2006-11-0012

IMPLEMENTING THE PHILIPPINE NATIONAL STANDARD SPECIFICATION FOR ANHYDROUS BIOETHANOL FUEL (PNS/DOE QS 007:2005)

WHEREAS, Republic Act (R.A.) No. 7638, otherwise known as “An Act Creating the Department of Energy (DOE)”, tasks the DOE to formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution;

WHEREAS, R.A. 7638 further mandates the DOE to develop and update the existing Philippine Energy Program, which shall provide for an integrated and comprehensive exploration, development, utilization, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy;

WHEREAS, bioethanol is an energy resource that is environment-friendly, renewable and can be produced locally such that if blended with petroleum products, would support the Government’s five-point energy independence program as well as the DOE’s thrust towards the development of indigenous and renewable energy resources, and increasing the use of alternative fuels for the transport sector;

WHEREAS, in 2005, the DOE adopted the Fuel Bioethanol Program to promote the use of bioethanol as a blending component to gasoline under certain terms and conditions particularly in view of the fact that the program implementation is not yet mandatory and as there is no currently no locally-sourced or produced bioethanol;

WHEREAS, the DOE has issued Department Circular No. 2006-08-0011 entitled “Interim Guidelines for the Accreditation of Oil Industry Participants in the Fuel Bioethanol Program”, providing for the accreditation guidelines

for Oil Industry Participants for the effective monitoring and implementation of the Fuel Bioethanol Program, ensuring also therein quality conformance of both imported and locally manufactured bioethanol to the Philippine National Standard (PNS);

WHEREAS, R.A. No. 8749, otherwise known as the “Philippine Clean Air Act of 1999”, provides that the DOE together with the Department of Environment and Natural Resources (DENR), the Bureau of Product Standards (BPS), and the Department of Science and Technology (DOST) and other stakeholders shall set specifications for all types of fuel and biofuel products and improve fuel composition;

WHEREAS, pursuant to the Fuel Bioethanol Program of the government, partnership was established with the ethanol manufacturers and other stakeholders for the development of product quality standard specification for Anhydrous Bioethanol, designated as PNS/DOE QS 007/2005 for blending with gasoline for use as automotive spark ignition engine fuel;

WHEREAS, PNS/DOE QS 007/2005 was promulgated by the BPS on April 18, 2006, which in effect requires the issuance of a corresponding circular to implement the same;

WHEREAS, there are pending legislation expected to be passed soon by Congress that aim to promote and/or mandate the use of bioethanol in the transport sector with quality specification conforming to the PNS;

NOW, THEREFORE, the following guidelines are hereby adopted to effectively implement

the PNS specifications for anhydrous bioethanol fuel:

- (1) Upon the effectivity of this Department Circular, only bioethanol conforming to PNS/DOE QS 007/2005 shall qualify for the Fuel Bioethanol Program: *Provided, however,* That the PNS color specification of dark violet for fuel bioethanol shall be made mandatory starting January 1, 2007;
- (2) All Oil Industry Participants engaged in the importation of bioethanol and/or denaturing of the same shall be required to submit to the DOE a Certificate of Quality of the imported or locally produced bioethanol, showing conformance to all the properties listed in PNS/DOE QS 007/2005. Further, all Oil Industry Participants shall ensure that their imported and/or locally-purchased bioethanol contains the desired and appropriate corrosion inhibitor additive for bioethanol.
- (3) The DOE shall verify compliance of the products to PNS/DOE QS 007/2005 through regular testing or spot testing.
- (4) Starting January 1, 2007, all Oil Industry Participants engaging in retailing

bioethanol-blended gasoline or E-gasoline in gasoline stations shall be required to label all E-Gasoline pumps with **“This gasoline contains 10% Bioethanol”** and **“Generally recommended for fuel injection engines”** following the prescribed specifications in Annex A;

- (5) Failure to comply with the provisions of this Department Circular shall subject the violator to the corresponding sanctions imposed under appropriate laws, including DOE rules and regulations.
- (6) If, for any reason, any provision of this Department Circular is declared unconstitutional or invalid, the other parts or provisions thereof which are not affected thereby shall continue to be in full force and effect.

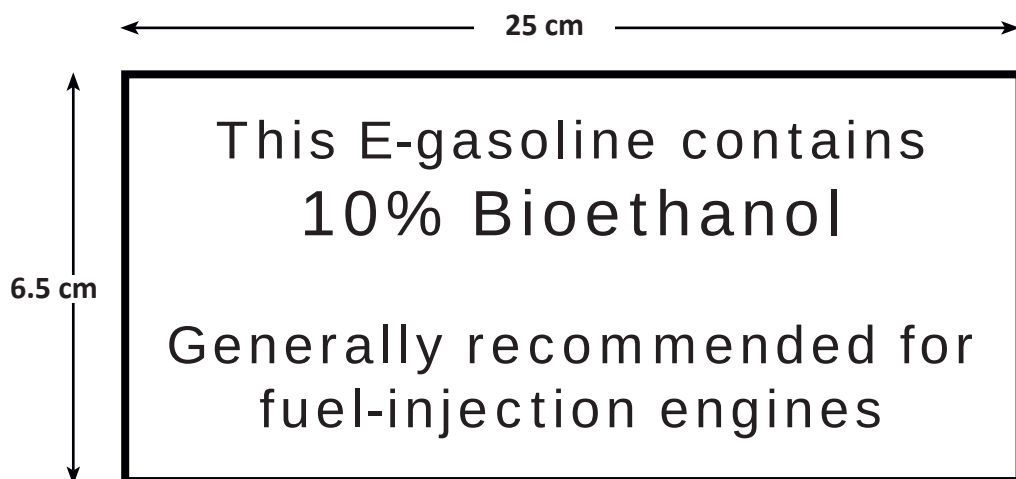
This Department Circular shall take effect immediately following its publication in any newspaper of general circulation and shall remain in effect unless otherwise revoked or amended.

Fort Bonifacio, Taguig City, Metro Manila, 9 November 2006.

RAPHAEL P.M. LOTILLA
Secretary

ANNEX A

Minimum Specification / Dimension for E-Gasoline Pump Labelling



- Prints are violet while borders are black with pantone yellow as background
- Font Type is Arial Black with size 32 except “10% Bioethanol” which is size 36

LABEL PROTECTION:

All labels must be resistant to gasoline, oil, grease, solvent, detergents, water and must be capable of withstanding extreme weather conditions so that all entries in the sticker are clearly readable at all times.

DEPARTMENT CIRCULAR NO. 2007-05-0006

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9367

PURSUANT TO SECTION 15 OF REPUBLIC ACT NO. 9367, OTHERWISE KNOWN AS THE BIOFUELS ACT OF 2006, THE DEPARTMENT OF ENERGY, IN CONSULTATION WITH NATIONAL BIOFUELS BOARD, APPROPRIATE GOVERNMENT AGENCIES, AND OTHER STAKEHOLDERS, HEREBY ISSUES, ADOPTS AND PROMULGATES THE FOLLOWING IMPLEMENTING RULES AND REGULATIONS.

Rule 1 **General Provisions**

SECTION 1. Title, Purpose, and Scope.

1.1 This Department Circular shall be known as the Implementing Rules and Regulations (IRR) of Republic Act No. 9367, otherwise known as the Biofuels Act of 2006 and referred to as the “Act” in this IRR.

1.2 It shall cover the production, blending, storage, handling, transportation, distribution, use, and sale of biofuels, biofuel-blends, and biofuel feedstock in the Philippines.

1.3 Further, it clarifies specific provisions of the Act and the roles and functions of the different government agencies and their relationship with the National Biofuels Board.

SECTION 2. Declaration of Policy.

It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and natural ecosystems consistent with the country’s sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

a) develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on

imported oil;

- b) mitigate toxic and greenhouse gas (GHG) emissions;
- c) increase rural employment and income; and
- d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

SECTION 3. Definition of Terms.

3.1 As used in the Biofuels Act of 2006 and this Implementing Rules and Regulations (IRR), the following terms shall be defined as follows:

- a) Act – shall refer to the Biofuels Act of 2006;
- b) AFTA – shall refer to the ASEAN Free Trade Agreement initiated by the Association of Southeast Asian Nations;
- c) Alternative Fuel Vehicles/Engines – shall refer to vehicles/engines that use alternative fuels such as biodiesel, bioethanol, natural gas, electricity, hydrogen, and automotive LPG, instead of gasoline and diesel;
- d) Bioethanol – shall refer to ethanol (C_2H_5OH) produced from feedstock and other biomass;

- e) Biodiesel – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines with quality specifications in accordance with the Philippine National Standards (PNS);
- f) Bioethanol Fuel – shall refer to hydrous or anhydrous bioethanol suitably denatured for use as motor fuel, with quality specifications in accordance with the PNS;
- g) Biofuel – shall refer to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS;
- h) Biofuel blends – shall refer to gasoline or diesel that has been blended with biofuels such as, but not limited to, bioethanol and biodiesel;
- i) Biomass – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and the biodegradable component of solid waste;
- j) DA – shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;
- k) DENR – shall refer to the Department of Environment and Natural Resources created under Executive Order No. 192, as amended;
- l) Diesel – shall refer to refined petroleum distillate, which may contain small amounts of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristics, suitable for compression ignition engine and other suitable types of engines with quality specifications in compliance with the PNS;
- m) DOE – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;
- n) DOF – shall refer to the Department of Finance created under Administrative Order Nos. 127 and 127-A;
- o) DOLE – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;
- p) DOST – shall refer to the Department of Science and Technology created under Republic Act No. 2067;
- q) DOTC – shall refer to the Department of Transportation and Communications created under Executive Order No. 125-A, as amended;
- r) DTI – shall refer to the Department of Trade and Industry created under Executive Order No. 133;
- s) Feedstock – shall refer to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;
- t) Gasoline – shall refer to volatile mixture of liquid hydrocarbon, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engine with quality specifications in compliance with the PNS;

- u) Locally-sourced biofuels – shall refer to biofuels derived from feedstocks grown/planted harvested and processed in the Philippines;
 - v) Motor Fuel – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles;
 - w) MTBE – shall refer to Methyl Tertiary Butyl Ether;
 - x) National Biofuels Program/Philippine Biofuels Program – shall refer to the program which the DOE is mandated to formulate under Section 7 of the Act;
 - y) NBB or Board – shall refer to the National Biofuels Board, created under Section 8 of the Act;
 - z) Oil Company – shall refer to any entity that distributes and sells petroleum fuel products;
 - aa) Oxygenate – shall refer to substances which, when added to gasoline, increase the amount of oxygen in that gasoline blend;
 - bb) PCA – shall refer to the Philippine Coconut Authority created under P.D. 232 as amended by Presidential Decrees 961 and 1468;
 - cc) Petroleum Depot or Terminal – shall refer to the supply point of petroleum products (or bulk storage facilities) operated by oil companies;
 - dd) PNS – shall refer to the Philippine National Standards consistent with Section 26 of R.A. No. 8749 otherwise known as the “Philippine Clean Air Act of 1999”;
 - ee) Renewable Energy Sources – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time;
 - ff) SRA – shall refer to Sugar Regulatory Administration created under Executive Order No. 18, s. 1986;
 - gg) Sugarcane Industry – shall refer to the industry that integrates the agricultural production systems of growing sugarcane into the industrial processing of the same into sugar, ethanol and other products with the consequent production of by-products including but not limited to bagasse, filter cake, and molasses. The sugarcane industry also covers the processing and manufacture of any of the by-products (bagasse, filter cake, molasses and others) into other value-added products or commodities; and
 - hh) WTO – shall refer to the World Trade Organization.
- 3.2 All other terms not covered in the Act or in this IRR shall be defined by concerned government agencies in the exercise of their respective regulatory and/or policy formulating functions.

Rule 2

Operation of the Mandate

SECTION 4. Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates

- 4.1 Pursuant to Section 4 of the Act, the DOE shall gradually phase out the use of harmful gasoline additives and/or oxygenates such as, but not limited to MTBE, according to duly accepted international standards.

4.2 The DOE, in consultation with the concerned government agencies and stakeholders, shall issue the appropriate department circular for the purpose within six (6) months from the effectivity of the Act.

SECTION 5. Mandatory Use of Biofuels.

Pursuant to Section 5 of the Act, all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components as follows:

5.1 Bioethanol

- a) Within two (2) years from the effectivity of the Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum five percent (5%) bioethanol fuel by volume: *Provided*, That the bioethanol blend conforms to the PNS.
- b) Within four (4) years from the effectivity of the Act, the NBB created under Section 8 of the Act is empowered to determine the feasibility and thereafter recommend to the DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country: *Provided*, That the same conforms to the PNS.

5.2 Biodiesel

- a) Within three (3) months from the effectivity of the Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel fuels sold in the country: *Provided*, That

the biodiesel blend conforms to the PNS.

- b) Within two (2) years from the effectivity of the Act, the NBB is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased after taking into account considerations including, but not limited to, domestic supply and availability of locally-sourced biodiesel component.

5.3 Other Biofuels

In the event that fuels derived from biomass other than bioethanol and biodiesel are developed pursuant to the Act as technically validated by the DOST, the DOE shall issue, upon consultation with the entities concerned and upon the recommendation of the NBB, the appropriate department circular to promote the utilization of such fuels and provide the appropriate initiatives consistent with the provisions of the Act: *Provided*, That the appropriate PNS for such fuel is established and complied with.

- 5.4 The DOE shall issue, in consultation with the concerned government agencies and entities, further guidelines relative to the above provisions which shall include, among others, the standards and reportorial requirements to be complied with. The issuance of these further guidelines shall not be a condition precedent to the implementation of the above provisions.

SECTION 6. Importation in case of supply shortage of locally-produced bioethanol.

- 6.1 Pursuant to Section 5.2 of the Act, in the event of a supply shortage of locally-produced bioethanol during the first

four-year period of implementation of the Act, as may be confirmed by the NBB, oil companies shall be allowed to import bioethanol to the extent of the shortage as may be determined by the NBB.

- 6.2 Prior to the importation of bioethanol due to a supply shortage, the importing oil company may apply for the issuance of a DOE Certification to the effect that the bioethanol to be imported shall be used for the National Biofuels Program.
- 6.3 The DOE Certification may be used by the oil company to avail itself of reduced tariff on bioethanol pursuant to Executive Order No. 449.
- 6.4 The issuance of the DOE Certification shall be made in accordance with existing DOE guidelines.

SECTION 7. Incentives under the Act.

7.1 To encourage investments in the production, distribution, and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules, regulations, the following additional incentives are hereby provided:

- a) **Specific Tax.** The specific tax on local or imported biofuels component of the blend per liter of volume shall be zero. For the purpose of availing of a zero specific tax, local or imported bioethanol shall be suitably denatured into bioethanol fuel in accordance with existing revenue regulations. The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.
- b) **Value Added Tax.** The sale of raw material used in the production of biofuels such as, but not limited to, coconut, jathropa, sugarcane,

cassava, corn, and sweet sorghum shall be exempt from the value added tax.

The tax incentive provided under Items (a) and (b) of this Section shall be subject to rules and regulations to be promulgated by the DOF.

- c) **Water Effluents.** All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and for other agricultural purposes are considered “reuse” and are therefore, exempt from wastewater charges under the system provided under Section 13 of R.A. 9275, also known as the Philippine Clean Water Act: *Provided, however,* That such application shall be in accordance with the guidelines issued pursuant to R.A. 9275, subject to the monitoring and evaluation by the DENR and approved by the DA; and
- d) **Financial Assistance.** Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor, and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino Citizens or Entities, at least sixty per cent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling, and transport of biofuel and biofuel feedstock, including blending of biofuels with petroleum, as certified by the DOE.

7.2 The appropriate government agencies shall issue the necessary guidelines for

the availment of such incentives.

Rule 3
The National Biofuels Board

SECTION 8. Creation and Organizational Structure of the National Biofuels Board.

8.1 Pursuant to Section 8 of the Act, the National Biofuels Board (NBB) is created and shall be composed of the Secretary of the DOE as Chairman and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA and SRA, as members.

- a) The Secretary of the DOE, as the Chairman, shall be assisted by a duly designated Undersecretary who shall act as his alternate; and
- b) The member Secretaries and Administrators may assign alternate representatives who must be occupying at least the level of Assistant Secretary: *Provided*, That only the Department Secretaries/ Administrators shall sign official documents and issuances of the NBB.

8.2 The NBB shall create a Technical Secretariat which shall provide for the administrative, policy, and technical services of the Board.

8.3 The NBB shall determine the appropriate compensation/remuneration of the members and the Technical Secretariat staff and personnel in accordance with existing laws, rules and regulations, and shall make appropriate requests and representations to the Office of the President and the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

SECTION 9. Meetings of the NBB.

Regular meetings of the NBB shall be held at least once every quarter on a date and in a place fixed by the Board.

SECTION 10. Powers and Functions of the NBB.

Pursuant to Section 9 of the Act, the NBB shall have the following powers and functions:

- a) Monitor the implementation of, and evaluate for further expansion, the National Biofuels Program prepared by the DOE pursuant to Section 7 (b) of the Act;
- b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval by the Secretary of DOE. For this purpose:
 - i. The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels in a format to be prescribed for this purpose;
 - ii. The NBB shall determine the availability of locally-sourced biofuels and recommend to the DOE the appropriate level or percentage of locally sourced biofuels to the annual volume of gasoline and diesel sold and distributed in the country.
 - iii. To ensure an adequate supply of bioethanol, the NBB shall recommend to the DOE the amount of bioethanol that may be imported at any given time by DOE-certified oil companies in the event of shortage in the supply of locally-sourced bioethanol during the first four years from the effectivity of the Act.

- c) Review and recommend to the DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally-sourced biofuels; *Provided*, That the minimum blend may be decreased only within the first four (4) years from the effectivity of the Act. Thereafter, the minimum blends of five percent (5%) and two percent (2%) for bioethanol and biodiesel, respectively, shall not be decreased.

In determining the availability of locally-sourced biofuels, the NBB may take into account factors such as, but not limited to, shortage in the supply of biofuels and feedstock and constraints or difficulties in the distribution of biofuel blends.

- d) Recommend to the DOE a program that will ensure that availability of alternative fuel technology for vehicles, engines and parts in consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels, including other biofuels;
- e) Recommend to the DOE the use of biofuel-blends in air transport taking into account safety and technical viability;
- f) Recommend specific actions to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment and social impact; and
- g) Exercise such other powers and functions as may be necessary or incidental to attain the objectives of the Act.

SECTION 11. The Technical Secretariat.

Pursuant to Section 8 of the Act, the NBB shall be assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE.

- a) **Composition.** The Technical Secretariat shall be headed by a Director to be appointed by the NBB. The number of staff of the Technical Secretariat and corresponding positions shall be determined by the NBB subject to existing civil service rules and regulations and the approval of the Department of Budget and Management (DBM).

- b) **Functions and responsibilities.** The Technical Secretariat shall have the following functions and responsibilities:

- i. Provide administrative and general support services to the NBB in collecting, securing, and processing pertinent information/data from all entities engaged in the production, blending and distribution of biofuels and biofuel-blends, including, but not limited to, actual and projected sales and inventory and data on the availability of locally-sourced biofuels;
- ii. Provide all members of the NBB appropriate information/data on appropriate vehicle technologies, including air transportation, in consonance with the mandated minimum biofuel blends;
- iii. Monitor and coordinate with all government entities in the performance of their respective functions and responsibilities in the implementation of the National Biofuels Program;
- iv. Identify issues, concerns and/or barriers on the implementation of the National Biofuels Program, including the mandated minimum biofuel blends, and propose measures/solutions to address the same, in coordination with all stakeholders of the biofuel industry; and

- v. Perform such other functions as may be directed by the NBB.

- c) **Creation of an Interim Technical Secretariat.** Within one (1) month from the effectivity of this IRR, the NBB shall designate an interim technical secretariat to be known as the NBB-Project Management Office (NBB-PMO) to hold office for a period of one (1) year or until such time that the organization of the Technical Secretariat is completed, subject to existing rules and regulations of the Department of Budget and Management and the Civil Service Commission. Prior to the organization of the NBB-PMO, the Energy Utilization Management Bureau (EUMB) of the DOE shall serve as the Technical Secretariat of the NBB; and

The NBB-PMO staff and personnel shall be provided with appropriate compensation and remuneration in accordance with existing rules and regulations of the Department of Budget and Management and the Civil Service Commission.

Rule 4

Role of the Department of Energy and Other Government Agencies

SECTION 12. The Department of Energy.

Pursuant to Section 7 of the Act, the DOE is mandated to take appropriate and necessary actions to implement the provisions of the Act, in addition to its existing powers and functions. In pursuance thereof, it shall, within three (3) months from the effectivity of the Act:

- a) Prepare the National Biofuels Program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program and the programs of other government agencies, such as, but not limited to, the feedstock supply program of the DA, PCA and SRA

technology research and development program of the DOST, and the vehicle development program of the DTI;

- b) Establish technical fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;
- c) Establish the guidelines for the transport, storage and handling of biofuels and biofuel-blends;
- d) Accredite producers and distributors of biofuels and developers/owners of biofuel production facilities following DOE's accreditation guidelines;
- e) Endorse qualified biofuel producers to the Board of Investments for the availment of appropriate fiscal incentives;
- f) Conduct regular monitoring, announced or unannounced inspections, sampling and laboratory testing of biofuels in all biofuel production facilities and feedstock production areas, and biofuel-blended gasoline and diesel in all blending/storage/distribution facilities and retail stations;
- g) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of the Act, the PNS and corresponding issuances of the Department;
- h) Impose fines and penalties against persons or entities found to have committed any of the prohibited acts under Section 12 (b) to (e) of the Act;
- i) Conduct various research and development activities and studies on biofuels, biofuel-blended gasoline and diesel, and/or other biomass-derived fuels for use in motors and engines, including air transport, and other vehicle technologies;

- j) Provide laboratory support services to other government entities and the private sector in the conduct of research and development activities on biofuels, biofuel-blends, and other biomass-derived fuels;
- k) Formulate guidelines for the importation of biofuels, taking into consideration relevant existing rules and regulations issued by the DOE and other government agencies; and
- l) Conduct, in coordination with biofuel stakeholders, information campaign to promote the use of biofuels.

SECTION 13. The Department of Finance.

The DOF shall monitor, in coordination with other concerned government agencies, the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC).

The DOF shall promulgate the rules and regulations necessary to implement its mandate under the Act.

SECTION 14. The Department of Science and Technology.

The DOST shall:

- a) Coordinate with the DA in identifying and developing viable feedstock for the production of biofuels;
- b) Develop and implement, through the Philippine Council for Industry and Energy Research and Development (PCIERD), a research and development program supporting a sustainable improvement in biofuel production and utilization technology. For this purpose, the DOST shall establish a network of academic and research institutions; and
- c) Publish and promote related technologies developed locally and abroad.

SECTION 15. The Department of Agriculture.

The DA, through its relevant agencies, shall have the following functions and responsibilities:

- a) Coordinate with the DOST in identifying and developing viable and quality feedstock, including production and primary postharvest processing technologies for biofuels;
- b) Within three (3) months from the effectivity of the Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the administrators of the SRA and the PCA, and other related DA agencies, within their authority, shall develop and implement policies in support of the National Biofuels Program and submit the same for consideration and approval by the Secretary of the DA;
- c) Ensure increased productivity and sustainable supply of biofuel feedstocks. The DA shall institute a program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production;
- d) Publish information on available and suitable areas for cultivation and production of biofuel crops, available and accessible technologies, sources of planting materials, and financial assistance;
- e) In cooperation with SRA, PCA, other attached agencies, and bureaus, shall undertake the identification and publication of potential areas suitable for the expansion and production of raw materials as feedstocks for biofuels;
- f) Undertake biofuel feedstock research and development which may include identifying new feedstock, developing high yielding varieties, and developing new processing technologies in

cooperation with public and private research agencies, and international research institutes; and

- g) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

SECTION 16. The Sugar Regulatory Administration.

Pursuant to its mandate under Executive Order No. 18 and the Act, the SRA shall:

- a) at all times ensure that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable; and
- b) together with the DA, PCA, and other DA-attached agencies, develop and implement policies supporting the National Biofuels Program and submit the same to the Secretary of the DA for consideration.

SECTION 17. The Philippine Coconut Authority.

Pursuant to its mandate to formulate and adopt a general program of development for the coconut and other palm oil industry in its all aspects, under PD 1468, Article II, Section (3) (a), the PCA shall develop, implement policies and programs within the coconut industry in support of the National Biofuels Program.

To this end, the PCA shall:

- a) Review and assess the policies, projects and activities of all other government agencies related to the National Biofuels Program and integrate/adopt them into the National Coconut Industry Development Program;
- b) Develop, formulate, and implement a massive nationwide rehabilitation, planting, and replanting program using

high-yielding coconut varieties including the strengthening of its organization, manpower and capabilities to fully support the National Biofuels Program;

- c) Formulate and implement the necessary regulatory measures to ensure the availability, sufficiency, quality, and sustainability of the supply of coconut raw materials for the National Biofuels Program;
- d) Require the accreditation/registration of reputable and credible oil mills who shall supply the coconut oil (CNO) requirements of coco biodiesel producers;
- e) Formulate industry policies and regulations which shall include the retention of CNO volume to support the required minimum of one percent (1%), and later on two percent (2%), coconut methyl ester (CME) of the biodiesel blends which may be increased later upon the recommendation of the NBB;
- f) Explore and expand the domestic and foreign markets of coconut biofuel products and by-products; and
- g) Seek funds for its sustainable operation and continuous support for the National Biodiesel component program.

SECTION 18. The Department of Labor and Employment.

The DOLE shall:

- a) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;
- b) Ensure the access of workers to productive resources and social protection coverage;
- c) Recommend policies, plans, and programs that will enhance the social

impact of the National Biofuels Program;
and

- d) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

SECTION 19. The Department of Trade and Industry.

19.1 Pursuant to the State’s policy of protecting public health through, among others, the reduction of toxic and greenhouse gas emissions, the DTI shall formulate and implement, in coordination with the DOTC and the DENR, a national motor vehicle inspection and maintenance program as a measure to substantially reduce emissions from motor vehicles pursuant to Art. 4, Section 21 (d) of R.A. 8749, otherwise known as the *Philippine Clean Air Act of 1999*.

19.2 Pursuant to its program under existing laws, the DTI shall promote the development of an alternative fuel technology for vehicles, engines and parts in consonance with the requirements of the mandated minimum biofuel-blends.

SECTION 20. The Tariff Commission.

The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements.

SECTION 21. The Local Government Units.

The Local Government Units shall assist the DOE in monitoring the distribution, sale and use of biofuels and biofuel-blends by:

- a) Ensuring strict implementation of local permitting requirements applicable to businesses engaged in the distribution

and sale of biofuels and biofuel blend;

- b) Ordering the closure of any business engaged in the distribution and sale of biofuel and biofuel blends found to be operating without the necessary permits and licenses;
- c) Reporting to the DOE violations of the Act being committed by any person involved in the distribution, sale, and use of biofuels and biofuel blends; and
- d) Revoking local permits previously issued to business entities found to have violated pertinent rules and regulations of the DOE and other concerned government agencies, upon the recommendation of the DOE or other concerned agency, as the case may be.

Rule 5

Role of the Players in the Biofuels Industry.

SECTION 22. Oil Companies.

22.1 **Blending of Biofuels.** Blending of biodiesel and bioethanol with diesel and gasoline fuels, respectively, shall be undertaken by the oil companies using appropriate blending methodologies at their respective refineries, depots or blending facilities prior to the sale of biofuel-blends to consumers/end-users: *Provided*, That blending methodologies shall be in accordance with duly accepted international standards as well as the guidelines issued by the DOE for this purpose: *Provided further*, That oil companies shall ensure compliance of the biofuel blends with the PNS.

22.2 **Supply and Distribution.** To ensure compliance of the minimum mandated biofuel blends with the PNS, oil companies shall observe the following guidelines, in addition to what may be prescribed by the DOE under subsequent issuances:

- a) Supply of biofuels shall be sourced only from biofuel producers accredited by the DOE. The procurement of biofuels may be covered by biofuels supply contracts or agreements;
- b) Ensure proper logistics and application of appropriate technologies in blending, handling, transporting, and distributing biofuel-blends; and
- c) Observe proper diligence in the supervision of company-operated, dealer-owned, or dealer-operated retail service stations carrying their brand in order to ensure that the quality and integrity of PNS-compliant biofuels shall be maintained.

22.3 Supply Shortage. In the event of supply shortage of locally-produced bioethanol during the first four-year period from the effectivity of the Act, oil companies may apply for the issuance of a certification to import bioethanol from the DOE in accordance with existing guidelines.

22.4 Reportorial Requirements. For proper monitoring of the compliance by oil companies with this IRR, each oil company shall submit to the DOE the following reports:

- a) Performance Compliance Report. Every oil company shall submit on an annual basis a Performance Compliance Report containing its compliance plan with the minimum mandated biofuel blends as well as other information that may be required by the DOE. Such report shall be duly certified and signed under oath by an authorized responsible officer of the oil company who shall personally

attest to the veracity and accuracy of its contents.

- b) Periodic Reports. The oil companies shall likewise submit periodic reports as may be required by the DOE.

SECTION 23. Biofuel Producers.

23.1 Accreditation of Biofuels Producers.

- a) Any individual or entity intending to engage in the production of biofuels shall apply for accreditation as a biofuel producer with the DOE. The DOE, in consultation with the stakeholders, shall issue the appropriate guidelines for this purpose, which shall indicate the requirements for quality assurance, quality management system, and analogous quality production standards.
- b) Pending the issuance of these guidelines, only those biofuel producers who have existing accreditation or have been issued a permanent Certificate of Fuel Additive Registration (CFAR) and who have pending applications for accreditation pursuant to Memorandum Circular No. 55 shall be allowed to produce and sell biofuels.

23.2 All biofuels producers, in addition to what may be required by the DOE under subsequent guidelines, shall:

- a) Register their distributors with the DOE;
- b) Ensure proper logistics and application of appropriate technologies in handling biofuels;
- c) Submit to the DOE the following data and information:

- i. Monthly production, sales and inventory of biofuels;
 - ii. Monthly report on projected production, sales and inventory of biofuels;
 - iii. Report on the application of technologies in the production, handling, storage and distribution of biofuels; and
 - iv. Such other data and information as may be required by the DOE and/or the NBB.
- d) Maintain a minimum inventory of biofuels equivalent to its average monthly sales to meet the minimum mandate;
 - e) Conduct and/or support local research and development to improve biofuels feedstock productivity; and
 - f) Report to DOE the weekly price of biofuels.

SECTION 24. Importer End-Users.

End users who are direct importers of diesel or gasoline shall also be subject to the required use of the mandated biofuel blend. To determine their compliance, such entities shall submit the following reports, in addition to what may be required by the DOE under subsequent guidelines:

- a) Monthly report to the DOE of its importation and consumption of gasoline/diesel; and
- b) Monthly report on the purchase and consumption of biofuels and biofuel blends.

Rule 6 Standards for Biofuel and Biofuel Blends

SECTION 25. Quality Standards.

All biofuels and biofuel blends that qualify under the Act shall be limited to those compliant with the PNS.

Facilities for the production, handling, distribution and storage of biofuels and biofuel blends shall likewise conform to standards and guidelines set by the DOE.

SECTION 26. Quality Assurance.

All biofuels producers shall assure compliance with quality standards in accordance with the following guidelines, in addition to what may be required by the DOE under subsequent issuances:

- a) All biofuel deliveries must be accompanied by a Certificate of Quality to be issued by the distributor/supplier indicating the properties of the delivered biofuels, which must be in compliance with the PNS;
- b) Biofuels packaged in individual containers shall be appropriately labeled and shall contain information such as DOE CFAR number, batch manufacturing date, and expiry date in accordance with the guidelines that will be issued by the DOE; and
- c) Biofuel producers shall establish management systems covering quality assurance, environmental management and occupational health and safety standards in accordance with the accreditation guidelines to be issued by the DOE.

Rule 7 Security of Domestic Sugar and Feedstock Supply

SECTION 27. Security of Domestic Sugar Supply.

27.1 The SRA shall develop and implement policies within the sugarcane industry in support of the National Biofuels Program. It shall form a consultative body within the sugarcane industry to undertake the initiatives stated herein.

27.2 Towards this end, the SRA shall formulate the necessary guidelines in ensuring the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

a) The SRA shall ensure full utilization of sugarcane and adequate supply of sugar in the domestic market and for other requirements. To this end, it shall conduct a periodic assessment of the domestic sugar supply and demand situation, and report the same to the NBB on a regular basis: *Provided*, That in case of shortage of locally produced bioethanol, the SRA in consultation with stakeholders, shall initiate appropriate action to increase local production and propose measures to the NBB to address the supply shortage.

b) The SRA shall develop appropriate schemes to facilitate orderly allocation of sugarcane for both sugar and ethanol. For this purpose, it shall report to the NBB the supply and demand situation of sugarcane and shall require regular submission of prescribed reports from bioethanol producers.

The SRA, pursuant to its existing mandate, shall formulate issuances consistent with its existing sugar classification functions, to effect an appropriate system of classification and allocation in terms of sugar and sugar equivalent.

SECTION 28. Security of Domestic Biofuels Feedstock Supply.

Pursuant to Section 11, paragraph (d) (2) of the Act, the DA shall ensure increased productivity and sustainable supply of biofuels feedstocks. Towards this end, the DA in consultation with PCA, SRA, and other entities concerned, shall develop and implement appropriate programs and guidelines in order to ensure a reliable supply of biofuel feedstocks.

Rule 8

Development of Social Amelioration and Welfare Program for Workers in the Production of Biofuels

SECTION 29. Objectives of the Program.

A Social Amelioration and Welfare Program ("Program") similar to that of the *Sugar Amelioration Act of 1991* or R.A. 6982, shall be developed for the following objectives:

- a) Promote gainful livelihood opportunities;
- b) Facilitate productive employment through effective employment services and regulation; and
- c) Ensure the access of workers to productive resources and social protection coverage.

SECTION 30. Coverage.

The program shall cover all rank and file employees of biofuel plants, workers and farmers engaged in the production of crops used as feedstocks in biofuels.

SECTION 31. Components of the Program.

The program shall provide basic benefits and assistance that will augment the income and improve the standard of living of workers engaged in the production of biofuels. It may consist of, among others, the following components:

- a) training and education assistance;
- b) livelihood assistance;
- c) social protection and welfare benefits; and
- d) distribution of financial benefits.

SECTION 32. Establishment of Guidelines and Mechanisms.

Pursuant to Section 17 of the Act, the NBB shall formulate and issue, through the appropriate NBB member agency/ies, the guidelines covering or governing the mechanisms, management and monitoring of the Program, similar to that prescribed under R.A. 6982 or the *Sugar Amelioration Act of 1991*.

However, the Act and this IRR shall not in any way result in the forfeiture or diminution of the existing benefits enjoyed by the sugar workers as prescribed under the *Sugar Amelioration Act*, in case sugarcane shall be used as feedstock.

Rule 9 Prohibited Acts, Penal and Administrative Provisions

SECTION 33. Prohibited Acts.

Any person or entity found in violation of any provision of the Act and this IRR shall be subject to appropriate criminal, civil, and /or administrative sanctions as provided herein and other existing applicable laws, rules and regulations.

Under Section 12 of the Act, the following shall be prohibited:

- a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in the Act;
- b) Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume in violation of the requirement under Section 5 of the Act;

- c) Distribution, sale, and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;

- d) Non-compliance with the established guidelines of the PNS and DOE adopted for the implementation of the Act; and

- e) False labeling of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel.

SECTION 34. Penal Provisions.

- 34.1 In accordance with Section 13 of the Act, any person, who willfully aids or abets in the commission of a crime prohibited in the Act, or who causes the commission of any such act by another shall be liable in the same manner as the principal;

- 34.2 In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation; and

- 34.3 The commission of an act enumerated in Section 12 of the Act, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from One Million (P 1,000,000) to Five Million pesos (P 5,000,000).

SECTION 35. Administrative Liability.

- 35.1 Without prejudice to incurring criminal liability, any person who commits any of the prohibited acts under Section 12 (b) to (e) of the Act, this IRR and other issuances relative to the implementation of the Act shall likewise be subject to administrative fines and penalties, in accordance with a schedule of administrative fines and penalties to be issued by the DOE.

For avoidance of doubt, administrative actions initiated pursuant to this section shall be separate and independent from any criminal actions that may arise for violations of Section 12 of the Act.

35.2 In addition to imposing fines and penalties, the DOE shall be authorized to:

- a) confiscate any amount of such products that fail to comply with the requirements of Sections 4 and 5 of the Act and implementing issuances of the DOE;
- b) determine the appropriate process and the manner of disposal and utilization of the confiscated products; and
- c) stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under the Act.

SECTION 36. Administrative Procedures.

36.1 The DOE may initiate *motu proprio*, or upon the filing of any complaint for the violation of any prohibited act under Section 12 (b) to (e) of the Act, the IRR or related issuances, an administrative proceeding against any such person or entity. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

36.2 The administrative proceeding shall be conducted before the DOE to determine the culpability of alleged offenders and to determine the applicable penalties. The administrative proceedings under this IRR shall be governed by the existing rules of practice and procedure before the DOE.

Rule 10 Other Provisions

SECTION 37. Congressional Oversight Committee.

37.1 Pursuant to Section 16 of the Act, a Congressional Oversight Committee, called the Biofuel Oversight Committee, is hereby constituted with fourteen (14) members, with the Chairpersons of the Committees on Energy of both Houses of Congress as co-chairpersons.

37.2 The Chairpersons of the Committees on Agriculture and on Trade and Industry in each chamber shall be *ex-officio* members of the Biofuels Oversight Committee.

37.3 The Senate President and the Speaker of the House of Representatives shall each designate four members from their respective chambers to sit in the Biofuels Oversight Committee. In designating such four members, the minority in each chamber shall be entitled to pro-rata representation provided that at the very least, they shall have one representative in the Biofuels Oversight Committee.

SECTION 38. Appropriations.

Funds necessary to finance the activities of concerned government agencies as provided in the Act and in this IRR shall be included in the annual *General Appropriations Act*.

SECTION 39. Special Clause.

The Act and the IRR shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO₂) and greenhouse gases (GHG) emission reductions by means of biofuels use.

SECTION 40. Village Level and/or Community-Based Facilities.

The promotion and utilization of biofuels for household and community equipment for lighting, cooking, farming, post-harvest processing, off-road operations, and other analogous uses shall be included as part of the National Biofuels Program in accordance with the government policy under the Act.

SECTION 41. Separability Clause. If any provision of this IRR is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions thereof.

SECTION 42. Effectivity. This IRR shall take effect fifteen (15) days after its publication in two newspapers of general circulation.

Signed this 17th day of May 2007 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

RAPHAEL P.M. LOTILLA
Secretary of Energy

JOINT ADMINISTRATIVE ORDER NO. 2008-1, Series of 2008

GUIDELINES GOVERNING THE BIOFUEL FEEDSTOCKS PRODUCTION, AND BIOFUELS AND BIOFUEL BLENDS PRODUCTION, DISTRIBUTION AND SALE UNDER REPUBLIC ACT NO. 9367

Pursuant to Sections 7, 8, 9, 10, 11 and 17 of Republic Act (R.A.) No. 9367, otherwise known as “The Biofuels Act of 2006” (hereinafter referred to as the “Act”), and Rule 4 of its Implementing Rules and Regulations (IRR), the Department of Agriculture (DA), Department of Agrarian Reform (DAR), Department of Energy (DOE), Department of Environment and Natural Resources (DENR), Department of Finance (DOF), Department of Labor and Employment (DOLE), Department of Science and Technology (DOST), Department of Trade and Industry (DTI), Department of Transportation and Communications (DOTC), National Biofuels Board (NBB), National Commission on Indigenous Peoples (NCIP), Philippine Coconut Authority (PCA), and Sugar Regulatory Administration (SRA) hereby adopt the following guidelines that shall govern the biofuel feedstocks production, biofuels and biofuel blends production, distribution and sale for the information, guidance and compliance of all concerned.

CHAPTER I **GENERAL PROVISIONS**

SECTION 1. Title. –

This Joint Administrative Order shall be known as “GUIDELINES GOVERNING THE BIOFUEL FEEDSTOCKS PRODUCTION, AND BIOFUELS AND BIOFUEL BLENDS PRODUCTION, DISTRIBUTION AND SALE”, hereinafter referred to as the “Guidelines”.

SECTION 2. Objectives. –

Pursuant to Section 2 of the Act and its IRR, the following are the objectives of these Guidelines:

- (a) To develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;
- (b) To mitigate toxic and greenhouse gas (GHG) emissions;

- (c) To increase rural employment and income;
- (d) To ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity, and food reserves of the country;
- (e) To ensure that lands devoted to food crops shall not be utilized for biofuel feedstocks production, except in cases provided herein;
- (f) To ensure the stability of the domestic supply of feedstock, biofuels, and biofuel blends;
- (g) To ensure the compliance of biofuels and biofuel blends producers, distributors and sellers with the Philippine National Standards (PNS) on biofuels and biofuel blends;
- (h) To ensure compliance with the mandated biofuel blends under the Act;
- (i) To promote the development of the biofuel industry in the country and encourage private sector participation and to institute mechanisms which will fast track investments in the biofuel industry; and
- (j) To promote biofuel workers' welfare and protection.

SECTION 3. *Biofuel Production Site as One of the Priority Development Areas for Land Conversion.* –

In accordance with the purpose of the Act, Section 6 of DAR Administrative Order No. 01, Series of 2002, is hereby amended to include a proposed biofuel production site as a Priority Development Area for Land Conversion and shall therefore read as follows:

xxx

6.1.7 Agricultural Areas/Lands proposed to be developed as biofuel production site as certified by DA: *Provided*, That each production facility site shall not be more than twenty five (25) hectares: *Provided, further*, That a project that has a production capacity in excess of one hundred thousand (100,000) liters per day or where more than twenty five (25) hectares is required as a production facility site, the applicant can apply for exemption for the additional hectareage as production facility site subject to the approval of DAR.

xxx

SECTION 4. *Definition of Terms* –

For purposes of these Guidelines, the following definitions shall apply:

- (a) *Act* refers to Republic Act No. 9367, otherwise known as the “Biofuels Act of 2006”;
- (b) *Agricultural Lands* as amended by Section 3-B of R.A. No. 7881 (Amendments to the Comprehensive Agrarian Reform Law) refer to lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical, and not classified by law as mineral land, forest or timber, or national park nor reclassified as residential, commercial, industrial or other non-agricultural uses before June 15, 1988;
- (c) *Ancestral Domain* refers to the areas belonging to indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a certain claim of

ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial;

(d) *Applicant* refers to any person or entity who proposes to engage in biofuel feedstock production, and biofuel production, distribution and sale;

(e) *Biodiesel* refers to the fatty acid methyl ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel-fed engines, with quality specifications in accordance with the PNS;

(f) *Bioethanol* refers to ethanol (C₂H₅OH) produced from feedstock and other biomass that shall be technically proven and approved by the DOE for use in gasoline-fed engines, including hydrous ethanol, with quality specifications in accordance with the PNS, and for higher blends beyond the 10% blend, the DOE shall issue the appropriate PNS;

(g) *Biofuel* refers to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS, and added or blended to petroleum fuels to enhance or alter chemical or physical properties and improve performance/usage of the fuels;

(h) *Biofuel Blends* refer to gasoline or diesel that has been blended with biofuels such as, but not limited to, bioethanol and biodiesel;

(i) *Biofuel Distributor* refers to any person or entity engaged in the distribution of PNS-compliant biofuels of an accredited Biofuel Producer in the domestic market: *Provided, That any person or entity*

engaged in distribution, supply and sale of PNS-compliant biofuels shall be deemed as a Biofuel Distributor;

(j) *Biofuel Feedstock Producer* refers to any person or entity engaged in farming and production of biofuel feedstocks and in the development, operation and management of biofuel feedstock areas;

(k) *Biofuel Producer* refers to any person or entity engaged in the production of PNS-compliant biofuels for the domestic market *Provided, That any person or entity engaged in the production, distribution, and sale of PNS-compliant biofuels shall be deemed as a Biofuel Producer;*

(l) *Biofuel Production Site* refers to the area for biofuel production which includes, but not limited to the processing plant, waste management facilities and other facilities directly related to biofuel production;

(m) *Certificate of Compliance* refers to the Certificate issued by the NCIP attesting that the Applicant has complied for securing the affected ICCs/IPs' free and prior informed consent;

(n) *Certificate of Non-Overlap* refers to the Certificate issued by the concerned Regional Director of NCIP, attesting to the fact that the area affected by a particular plan, program, project, or activity does not overlap with any ancestral domain;

(o) *Certification Precondition* refers to the Certification issued by NCIP that the Applicant has complied with the requirements under Republic Act 8371 (RA 8371), otherwise known as the *Indigenous Peoples Rights Act of 1997* and its IRR;

(p) *CFAR* refers to Certificate of Fuel Additive Registration issued by the DOE;

- (q) *Community-based Biofuel Producer* refers to a people's organization, cooperative or group of people in a specific community who is engaged in the production of biofuel;
- (r) *EUMB* refers to the Energy Utilization Management Bureau of the Department of Energy;
- (s) *Feedstock* refers to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum oil palm and other biomass used in the production of biofuels;
- (t) *Free and Prior Informed Consent (FPIC)* refers to the consensus of all members of the ICCs/IPs which is determined in accordance with their respective customary laws and practices that is free from external manipulation, interference, and coercion, and obtained after fully disclosing the intent and scope of the plan/program/project/activity;
- (u) *Fuel* refers to products used to produce heat, power or illumination by means of combustion, burning or oxidation. This includes gasoline, diesel, and biofuel;
- (v) *Illegal Conversion* is the act of changing the current use of the land from agricultural to another agricultural or non-agricultural use, the effect of which is to exempt the land from CARP coverage without an order of conversion from DAR, or changing the use of the land other than that allowed under the order of conversion issued by the DAR;
- (w) *IRR* refers to DOE Department Circular No. DC 2007-05-0006, otherwise known as the "Implementing Rules and Regulations of Republic Act No. 9367";
- (x) *Irrigable Lands* refer to lands which display marked characteristics justifying the operation of an irrigation system;
- (y) *Irrigated Lands* refer to lands serviced by natural irrigation or irrigation facilities. These include lands where water is not readily available as existing irrigation facilities need rehabilitation or upgrading or where irrigation water is not available year-round;
- (z) *Land Use Conversion* refers to the act or process of changing the current use of a piece of agricultural land into some other use as approved by the DAR;
- (aa) *LGU* refers to the Local Government Unit;
- (bb) *NIA* refers to the National Irrigation Administration;
- (cc) *Oil Company* refers to any entity that distributes and sells petroleum fuel products;
- (dd) *OIMB* refers to the Oil Industry Management Bureau of the Department of Energy;
- (ee) *PFC* refers to the Philippine Forest Corporation of the Department of Environment and Natural Resources;
- (ff) *PNS* refers to the Philippine National Standards consistent with Section 26 of R.A. No. 8749, otherwise known as the "Philippine Clean Air Act of 1999";
- (gg) *Private Agricultural Lands* refer to agricultural lands as defined herein and owned by natural or juridical persons or by the government in its proprietary capacity;
- (hh) *Raw Materials* refer to bio-feedstocks may it be in its original state or otherwise, such as, but not limited to, molasses, coconut oil, coconut, palm oil, oil palm, jatropha oil, jatropha, sugarcane, cassava, sweet sorghum, and other biomass used in the production of biofuels;

- (ii) *Reclassification of Agricultural Lands* refer to the act of specifying how agricultural land shall be utilized for non-agricultural uses such as residential, industrial and commercial, as embodied in the approved land use plan, subject to the requirements and procedure for land use reclassification. It also includes the reversion of non-agricultural lands to agricultural use;
- (jj) *Renewable Energy Sources* refer to the energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis;
- (kk) *Social Amelioration and Welfare Program* refers to the guidelines governing the mechanisms and implementation of amelioration and welfare program for the biofuel workers pursuant to Section 17 of the Act, which shall be issued by the DOLE.

CHAPTER II

BIOFUEL FEEDSTOCK PRODUCERS

SECTION 1. Requirements for Biofuel Feedstock Producers. –

An Applicant who shall engage in the production of biofuel feedstock shall secure the following, prior to the production thereof:

- (a) Environmental Compliance Certificate (“ECC”) issued by the DENR, as applicable;
- (b) Certification Precondition issued by the NCIP, as applicable; and
- (c) Certification issued by the DA, as applicable;

The requirements above shall not be required for all existing feedstock areas, subject to DA policy guidelines. Existing coconut and sugarcane areas shall be subject to the regulations by PCA and SRA, respectively, as approved by the DA.

SECTION 2. Environmental Compliance Certificate. –

An Applicant who shall engage in the production of biofuel feedstocks shall secure an ECC from the DENR. The issuance thereof shall be subject to the following guidelines:

- (a) For new biofuel feedstock production project with a total contiguous land area of one hundred (100) hectares up to one thousand (1,000) hectares and which involves land preparation, an Initial Environmental Examination (IEE) or IEE Checklist is required prior to the issuance of ECC;
- (b) For new biofuel feedstock production project with a total contiguous land area of more than one thousand (1,000) hectares and which involves land preparation, an Environmental Impact Statement (EIS) is required prior to the issuance of ECC; and
- (c) For existing biofuel feedstock production areas regardless of the total land area, an ECC is no longer required;

For the above purposes, DENR Administrative Order No. 30, Series of 2003 and DENR Memorandum Circular No. 2007-08, whenever applicable is hereby adopted as an integral part of these Guidelines (Annex “A” and “B”, respectively).

SECTION 3. Certification Precondition. –

An Applicant shall secure a Certificate of Non-Overlap or Certificate of Compliance from the NCIP, subject to the following guidelines:

SECTION 3.1. If the Proposed Site Is Outside the Ancestral Domain/Land. –

If the proposed site for the project is outside the ancestral domain/land of the ICCs/IPs, a Certificate of Non-Overlap shall be secured by the Applicant, which shall be issued by

the concerned NCIP Regional Director after a field-based investigation.

SECTION 3.2. *If the Proposed Site is Within or Overlaps the Ancestral Domain/Land.* –

- (a) An Applicant shall secure the Free and Prior Informed Written Consent if the area to be covered by the project is located within or overlaps the ancestral domain/land ICCs/IPs.
- (b) After securing the FPIC, an Applicant shall secure a Certificate of Compliance from the NCIP Head Office.

SECTION 3.3. *Documentary Requirements.* –

For purposes of securing the Certification Precondition under Sections 3.1 and 3.2 hereof, the following documents are required to be submitted by the Applicant:

- (a) Endorsement from the DENR;
- (b) Project Profile of the Applicant; and
- (c) Operational Plan.

For the above purpose, NCIP Administrative Order No. 1, Series of 2006, is hereby adopted as an integral part of these Guidelines (Annex “C”).

SECTION 4. *DA Certification.* –

An Applicant shall secure a DA certification that the feedstock or the proposed biofuel feedstock area may be utilized for the production of biofuel feedstock.

The DA Certification shall not be required if the feedstock to be used (e. g., molasses), does not involve land utilization.

SECTION 4.1. *Criteria for DA Certification.* –
The following are the criteria for the issuance of DA certification:

- (a) Cereals that can be used both for food and for biofuel production such as, but

not limited to, corn and wheat, shall not be used for biofuel production;

- (b) The land to be used shall be consistent with the natural expansion of the municipality or locality, as contained in the approved physical framework and land use plan by the concerned municipality or locality;
- (c) The area that will be used is not the only remaining food production area of the community;
- (d) All agricultural areas classified hereunder shall not be utilized for biofuel feedstock production:

- (1) All areas covered by government-funded irrigation facilities, either national agency or LGU, designed to support rice and other crop production, and all irrigated lands where water is not available for rice and other crop production but are within areas programmed for irrigation facility rehabilitation by DA and NIA;

- (2) All irrigable lands already covered by irrigation projects with firm funding commitments as certified by NIA at the time of the application for land use conversion;

- (3) All privately irrigated alluvial plain lands utilized for rice and corn production; and

- (4) All agricultural lands that are ecologically fragile, the utilization of which shall result in serious environmental degradation.

SECTION 4.2. *Issuance of Certification.* –

The Certification may be issued, except for areas identified above, under the following conditions:

- (a) Compliance with the SRA and PCA policy guidelines, as approved by DA, for the utilization of sugarcane and coconut areas, and DA policy guidelines for the utilization of all other existing feedstock areas;
- (b) The areas are evaluated by DA to be underutilized and marginal; and
- (c) The proposed project is supportive to agro-industrial development, and will generate additional and alternative livelihood opportunities for the affected community.

SECTION 4.3. Scope and Coverage. –

As used in this Section, an Independent Biofuel Feedstock Producer shall refer to a Biofuel Feedstock Producer who has no marketing or supply agreement with a Biofuel Producer.

- (a) Only an Independent Biofuel Feedstock Producer with an effective area exceeding twenty five (25) hectares, either contiguous or fragmented, shall be required to obtain a DA Certification.
- (b) An Independent Biofuel Feedstock Producer whose effective area is twenty five (25) hectares or less is exempted from securing the DA Certification.
- (c) A Biofuel Feedstock Producer who has a marketing or supply agreement with a Biofuel Producer shall not be required to secure the DA Certification; *Provided*, that the Biofuel Producer shall secure the DA Certification as provided in Chapter III, Section 2.4 of this Guidelines.

SECTION 4.4. Documentary Requirements. –

The following documents and information are required to be submitted by the Applicant:

- (a) Feasibility Study;

- (b) List of Biofuel Feedstock supplier(s); and
- (c) One (1) copy each of geo-referenced map, vicinity map, and lot plan showing the feedstock production areas duly certified by the LGU.

CHAPTER III

**BIOFUEL PRODUCER, DISTRIBUTOR,
AND SELLER**

SECTION 1. Certificate of Registration and Accreditation. –

An Applicant shall secure a Certificate of Registration and Accreditation from the DOE prior to production, distribution, and sale of biofuel. This shall apply to the following:

- (a) Biofuel Producer that:
 - (1) Sells biofuels to Oil Companies; and
 - (2) Sells directly to the end users (for bio-diesel);
- (b) Biofuel Distributor

Community-based Biofuel Producers and/or individuals who produce biofuels for their own direct uses are exempt from securing a Certificate of Accreditation: *Provided, however*, That Community-based Biofuel Producers and/or individuals who sell their products commercially are required to secure a Certificate of Accreditation from the DOE.

SECTION 2. Requirements for Registration of Biofuel Producers With the DOE. –

The DOE shall issue a Certificate of Registration with Notice to Proceed with the construction of the facilities upon complete and satisfactory submission of the following:

- (a) Duly accomplished DOE application form;
- (b) Proof of payment of filing fees;
- (c) Registration with the Securities and

Exchange Commission (SEC), Philippine Economic Zone Authority (PEZA), Cooperative Development Authority (CDA) and/or the DTI, as applicable;

- (d) Certification Precondition from NCIP for ancestral domains/lands, as applicable.
- (e) Feasibility Study demonstrating the technical, economic and ecological viability of biofuel production and Construction/Work Plan;
- (f) Developer's Profile;
- (g) Letter of Intent to supply a volume of biofuel;
- (h) DA Certification as specified in Chapter II of this Guidelines;
- (i) SRA or PCA Registration, as applicable;
- (j) Special Forest Land-Use Agreement from DENR if the site is within untenured forest lands, as per existing rules and regulations;
- (k) CARP Exemption based on HLURB certification that the land was classified prior to June 15, 1988 or DAR Land Use Conversion, as applicable;
- (l) ECC from DENR; and
- (m) LGU Clearance and Locational Clearance.

The Certificate of Registration with Notice to Proceed shall automatically be revoked upon failure to commence construction of the facilities within two (2) years from the issuance thereof.

SECTION 2.1. Certification Precondition. –

An Applicant shall secure a Certificate of Non-Overlap or Certificate of Compliance from the NCIP, subject to the following guidelines:

SECTION 2.1.1. *If the Proposed Site is Outside the Ancestral Domain/Land. –*

If the proposed site for the project is outside the ancestral domain/land of the ICCs/IPs, a Certificate of Non-Overlap shall be secured by the Applicant, which shall be signed by the concerned NCIP Regional Director after a field-based investigation.

SECTION 2.1.2. *If the Proposed Site is Within or Overlaps the Ancestral Domain/Land. –*

- (a) An Applicant shall secure the Free and Prior Informed Written Consent if the area to be covered by the project is located within or overlaps the ancestral domain/land of the ICCs/IPs.
- (b) After securing the FPIC, an Applicant shall secure a Certificate of Compliance from the NCIP Head Office.

SECTION 2.1.3. *Documentary Requirements. –*

For purposes of securing the Certification Precondition under Sections 2.1.1 and 2.1.2 hereof, the following documents are required to be submitted by the Applicant:

- (a) Endorsement from the DENR;
- (b) Project Profile of the Applicant; and
- (c) Operational Plan.

For the above purpose, NCIP Administrative Order No. 1, Series of 2006, is hereby adopted as an integral part of this Guidelines (Annex "C").

SECTION 2.2. *Issuance of ECC by DENR for Biofuel Production. –*

An Applicant who shall engage in the production of biofuels shall secure an ECC from the DENR-EMB Regional Office. The issuance thereof shall be subject to the following guidelines:

- (a) For Biofuel Processing Plants with annual production capacity of equal to or less than one hundred fifty (150) million liters (< 150 million liters) per year, an Initial Environmental Examination (IEE) or IEE Checklist is required prior to the issuance of ECC; and
- (b) For Biofuel Processing Plants with annual production capacity of more than one hundred fifty (>150) million liters per year, an Environmental Impact Statement (EIS) is required prior to the issuance of ECC.

For the above purpose, DENR Administrative Order No. 30, Series of 2003 and DENR Memorandum Circular No. 2007-08, whenever applicable is hereby adopted as an integral part of these Guidelines (Annex “A” and “B”, respectively).

SECTION 2.3. *DAR Conversion of Agricultural Lands to Biofuel Production Site. –*

The following documents and information are required to be submitted by an Applicant to DAR for purposes of converting land from agricultural to biofuel production site:

- (a) Proof of payment of filing fees and inspection costs;
- (b) Posting of performance bond;
- (c) Sworn application for conversion;
- (d) Proof of land ownership or proof of right over the land (e. g., Transfer Certificate of Title, tax declaration, lease agreement, if applicant is Farmer Beneficiary under the Comprehensive Agrarian Reform Law (CARP), a certification from LBP/PARO);
- (e) DA certification as provided in Chapter II, Section 2.4 of these Guidelines;
- (f) Feasibility Study containing, among others, the Applicant’s financial

and organizational capability, and development plan;

- (g) Joint venture agreements and other similar arrangements;
- (h) Photographs of the property;
- (i) Affidavit of Undertaking, as provided under DAR Administrative Order No. 1, Series of 2002, as amended;
- (j) MARO Certification as provided under DAR Administration Order No. 1, Series of 2002, as amended;
- (k) Notice of LUC Application as provided under DAR Administrative Order No. 1, Series of 2002, as amended;
- (l) HLURB Certification or Sangguniang Panlalawigan Resolution, as the case may be;
- (m) Lot plan; and
- (n) Maps:
 - (1) Vicinity Map;
 - (2) Directional Sketch Map; and
 - (3) Topographic Map, as applicable.

For the above purpose of converting the use of an agricultural land from agricultural to biofuel production site, DAR Administrative Order No. 1, Series of 2002, as amended, in all aspect not inconsistent herewith, is hereby adopted as an integral part of this Guidelines (Annex “D”).

SECTION 2.4. *DA Certification. –*

All Biofuel Producers shall declare their proposed source of feedstock for evaluation of DA if the proposed biofuel feedstock production area is compliant with the prescribed criteria as specified in Chapter II, Section 4.1 of these Guidelines. The DA shall subsequently issue a certification to that effect.

A Biofuel Producer who shall have new biofuel feedstocks producer-supplier, or new feedstock production areas, is required to submit to the DA the list of its new feedstock producer-supplier or new feedstock production areas for evaluation based on the criteria as specified in Chapter II, Section 4.1 of these Guidelines. Moreover, every Biofuel Producer shall declare his/her biofuel feedstocks producer-supplier and the location of the feedstock production area.

A Biofuels Producer or Biofuel Blend Producer who shall have agricultural lands as biofuels and biofuel blend production site is required to apply with the DA Technical Committee on Land Use Matters (NTECLUM) for the purpose of securing the DA Certification of Eligibility for Reclassification of Agricultural Lands as a requirement of the DAR. The following information and documents are required:

- (a) Notarized Sworn Declaration of Application for Land Use Reclassification;
- (b) Proof of ownership of land e.g., photocopy of OCT/TCT and/or other documents establishing ownership, duly certified by the Register of Deeds not later than thirty (30) days prior to filing. If at the time of application the landholding is an untitled agricultural land, the following shall be required, in lieu of the OCT/TCT:
 - (i) Certification of the DENR Community Environment and Natural Resources Officer (CENRO) that the landholding has been classified as alienable and disposable;
 - (ii) Certification of the DENR CENRO (for administrative confirmation of imperfect title) or the Clerk of Court of regular courts (for judicial confirmation of imperfect title) that the titling process/proceeding has commenced, and there are no adverse claimants;

- (iii) If the land title has any encumbrances or mortgages, a certification by the lending institution/mortgagee that he has no objection to the application, is required.

- (c) Special Power of Attorney (if the Petitioner is other than the owner of the land) or Board Resolution (with the signature of the members) if the landowner is a Corporation;
- (d) Map of the Area/Parcellary Map prepared by a licensed geodetic engineer indicating the Name of Owner, Title No., and Lot Area;
- (e) Location Map with sufficient reference points for proper identification of lot/s applied for;
- (f) Zoning Certification from HLURB;
- (g) Photographs of the area (Size: 5R) with captions duly certified by a member of the DA-Regional Land Use Technical Working Group (RLUTWG) Inspection Team;
- (h) Certification from the NIA (for areas of 5 hectares and above, to be signed by the Regional Irrigation Manager);
- (i) Certification from the SRA, as applicable;
- (j) Certification from the PCA, as applicable;
- (k) Certification from the Fiber Industry Development Authority, as applicable;
- (l) Certification from the Bureau of Fisheries and Aquatic Resources, as applicable;
- (m) Field Inspection Report by the DA-RLUTWG.

SECTION 3. *Certificate of Accreditation from DOE.* –

The DOE shall issue a Certificate of Accreditation prior to commercial operations upon the submission and compliance with the following:

- (a) Rated production capacity in million liters per year;
- (b) Certificate of Fuel Additive Registration from the DOE for biofuels, as applicable;
- (c) Completion of DOE's inspection of the facilities and on-site sample taking of the biofuels produced;
- (d) Product compliance with the PNS;
- (e) Distribution networks and authorized distributors, if any; and
- (f) Program of quality management system.

The Certificate of Accreditation shall be valid for a period of five (5) years, unless earlier revoked or suspended as provided in this Guidelines.

SECTION 3.1. *Renewal of Certificate of Accreditation.* –

The Certificate of Accreditation may be renewed every five (5) years, subject to compliance with the minimum requirements as provided by this Guidelines, pertinent laws, rules and regulations, and other DOE issuances. The following documents shall be submitted for the renewal of this Accreditation:

- (a) Proof of payment of renewal fee;
- (b) Completion of DOE's inspection of the facilities and on-site sample-taking of the biofuels produced;
- (c) Proof of compliance with PNS;
- (d) BIR tax clearance for the immediately preceding year;

- (e) Updated distribution networks and authorized distributors; and
- (f) Updated local government licenses and permits.

SECTION 3.2. *Amendment of Certificate of Accreditation.* –

The Biofuel Producer shall send a Letter-request to DOE for the amendment of the Certificate of Accreditation, thirty (30) days prior to the intended amendment, if any of the following is attendant:

- (a) Increase or decrease of production capacity;
- (b) Change in the process flow, technology or feedstock to be used for the biofuel production; and
- (c) Change in the ownership of the biofuel production project.

SECTION 4. *Reportorial Requirements and Other Submissions for Biofuel Producers.* –

An accredited Biofuel Producer shall be required to submit the following reports and documents to the DOE:

- (a) Monthly accomplishment reports which shall include, among others, the following:
 - (1) Actual monthly biofuel production, sales and inventory report;
 - (2) Projected monthly biofuel production, sales and inventory report;
 - (3) Safety and accident reports, if applicable;
 - (4) Reports on product analysis in compliance with the PNS;
 - (5) Feedstock production reports and technology enhancements, if any;

(6) Biofuel Supply Contract with oil company and other end uses or Sworn Sales Report;

(7) Updated list of distributors; and

(8) Updated feedstock supplier.

(b) Annual local government licenses and permits; and

(c) Any and all data, information and reports which may be required by the NBB, the DOE, or any other government regulating agencies. For this purpose, the DOE shall formulate a standard and harmonized reporting system for the purpose of consolidating and harmonizing all the reportorial requirements of the regulating agencies concerned.

SECTION 5. *Registration of a Distributor With the DOE.* –

An Applicant shall register with the DOE for the distribution of the biofuels. The Certificate of Registration shall be issued by the DOE upon submission and compliance with the following:

(a) Registration with the SEC and/or the DTI;

(b) Business and Mayor's permit;

(c) Certification by an accredited Biofuel Producer as its duly authorized distributor for a particular biofuel product;

(d) Proof of compliance with PNS; and

(e) Registration certificates, certifications and other clearances as may be required by other government entities.

The Certificate of Registration shall be renewed annually subject to compliance with the minimum requirements as provided for by this Guidelines, pertinent laws, rules and regulations and other DOE issuances.

Upon registration, the authorized Biofuel Distributor shall submit to the DOE, through the EUMB, monthly accomplishment reports that shall include among others, monthly biofuel sales and inventory of biofuels.

SECTION 6. *Issuance of Receipts.* –

All transactions involving the production, distribution and sale of biofuels must be evidenced by an official receipt bearing the name address of the Biofuel Producer, and Distributor and indicating the quantity and price of the biofuel product sold, the date of the transactions and such other information required under existing laws and rules on national internal revenue. Duplicate copies of official receipts shall be made available for verification by DOE inspectors/personnel.

SECTION 7. *Permit to Export Biofuels.* –

Prior to each exportation of the biofuels, the Biofuel Producer and/or Biofuel Distributor shall submit to the DOE a written application to export: *Provided*, That the DOE shall only allow exportation in the event that there is excess of supply of biofuels for domestic consumption.

The following documents and information are required to be submitted by the Biofuel Producer:

(a) Product type and volume to be exported and cost of product shipment;

(b) Country of destination;

(c) Percentage of volume to be exported to plant's current production capacity; and

(d) Payment of appropriate application of processing fees per shipment; and

(e) Export clearance from PCA, SRA, and other appropriate regulatory agency for coconut-based, sugarcane/sugar/molasses-based biofuels and other biofuels, respectively.

CHAPTER IV OIL COMPANIES

SECTION 1. *Responsibilities of Oil Companies.*

–

All Oil Companies shall undertake the blending of biodiesel and bioethanol with diesel and gasoline, respectively, using appropriate blending methodologies at their respective refineries, depots or blending facilities within the period required in Section 5 of the Act and Section 5 of the IRR, and shall ensure that the biofuel blends comply with the PNS set forth under the pertinent rules in addition to quality/property requirements provided under pertinent laws or guidelines applicable to petroleum and/or petroleum products.

An Oil Company shall source its biofuels only from Biofuel Producers accredited by the DOE or from Biofuel Distributors registered with the DOE. Unless otherwise authorized by the DOE to import in case of shortage of supply of locally-produced bioethanol as provided for under Section 5.2 of the Act, an oil company's failure to source its biofuels from accredited Biofuel Producers and/or registered Biofuel Distributors is a prohibited act under this Guidelines and shall be subjected to the sanctions provided herein.

In the event that an oil company's retail stations, carrying its name, company-operated, dealer-owned, and/or dealer owned, are found to be selling biofuel blends that do not conform with the PNS, the oil company shall be equally responsible with such retail stations for the violation of this Guidelines.

SECTION 2. *Reportorial Requirements for Oil Companies.* –

Every oil company shall submit to the DOE the following:

- (a) Within the month of January every year, Performance Compliance Report of the

prior year containing its compliance plan with the minimum biofuel blends, as well as other information that may be required by the DOE. Such report shall be duly certified and signed by an authorized responsible officer of the oil company.

- (b) Periodic reports as may be required by the DOE, including the following:

- (1) Local Purchases Report/Receiving Reports. On a per supplier basis, the names and addresses of the suppliers of biofuels;
- (2) Sales Reports/Removal Reports. The names and addresses of customers/ consignees, the volume of biofuels sold/transferred and volume thereof;
- (3) Inventory Summary Reports. On a per company basis, the inventory stocks including in-transit volume of biofuels; and
- (4) Imports. Names and addresses of foreign suppliers, dates, volume and price of actual importation of Bioethanol, as applicable (for verification against the Notices of Importation).

SECTION 3. *Issuance of Receipts.* –

All transactions involving the sale of biofuel blends must be evidenced by an official receipt bearing the name and address of the Oil Company and indicating the quantity and price of the biofuel blends sold, the date of the transactions and such other information required under existing laws and rules on national internal revenue. Duplicate copies of official receipts shall be made available for verification by DOE Inspectors/personnel.

SECTION 4. *Importation of Bioethanol by Oil Companies.* –

In the event of supply shortage of locally-produced Bioethanol during the four-year period provided under Section 5.2 of the Act, an Oil Company may apply for the issuance of a certification to import bioethanol from the DOE-OIMB, provided, that the NBB certifies the shortage of bioethanol in the country. For this purpose, DOE Department Circular No. DC 2006-08-0011 is hereby adopted as an integral part of this Guidelines and hereby attached as Annex “E”.

SECTION 5. *Local Purchases of Denatured Bioethanol by Oil Companies.* –

Consistent with the reportorial requirements of DOE, an Oil Company shall report and file a Notice to the DOE-OIMB for every purchase of locally-produced denature bioethanol for the proper monitoring of quality standards and the volume of bioethanol actually sold and distributed. Further, such purchases of denatured bioethanol shall be sourced from a DOE accredited Biofuel Producer.

**CHAPTER V
ONE-STOP SHOP**

SECTION 1. *Creation of One-Stop Shop.* –

A One-Stop Shop under the supervision of the NBB is hereby created. The One-Stop Shop shall:

- (a) Accept, screen and undertake preliminary evaluation of the applications for feedstock production, biofuels and biofuel blends production and distribution;
- (b) Assist in the processing of applications and forward the same to the concerned government agency(ies) in securing the necessary certificates, licenses and permits: *Provided*, that any application which involves issuances and certifications from the DA, DAR, DENR, and NCIP shall be transmitted also to the DA-DAR-DENR Convergence Initiative

Technical Secretariat for facilitation and monitoring. The DA, DAR, and DENR are currently undertaking convergence efforts which primarily focus on development of idle lands for agricultural purposes;

- (c) Coordinate and liaise with the concerned government agency on the status of the said applications; and
- (d) Collect the applicable fees, including facilitation fee.

SECTION 2. *Rules and Regulations Governing the Operations of the One-Stop Shop.* –

The NBB is hereby empowered to promulgate the necessary rules and regulations governing the operations of the One-Stop Shop.

SECTION 3. *Staffing.* –

The One-Stop Shop shall be manned by duly designated staff of the concerned government agencies for at least one year upon the effectivity of this Guidelines or until such time the NBB Technical Secretariat has developed or gained the necessary expertise on the functions of the One-Stop Shop.

**CHAPTER VI
SOCIAL AMELIORATION
AND WELFARE PROGRAM**

SECTION 1. *Benefits of Biofuel Workers.* –

Pursuant to Section 17 of the Act, R.A. No. 6892 or the *Sugar Amelioration Act of 1991* and its Implementing Rules and Regulations are hereby made as integral parts of this Guidelines and hereby attached as Annexes “F” and “G”.

SECTION 2. *Social Amelioration and Welfare Program for Biofuel Workers.* –

Pursuant to Sections 11 (e) and 17 of the Act, and per authority granted by the NBB, the

DOLE, shall be the implementing agency for the development and management of the Social Amelioration and Welfare Program of Biofuel Workers, and in consultation with concerned government agencies and other stakeholders, shall lead in the formulation of appropriate policies and guidelines governing the mechanisms, management, and monitoring of the Social Amelioration and Welfare Program (SAWP) for biofuel workers.

Considering the peculiarities of the technological aspects, and institutional arrangements and systems in the biofuel feedstocks production, and biofuels production, distribution and sale, separate and specific SAWP guidelines shall be formulated and issued for the workers in each biofuel feedstock. All guidelines to be formulated and issued by DOLE relative to the implementation of the SAWP for biofuel workers are hereby made integral part(s) of this Guidelines.

CHAPTER VII
FUNCTIONS OF OTHER GOVERNMENT
AGENCIES

In addition to the functions of the concerned government agencies as specified in the Act, its IRR, and other existing and pertinent laws, the DOST, DA and its attached agencies, DENR-PFC and the PNOC-AFC are hereby tasked to identify, develop and propagate the biofuel feedstocks to be used in the country.

In the case of *Jatropha* and other biofuel feedstocks, the primary regulatory agency shall be the DA or its designated unit under the Department.

For the development and production of non-land based biofuel feedstocks or feedstocks not derived from agricultural and agro-forestry products and residues, the DOST or its designated unit shall be the coordinating agency.

The Agribusiness Lands Investment Center, under the management of the Philippine Agricultural Development and Commercial Corporation (PADCC) of the DA, shall be a member of the DA Evaluation Team tasked with the identification and validation of biofuel feedstock production areas.

The NBB shall be the repository of data and information on the biofuels industry and the concerned government agencies are hereby tasked to forward such data and information to the NBB.

CHAPTER VIII
PROHIBITED ACTS AND SANCTIONS

SECTION 1. *Prohibited Acts.* –

A fine of Two Hundred Thousand Pesos (P 200,000.00) for each violation shall be imposed by the DOE upon any person or entity that has been found to have committed any of the following acts:

- (a) Diversion of biofuels, whether locally produced or imported, for purposes other than those stated in the Act, the IRR, this Guidelines, the Certificate of Accreditation, and any other legislation or administrative issuances that may be subsequently promulgated.
- (b) Sale of biofuel and biofuel blends which fail to conform with the PNS. A person or entity that commits this prohibited act shall be guilty of the act of Adulteration. The possession of biofuel blend which does not conform to the PNS shall *prima facie* constitute Adulteration.
- (c) Distribution, sale and/or use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB or the DOE;

- (d) Refusal to sell biofuel and/or biofuel blends shortly before a price increase or in times of tight supply thereof; where the buyer or end-user has the ability to pay for the product; and/or undue accumulation of biofuel and/or biofuel blends in times of tight supply or shortly before a price increase. A person or entity who commits this prohibited act shall be guilty of Hoarding.

For the purpose of this Guidelines, “undue accumulation” means to keep or stock quantities of biofuel products beyond inventory levels as determined by the DOE, for a period of thirty (30) days immediately preceding the period of tight supply or price increase.

- (e) Production, distribution and/or sale of biofuels without having been issued the requisite Certificate of Accreditation/Registration;
- (f) Distribution, sale and/or delivery of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel with false or incorrect labels or information, or without the appropriate labels or information such as DOE CFAR batch manufacturing date, expiry date and such other label or information that the DOE shall subsequently require; and
- (g) An Oil Company’s failure to source its biofuels from other than accredited Biofuel Producers or registered Biofuels Distributors.

The DOE shall likewise cause the cessation of the operation of such business found to have committed a prohibited act upon compliance with the administrative procedures provided under Section 36 of the Act’s IRR. The DOE may subsequently issue an order to authorize resumption of the operation of the business of the violator upon proper showing, with sufficient proof and to the satisfaction of the DOE, that necessary corrective measures have

been applied and dully effected, and after full payment of the said fines. An additional fine of Ten Thousand Pesos (P 10,000.00) per day shall be imposed in case such person continues to operate after an Order or Notice of cessation of operation of business has been issued by the DOE.

Provided, That a fine of Three Hundred Thousand Pesos (P 300,000.00) shall be imposed against a person or entity who is found to have committed the same prohibited act for the second time and shall be a ground for revocation of the Accreditation or Registration granted to such person.

SECTION 2. *Other Prohibited Acts.* –

The following acts are likewise prohibited under these Guidelines:

- (a) Exportation of biofuels and biofuel blends without the permit to export from the DOE shall be penalized with a fine of Fifty Thousand Pesos (P 50,000.00).
- (b) Failure to provide copies of official receipts when so required by the DOE inspectors/personnel shall be penalized with a fine of Fifty Thousand Pesos (P 50,000.00);
- (c) Failure to issue a Certificate of Quality accompanying the delivered biofuels and/or biofuel blends shall be penalized with a fine of Fifty Thousand Pesos (P 50,000.00). All biofuels and biofuel blends deliveries must be accompanied by a Certificate of Quality to be issued by the Biofuel Producer, Distributor or Seller indicating the properties of the delivered biofuels and biofuel blends, and to the effect that the delivered products are in compliance with the PNS; and
- (d) Refusal to allow inspection by the DOE or other concerned government agency shall be penalized with a fine of Fifty Thousand Pesos (P 50,000.00). The DOE

or other concerned government agency shall have the right to enter, within reasonable hours of the day, a plant or any distribution or retail station to conduct actual inspection and product sampling. Any person or entity that refuses to allow access or entry of authorized inspectors from the DOE after proper presentation of reasonable identification papers shall be subject to the sanctions herein provided and such refusal to allow access or entry shall furthermore constitute *prima facie* evidence of commission of the prohibited acts under Section 1 (a, b, c, d, and e) above, against the entity refusing such access.

- (e) Violation of the criteria for utilization of land as provided under Chapter II, Section 4 of this Guidelines, after the Certificate of Accreditation has been issued shall be penalized with a fine of Fifty Thousand Pesos (P 50,000.00) and shall be the cause of revocation of the Certificate of Accreditation.

Provided, That a fine of One Hundred Thousand Pesos (P 100,000.00) shall be imposed against a person or entity that is found to have committed the same prohibited act for the second time. The DOE shall further order the immediate cessation of the operation of the business of such person found to have committed any of the above mentioned prohibited acts, upon compliance with the administrative procedures provided under Section 36 of the Act's IRR. The DOE may subsequently issue an order to authorize resumption of the operation of the business of the violator upon proper showing, with sufficient proof and to the satisfaction of the DOE, that necessary corrective measures have been applied and duly effected, and after full payment of the said fines. An additional fine of Ten Thousand Pesos (P 10,000.00) per day shall be imposed in case such person continues to operate after an Order of cessation of operation of business has been issued by the DOE.

A fine of Two Hundred Thousand Pesos (P200,000.00) shall be imposed against a person who is found to have committed the same prohibited act for the third time and such violation shall be a ground for the revocation of the Accreditation or Registration granted to such person.

SECTION 3. *Confiscation of Biofuel Products.*

–

In addition to the sanctions provided above, the products that fail to comply with the requirements under Sections 4 and 5 of the Act, shall be confiscated under Section 13 of the Act. The DOE shall determine the appropriate process and manner of disposal and utilization of the confiscated products.

SECTION 4. *Non-Compliance with Registration and Reportorial Requirements.*

–

A penalty of Two Hundred Thousand Pesos (P200,000.00) plus Ten Thousand Pesos (P10,000.00) a day shall be imposed upon any person who fails, without any justifiable reason, to submit documents required to be submitted under Guidelines.

SECTION 5. *Issuance of Notice and Warning.*

–

The penalty provided in the preceding sections shall be imposed only after compliance with the administrative procedures under Section 36 of the Act's IRR.

SECTION 6. *Criminal Liability.*

The imposition of any administrative sanction is without prejudice to any criminal action that may be filed, if warranted, under Section 13 of the Act, IRR, existing laws, rules and regulations.

CHAPTER IX FINAL PROVISIONS

SECTION 1. *Transition Period.*

–

The validity of all accreditations and provisional registrations issued by DOE pursuant to Memorandum Circular No. 55 shall automatically expire six (6) months after the effectivity of this Guidelines. Biofuel Producers accredited or registered provisionally under the said memorandum circular shall be required to submit the following to the DOE, in addition to the requirements under Chapter III, Section 3 of this Guidelines, for the issuance of a new Certificate of Accreditation:

- (a) Letter of Intent to supply a volume of biofuel or biofuel blends; and
- (b) Certification from the DA on feedstock supply and land use as specified in Chapter II of this Guidelines.

SECTION 2. *Interpretation of these Guidelines.* –

In the event that a conflict arises in the interpretation of this Guidelines, it shall be liberally construed by the concerned agencies in favor of the Biofuel Feedstock Producer, Biofuel and Biofuel Blends Producer, Distributor and Seller.

SECTION 3. *Amendments.* –

Amendment/s to any part of this Guidelines and to the pertinent parts of the Department orders, circulars, memoranda or other issuances which were made part as Annexes of this Guidelines shall be done through a consultation of the concerned agencies and stakeholders and concurrence of the majority of the signatories herein.

SECTION 4. *Separability Clause.* –

If, for any reason, any section or provision of this Guidelines is declared unconstitutional or invalid, such parts not affected shall continue to remain in full force and effect.

SECTION 5. *Supplementary Provisions.* –

The DOE, in consultation with the concerned agencies and the biofuel sector, is hereby authorized to promulgate rules, supplementary in character, for the proper implementation of this Guidelines.

SECTION 6. *Repealing Clause.* –

Department orders, circulars and other issuances of the concerned departments and other government agencies not consistent with this Guidelines are hereby deemed repealed or amended accordingly.

SECTION 7. *Effectivity.* –

This Guidelines shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Issued in Taguig City, Metro Manila, this 8th day of October, 2008.

ANGELO T. REYES
Secretary
Department of Energy and
Concurrent Chairman
National Biofuels Board

NASSER C. PANGANDAMAN
Secretary
Department of Agrarian Reform

ARTHUR C. YAP
Secretary
Department of Agriculture

JOSE L. ATIENZA, JR.
Secretary
Department of Environment
and Natural Resources

MARGARITO B. TEVES
Secretary
Department of Finance

MARIANITO D. ROQUE

Secretary
Department of Labor and Employment

ESTRELLA F. ALABASTRO

Secretary
Department of Science and Technology

PETER B. FAVILA

Secretary
Department of Trade and Industry

LEANDRO R. MENDOZA

Secretary
Department of Transportation and
Communications

EUGENIO A. INSIGNE

Chairman
National Commission on Indigenous Peoples

OSCAR G. GARIN

Administrator
Philippine Coconut Authority

RAPHAEL L. COSCOLLUELA

Administrator
Sugar Regulatory Administration and
Vice-Chairman
National Biofuels Board

DEPARTMENT CIRCULAR NO. DC 2008-06-0002

IMPLEMENTING THE PHILIPPINE NATIONAL STANDARD SPECIFICATION FOR BIODIESEL AND BIOFUEL BLENDS PURSUANT TO REPUBLIC ACT NO. 9367, OTHERWISE KNOWN AS THE “BIOFUELS ACT OF 2006”

WHEREAS, Republic Act (R.A.) No. 7638, “An Act Creating the Department of Energy (DOE)”, tasks the DOE to formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution;

WHEREAS, Republic Act No. 8749, otherwise known as the “Philippine Clean Air Act of 1999”, directs the DOE, together with the Department of Environment and Natural Resources (DENR), Bureau of Product Standards (BPS), and Department of Science and Technology (DOST) and other stakeholders, to set specifications for all types of fuel and fuel-related products and improve fuel composition;

WHEREAS, Republic Act No. 9367, otherwise known as the “Biofuels Act of 2006”, mandates the use of biofuels to reduce dependence on imported fuels with due regard to the

protection of public health, the environment and natural ecosystems consistent with the country’s sustainable economic growth that would expand opportunities for livelihood;

WHEREAS, Republic Act No. 9367 mandates a minimum blend of biodiesel to diesel by volume respectively, provided, that the biofuel blend conforms to the Philippine National Standard (PNS);

WHEREAS, Department Circular No. DC 2007-05-0006, providing for the “Rules and Regulations Implementing Republic Act No. 9367”, and which took effect on June 8, 2007, instituted among others, the following PNS for biofuels:

PNS/DOE QS 2020:2003 – Coconut Methyl Ester (B100) Specification

PNS/DOE QS 007:2005 – Anhydrous Bioethanol Fuel Specification

PNS/DOE QS 008:2006 – E-Gasoline Fuel Specification

PNS/DOE QS 004:2007 – FAME-blended Diesel Oils Specification

WHEREAS, subsequently PNS/DOE QS 002:2007 was promulgated to supersede PNS/DOE QS 2020:2003 as the latest revision of quality standard specification for Coconut Methyl Ester (CME);

NOW, THEREFORE, the following guidelines are hereby adopted to effectively implement the Philippine National Standard for Coconut Methyl Ester (B100):

- (1) Starting on the effectivity of the Department Circular, only CME conforming to PNS/DOE QS 002:2007 shall be manufactured, sold, offered for sale, dispensed, or introduced into commerce as Biodiesel in the Philippines;
- (2) Only Fatty Acid Methyl Ester (FAME)-blended diesel conforming to PNS/DOE QS 004:2007 shall qualify under the National Biofuels Program;
- (3) Accordingly, only FAME-blended diesel conforming to PNS/DOE QS 004:2007 shall be allowed to be blended into base diesel and sold at the retail outlets (gasoline stations).
- (4) In order to protect against adulterated or off-specification products, it shall be the responsibility of the operator of the Retail Outlet or oil company to require his product supplier to provide a quality certification for every product delivery made prior to blending with base diesel.
- (5) To ensure the integrity of the products for retail, the Retail Outlet operator shall adhere to good housekeeping protocol particularly with regard to handling, storage and dispensing of biofuel blends. Correspondingly, the Oil Companies

shall ensure that their retail outlets and other customers are properly trained and equipped to handle, store and dispense biofuel blends.

- (6) Only qualified entities as determined by the DOE shall be allowed to import unblended or base diesel either for own use or commercial purposes. In order to qualify, said entities shall, prior to any importation, submit to the DOE a certification that they have the capability and capacity to blend imported unblended or base diesel with the required biofuel component. In addition, such entities shall fully comply with the Notice and Reportorial Requirements provided under Republic Act No. 8479, otherwise known as the *Downstream Oil Industry Deregulation Act of 1998*. Said acknowledged product importation shall be subject to proper blending with the biodiesel component prior to use or commercial sale.
- (7) Any person who shall commit any of the prohibited acts enumerated in RA 9367, this issuance and other issuances relative to the implementation of the Act and in pursuance of the mandate of the DOE, shall be subject to criminal and/or administrative action, in accordance with existing DOE rules and regulations or any subsequent rules and regulations or guidelines that shall be issued by the DOE.

This Department Circular shall take effect immediately following its publication in any newspaper of general circulation and shall remain in effect unless otherwise revoked or amended.

Fort Bonifacio, Taguig City, Metro Manila.
June 10, 2008.

ANGELO T. REYES
Secretary

DEPARTMENT CIRCULAR NO. DC2009-02-0002

MANDATING A MINIMUM OF 2% BLEND OF BIODIESEL IN ALL DIESEL AND 5% BIOETHANOL IN ANNUAL TOTAL VOLUME OF GASOLINE

WHEREAS, Section 5.1 of Republic Act No. 9367 or the “Biofuel Act of 2006” mandates that, “Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume. Provided, that the ethanol blend conforms to PNS.”;

WHEREAS, Section 5.3, paragraph 2 of Republic Act No. 9367 states, “Within two years from the effectivity of this Act, the NBB created under this Act, is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.”

WHEREAS, on January 19, 2009, the National Biofuels Board (NBB) established the viability of implementing the minimum blend of two percent (2%) for biodiesel sold and distributed by every oil company;

WHEREAS, in a resolution dated January 19, 2009, the NBB recommended to the DOE the implementation of the two percent (2%) blend (B2) for diesel;

NOW, THEREFORE, in consideration of the foregoing, all entities that distribute and sell petroleum fuel products are required to implement the following minimum biofuel blends by February 6, 2009, with specifications pursuant to the Philippine National Standards (PNS) for B2, and conventional gasoline and E10 grades:

- c. At least five percent (5%) bioethanol in the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country;

At least two percent (2%) blend of biodiesel by volume.

This Circular shall take effect immediately.

Signed this _____ day of February 2009 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

(Sgd)

ANGELO T. REYES

Secretary

DEPARTMENT CIRCULAR NO. DC2015 -06-0005

AMENDING DEPARTMENT CIRCULAR NO. 2011-02-0001 ENTITLED “MANDATORY USE OF BIOFUEL BLEND”

WHEREAS, as of 2014, the bioethanol requirement of the local market runs to as high as 455 million liters and it is projected that this will increase in the near future to an average of about 5% annually in order to meet the ten percent (10%) bioethanol blend requirement as required under Section 5.2 of the Biofuels Act of 2006 (Biofuels Act) and Department Circular No, 2011-02-0001;

WHEREAS, on 04 July 2013, the NBB recommended allowing the exemption of gasoline products of certain grade as one of the courses of actions that will address the problem in the best interest of the country as this will reduce our imports, encourage the local producers to increase their output and improve the power of choice at lower cost of the Filipino customers;

WHEREAS, on 12 May 2015, notwithstanding this consistently increasing demand, it was determined by the National Biofuels Board (NBB), through its Bioethanol Committee, during its Special NBB Meeting and from the consultation with the local bioethanol producers called by the Sugar Regulatory Administration (SRA) on 19 May 2015, that nine (9) years after the implementation of the Biofuels Act of 2006, locally-produced bioethanol, as of end 2014 accounts for only 27% of the total domestic bioethanol requirement or only 115 million liters;

WHEREAS, to address this shortage and enable the gasoline companies to comply with the ten percent (10%) minimum biofuels blend requirement, importation of this product was allowed to continue until now notwithstanding the fact that importation of bioethanol products is allowed only within four (4) years from the effectivity of

the Biofuels Act and only to the extent of the shortage as may be determined by the NBB; hence, importation of the products was supposed to be legally allowed only up to the year 2013;

WHEREAS, the massive increase in the bioethanol product from local sources, as expected with and envisioned by the passage of the Biofuels Act, did not materialize resulting in the continued deficit of the locally produced bioethanol products as compared to the demand, thus requiring the continued huge importation of this product in spite of the fact that it is no longer allowed under Section 5.2 of the Biofuels Act;

WHEREAS, while the Biofuels Act requires a minimum ten percent (10%) bioethanol blend on gasoline products, it also prohibits the importation of bioethanol after four (4) years from the effectivity thereof, thereby rendering it legally impossible to comply with both provisions of the Act;

WHEREAS, it is one of the legal principles observed in the Philippine jurisdiction that the law obliges no one to perform an impossible act; and

WHEREAS, the continued importation of bioethanol products benefits more the foreign suppliers than the interests of the affected domestic sectors; hence, it is high time that the government come up with a more innovative solution to address the problem in the best interest of the country while assuring the full utilization of all available locally produced bioethanol products.

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues, amends

and promulgates this Department Circular amending DC No. 2011-02-0001:

SECTION 1. Title. This Circular shall be known as the “Amended Guidelines on E-10 Implementation.”

SECTION 2. Scope and Application. This Circular shall apply to all entities involved in the Biofuels Program.

SECTION 3. Amendment to Section 3.2 of DC 2011-02-0001, Section 3.2 Exempt Gasoline Grade of DC2011-02-0001 is hereby amended by adding the following sub-section to read as follows:

x x x x

Section 3.2.1. Temporary Relaxation of Gasoline Grade. In consideration of the insufficiency of locally-produced bioethanol and to reduce the level of bioethanol importation, the ethanol blend requirement per PNS/DOE QS 008:2012 may be waived for Premium Plus Grade gasoline products (minimum 97 RON) temporarily during the period of deficiency in the locally produced bioethanol products opposite the demand, provided that the following shall be strictly complied with by the oil company-participant:

- 3.2.1.1 The oil company intending to make available non-E10 gasoline under this provision must file a proper notice to the OIMB informing such intention. Said filing must also identify the specific location/s wherein such non-E10 products shall be sold for proper monitoring and validation by the OIMB;
- 3.2.1.2 The actual minimum guaranteed octane at the

pump shall not be lower than 97 RON;

- 3.2.1.3 The dispenser unit must clearly indicate through proper labelling (see Annex 1) that the said gasoline is a non-E10 gasoline to clearly and distinctly distinguish it from other Premium Plus grade E10 products as a guide to the consuming public;
- 3.2.1.4 Regular monitoring of these outlets shall be conducted to ensure that only Premium Plus grade gasoline products are sold as neat/pure gasoline, as reported to the OIMB.”

X X X X

SECTION 4. Allocation of Locally-Produced Bioethanol. All locally-produced bioethanol shall continue to be allocated to the oil companies pursuant to the Revised Guidelines on the Utilization of Locally-Produced Bioethanol.

SECTION 5. LMA Computation. Notwithstanding the relaxation of the bioethanol blend requirement, the computation of the market share for LMA purpose as provided in Section 5 of this Circular shall still be based on the total gasoline sold (E10 and non-E10) by the oil company-participant so as not jeopardize the program of the local bioethanol producers and encourage increase in local capability. Only the imported bioethanol will be reduced in this scheme.

SECTION 6. Mandatory NBB Review. This relaxation from the bioethanol blend requirement shall be subject to a review upon recommendation by the NBB when circumstances so warrant

SECTION 7. Prohibited Acts and Penalties. Failure to comply with the provisions of this Circular shall be subject to penalty under Chapter VIII. Section 1 of Joint Administrative Order (JAO) 2008-1 Series of 2008

SECTION 8. Separability Clause. If for any reason, any section or provision of this circular is declared unconstitutional or invalid, such parts not affected shall continue to remain in full force and effect.

SECTION 9. Effectivity. This Circular shall be effective upon its publication in two (2)

newspapers of general circulation and shall remain in effect until revoked

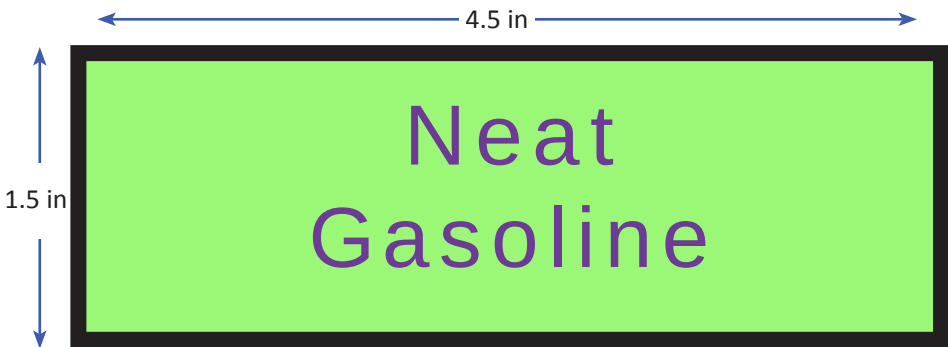
Issued at Energy Center, Bonifacio Global City, Taguig City.

Signed by:

CARLOS JERICO L. PETILLA
Secretary

ANNEX A

**Minimum Specification/Dimension
For E0 Gasoline Pump Labeling**



- Prints are violet while borders are black with light green as background
- Font type is Aria Black with size 32 in two lines

LABEL PROTECTION:

All labels must be resistant to gasoline, alcohol, oil grease, solvent, detergents, and water and must be capable of withstanding extreme weather conditions so that all entries in the sticker are clearly readable at all times.

DEPARTMENT CIRCULAR NO. DC2015 -06-0007

REVISED GUIDELINES ON THE UTILIZATION OF LOCALLY-PRODUCED BIOETHANOL IN THE PRODUCTION OF E-GASOLINE

WHEREAS, Department Circular No. 2011-12-0013 was issued on 15 December 2011 with the primary purpose of ensuring that all locally produced bioethanol by the accredited bioethanol producers are purchased and utilized by the oil companies before the latter are allowed to import supplemental bioethanol to comply with the Bioethanol mandate;

WHEREAS, through Department Circular No. 2011-12-0013, the mechanism or Local Monthly Allocation (LMA) and Notice of Allowable Bioethanol Importation (NABI) was institutionalized specifically to monitor actual bioethanol requirement and utilization of both local and imported bioethanol on a monthly basis, with non-compliance therewith to be subject to certain penalties;

WHEREAS, during its implementation, it has been determined and subsequently validated by all the oil companies, that planning, ordering, purchasing and scheduling deliveries for local and imported bioethanol were too tight especially when unprogrammed delays or cancellations of deliveries occur, thus, adversely affecting the stability, continuity and ability of the oil companies to make E- gasoline available in the market;

WHEREAS, during the 5-6 March 2013 Workshop in Antipolo City for the Review, Assessment and Consultation on the DOE Department Circulars participated in by all the stakeholders in the Bioethanol Program, various implementation issues were discussed and solutions were developed specifically to resolve and address future supply constraint through the review and amendment of DC No. 2011-12-0013;

WHEREAS, the amendments to the above-cited Circular were discussed and agreed upon by the National Biofuel Board in its Board Meeting of 4 July 2013 and further refined in succeeding Bioethanol Committee meetings of 24 February 2015 and 22 April 2015 and these amendments include:

1. the elimination of the notice of allowable bioethanol importation (NABI) and requirement of minimum inventory of the component to produce E10;
2. the consideration for major equipment breakdown;
3. the expanded definition of supply sales, the allowance of carry over for advance liftings, clarification of required reports and due dates;
4. all monthly volumes reported for the quarter by the local bioethanol producers are committed volumes;
5. reported committed volumes shall now be production and inventory;
6. submission of a Certificate of Sale of Bioethanol by both the local bioethanol producers and oil companies which shall be the basis of the former's sale and the latter's compliance with its local monthly allocation (LMA); and
7. submission by the oil companies of the Summary of Planned and Actual Lifting;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues, adopts and promulgates this Department Circular revising DC No. 2011-12-0013:

SECTION 1. Title. This Circular shall be known as file “*Revised Guidelines on the Utilization of Locally-Produced Bioethanol.*”

SECTION 2. Scope and Application. This Circular shall apply to all entities involved in the Biofuels Program.

SECTION 3. Definition of Terms. As used in this Circular, the following terms shall be understood to mean as follows:

- a. *Advance Lifting* refers to volume(s) lifted by an oil company beyond its LMA for the quarter and for volume(s) beyond the ethanol producers’ committed/projected volumes for the same quarter.
- b. *First Month of the Allocating Quarter* refers to the month when the Bioethanol Producers submit their committed volumes available for lifting for the succeeding quarter and when the OIMB circulates the Local Monthly Allocation (LMA) of the Oil Companies. For example, January 2015 is the Allocating Month for the 2nd quarter of 2015 (April - June).
- c. *Certificate of Sale of Bioethanol* refers to the Certificate issued by the local bioethanol supplier to the oil company after every bioethanol lifting made by the oil company
- d. *Contracted Volume* refers to the volume of locally-produced bioethanol which is agreed upon by a bioethanol producer with an oil company through a supply contract and is not available for direct sale to other oil companies.
- e. *Conventional, Neat, or Unblended gasoline* refers to gasoline not blended with any biofuel, and may be used interchangeably
- f. *E-Gasoline refers to unleaded gasoline blended with Bioethanol complying with the PNS* (e. g. E-10 is a blend of 10% Bioethanol and gasoline);

- g. *Force Majeure* refers to any act of God, fire, riot, war, civil unrest, natural disaster, accident, act of government which would prevent it from producing its committed volume.
- h. *Historical Sales* refers to the sales for the same period of previous year.
- i. *Lifting Month* refers to the month when Bioethanol Producers deliver the committed volume and when the Oil Companies lift the bioethanol products based on their LMA or adjusted LMA.
- j. *Locally produced Bioethanol* refers to Bioethanol derived from feedstock grown/planted, harvested and processed in the Philippines.
- k. *Local Monthly Allocation (LMA)* refers to the local bioethanol volume imposed on the Oil Companies based on the committed volume by the local bioethanol producers of bioethanol available for lifting by the Oil Companies and computed and circulated by the OIMB in compliance with the legal obligation of Oil Companies to use locally-sourced bioethanol before importing bioethanol that will be blended with gasoline to be sold in the Philippines;
- l. *Major Equipment Breakdown* refers to any unexpected equipment failure beyond the control of a bioethanol producer that requires a plant shutdown of five (5) days or more before normal operation can resume, as listed in Annex A.
- m. *Market Share* refers to an Oil Company’s percentage share in the total sales of gasoline sold in the Philippines based on historical sales of gasoline.
- n. *NBB* refers to the National Biofuel Board;
- o. *OIMB* refers to the DOE’s Oil Industry Management Bureau;

- p. *Procurement Plan* - see Summary of Monthly Planned Lifting;
- q. *REMB* refers to the DOE's Renewable Energy Management Bureau;
- r. *Summary of Monthly Planned/Actual Lifting*, which contains the lifting dates for the month, the name/s and address/es of the local bioethanol suppliers and the volume to be lifted as agreed upon by both the oil company and the local bioethanol supplier. Summary of Monthly Planned Lifting shall be submitted before the first day of the Lifting month while the Summary of Monthly Actual Lifting shall be submitted fifteen (15) days after the lifting month.
- s. *Supply Sales* refers to the sales of Bioethanol among refiners and oil importers for blending into their gasoline to be sold to end users. In the case of E10, supply sales shall refer to sales among oil industry participants.

SECTION 4. Obligations of the Bioethanol Producers. The Bioethanol Producers shall:

- a. Secure and maintain a DOE accreditation as a Bioethanol Producer.'
- b. Submit to the REMB on the first (1st) day of February of each year:
 - i. Copy of annual local government licenses and permits;
 - ii. Projected monthly production capacity for the current year for EP-95 (95% purity bioethanol) and EP-99.5 (99.5% purity bioethanol); and.
 - iii. Storage capacity for each location, product grade and tank as of the current year.
- c. Submit to the REMB not later than the first (1st) day of each Allocating month

the Monthly Volume Report containing:

- i. Committed volume available for lifting by the oil companies on the third (3rd) month (the "Lifting Month") succeeding the Allocating month. For example, for the Allocating month of January, the committed volume available for lifting on April, May and June shall be reported. Any Force Majeure Event or Major Equipment Breakdown that will result in non-compliance with committed volume for the allocating or succeeding months shall be included in this report; and.
 - ii. Contracted volume and volume available for lifting by other Oil Companies. Contracted volume shall be part of the committed volume but needs to be declared to apprise the other Oil Companies of the available volume of local bioethanol for lifting.
- d. Actively market their products, with due consideration to their production, storage and distribution capabilities, to the Oil Companies to establish a high level of trust and reliability between buyers and sellers leading to a more stable market share;
 - e. Reply within seven (7) calendar days upon receipt of any request on quotation and offer to buy from the Oil Companies. Failure to reply to the Oil Companies at the prescribed period shall automatically mean that a bioethanol producer is not capable of supplying the required volume of locally-produced bioethanol;
 - f. Issue the Certificate of Sale of Bioethanol to the Oil Company for every volume of bioethanol lifted; (Form- Annex B);
 - g. Improve distribution infrastructure and system to better serve the unique requirements of the downstream oil

industry, such as providing for isotanks/containers, consolidated or jointly operated storage tanks, etc.;

- h. Notify the DOE-REMB and all customers within 24 hours of any substantial disruption to production operations resulting from Force Majeure Event or Major Equipment Breakdown and submit a confirmatory report to DOE-REMB and all customers within 5 days from the occurrence of the breakdown. The confirmatory report shall contain the adjustments of the estimated committed volume and delivery schedules including the list of equipment / production facilities that broke down subject to validation by DOE-REMB, projected date of resumption of normal operations and repair plan. Otherwise, the confirmatory report shall contain an assurance that committed volume and deliveries would be met;
- i. Strictly comply with the committed monthly volume to be produced for a specific quarter as indicated in the Monthly Volume Report submitted to REMB. Failure to comply with said commitment shall constitute a prohibited act and shall be subject to penalties under Section 9 of this Circular; and
- j. Participate in the NBB Bioethanol Committee (NBB-BC) monthly meeting.

SECTION 5. Obligations of the Oil Companies.

The Oil Companies shall:

- a. Secure and maintain a DOE accreditation as an 'Oil industry Participant in the Fuel Bioethanol Program;'
- b. Notify in writing the OIMB every purchase of locally-produced bioethanol prior to actual lifting;
- c. Submit to the OIMB within the month of January of each year, the Performance

Compliance Report of the prior year containing its compliance with the minimum biofuel blends, as well as other information as may be required by the DOE. Such report shall be duly certified and signed by an authorized responsible officer of the Oil Company;

- d. Submit to OIMB the following Monthly Reports:
 - i. Summary of Monthly Planned Lifting not later than the first (1st) day of each month; (Form- Annex C);
 - ii. On the fifteenth (15th) day of each month:
 - 1. Activity reports as required under Republic Act No 8479. otherwise known as the "Downstream Oil Deregulation Act of 1998" and related issuances;
 - 2. Actual purchases of local and imported Bioethanol for the previous month, including the names and addresses of suppliers of Bioethanol, dates, volume and price (OISMD Schedule 1 & II- Annex D & E).
 - 3. Summary of Monthly Actual Lifting, together with the Certificate/s of Sale of Bioethanol issued by the local bioethanol producer; (Form - Annex F).
 - 4. At the end of each allocating quarter, its' Quarterly Procurement Plan of locally-produced bioethanol containing the names and addresses of the suppliers of bioethanol, lifting schedules, and volume of bioethanol to be lifted
- e. Ensure the monthly lifting of LMA that has been negotiated with the bioethanol producers although reckoning of LMA

compliance for purposes of penalties is on a quarterly basis;

- f. Furnish the OIMB with the relevant documentation of any offer to buy that was accepted or denied/un-responded to by the bioethanol producer before the 15th day of the second month of the allocating quarter;
- g. Maintain a 15-day minimum in-country inventory of blending components of E10 (neat gasoline and bioethanol fuel). The inventory shall include owned and contracted volumes located in the Free Port Zones;
- h. Strictly comply with the LMA. Failure to comply shall constitute a prohibited act and shall be subject to penalties under Section 9 of this Circular;
- i. Participate in the NBB Bioethanol Committee (NBB-BC) monthly meeting.

SECTION 6. Obligations of the REMB. The REMB shall:

- a. Accredite qualified 'Bioethanol Producers;'
- b. Provide the OIMB and the NBB reports of committed volumes per allocating period per producer within the time frame necessary for the preparation of the LMA and the actual sales per oil company consummated by the bioethanol producers for the Compliance Report.
- c. Monitor the operation, production and quality of the Bioethanol at source or production plant;
- d. Encourage, guide and assist the Bioethanol Producers to increase local production capacity and improve logistics to meet local demand at competitive prices;
- e. Conduct Information Educational and Communication (IECJ Campaigns to

promote the use of bioethanol and bioethanol-blends;

- f. Within fifteen (15) working days upon receipt of confirmatory report of any disruption to production operations of bioethanol production facilities due to Force Majeure Event or Major Equipment Breakdown, conduct site validation and submit a comprehensive report to the NBB Bioethanol Committee. The report shall include the list of equipment affected, the adjustments of committed volume and delivery schedules, if any, projected date of resumption of normal operations and the repair plan of the bioethanol producer;
- g. Monitor compliance of bioethanol producers with the monthly committed volumes although reckoning of compliance for purposes of penalties is on a quarterly basis. Report to the NBB Bioethanol Committee quarterly committed volume compliance of bioethanol producers;
- h. Require the bioethanol producers to submit their latest annual audited financial statements by May 15 of every year;
- i. Participate in the NBB Bioethanol Committee (NBB-BC) monthly meeting and report therein the quarterly compliance of the bioethanol producers with their committed and projected ethanol volumes for the quarter, as well as actual production and sales for the period.

SECTION 7. Obligations of the OIMB. The OIMB shall:

- a. Accredite qualified oil industry participants in the Fuel Bioethanol Program;
- b. On the 10th day of the first month of the Allocating Quarter, calculate and circulate the respective LMA of each Oil Company

for the Lifting Quarter in accordance with the report and recommendation of the NBB Bioethanol Committee, based on the average market share computed as follows:

- i. Determine the monthly gasoline (E0 and E10) sales of each Oil Company and the total industry for the previous year. For the computation of the LMA for the first quarter of the current year (January, February and March), all gasoline sales data of the Oil Companies for the same period of the previous year shall be the basis;
- ii. Determine the gasoline market share for the quarter of each Oil Company based on the above;
- iii. Determine the LMA for each Oil Company based on their respective gasoline market share and using the total monthly committed volumes of the local bioethanol producers for the subject quarter.

For a New Oil Company whose activity includes importation and distribution of gasoline, the LMA shall be computed using the percentage of historical local bioethanol production to total historical bioethanol demand, in lieu of Market Share, multiplied by ten percent (10%) of the estimated volume of its gasoline importation for the subject quarter, as shown in the formula hereunder. Such importation shall comply with the applicable DOE rules and regulations;

$$\text{LMA of a New Oil Company, kl} = \frac{(\text{Historical bioethanol production} \times 100\%)}{(\text{Estimated gasoline import (kl)} \times 10\%)} \times \text{\% historical bioethanol demand}$$

- c. In lieu of the NABI, strictly monitor compliance of Oil Companies with the monthly lifting of local bioethanol pursuant to the LMA, although reckoning of compliance for purposes of penalties is on a quarterly basis;

- d. Monitor compliance to the 15-day minimum in-country inventory of blending components of E10 (neat gasoline and bioethanol fuel);
- e. Upon agreement by the concerned bioethanol producer and Oil Company, carry over to the succeeding quarter advance liftings by the latter;
- f. Calculate the effect or adjustment in the pump price of gasoline sold in the Philippines based on the blending ratio. The share of ethanol price on the adjustment in the pump shall be based on the reported local and imported Bioethanol prices of the Oil Companies. It shall be the sum of the respective difference between the weighted average price of local and imported Bioethanol for the current and previous months.

The reported Bioethanol import price shall be validated using the average industry import cost and international ethanol price indices, while the reported local price shall be validated based on the agreed formula of the local Bioethanol producers using the SRA indices for the various feedstock. Further explanation or justification from the oil companies or Bioethanol producers or both shall be required as may be deemed necessary;

- g. Participate in the NBB Bioethanol Committee (NBB-BC) monthly meeting and report therein the quarterly compliance of the Oil Companies with the LMA.

SECTION 8. Obligations of the NBB. The NBB shall:

- a. Conduct the Monthly Allocation and Compliance Meeting among the Bioethanol Producers and Oil Companies every twenty-second (22nd) day of the month wherein the following shall be resolved:

- i. Oil Companies and Bioethanol Producers are given the opportunity to reconcile, adjust, and balance any shortfalls in the delivered or lifted bioethanol products. Purchases of local bioethanol under the Supply Sales arrangement can be credited as compliance with the LMA of the buyer. However, sales under the Supply Sales arrangement cannot form part of the seller's LMA;
 - ii. Other issues which the Bioethanol Producers or Oil Companies, DOE or NBB may wish to discuss; and,
 - iii. Compliance with the LMA for the previous quarter shall be verified every fifteenth (15th) day of April, July, October and January. The DOE shall commence the process of imposing the penalties or sanctions upon verification of any instance of non-compliance to commitment;
- b. Publish, through the Sugar Regulatory Administration (SRA), a monthly price index for bioethanol every first (1st) day of the month based on data from the Sugar Regulatory Administration (SRA) and Department of Agriculture (DA) as reference for the determination of the reasonableness of the price of Locally-Produced Bioethanol;
 - c. Resolve, through the NBB-BC, within Fifteen (15) days upon receipt of REMB report whether the substantial disruption in production operations will qualify as Force Majeure Event or Major Equipment Breakdown.
 - d. Recommend to the DOE the penalties to be imposed to Oil Companies and bioethanol producers who are found to be in violation of the provisions of DC 2011 -12-0013 and this Circular.
- a. Non-compliance with any of the foregoing provisions shall be considered as a prohibited act under Section 12(d) of the *Biofuels Act of 2006*. In the event of a criminal action against the offender, upon conviction thereof, the offender shall suffer the penalty of one (1) year to five (5) years imprisonment and a fine ranging from a minimum of One Million Pesos (Php1,000,000.00) to Five Million Pesos (Php5,000,000.00);
 - b. The DOE shall confiscate any amount of such products that fail to comply with the requirements of Section 4 and 5 of the *Biofuels Act of 2006*, and implementing issuances of the DOE. The DOE shall determine the appropriate process and the manner of disposal and utilization of the confiscated products. The DOE is also empowered to stop and suspend the operation of businesses for refusal to comply with any order of instruction of the DOE Secretary in the exercise of his functions under the *Biofuels Act of 2006*. Further, the DOE is empowered to impose administrative fines and penalties for any violation of the provisions of the Biofueis Act of 2006, implementing rules and regulations and other issuances relative to the *Biofuels Act of 2006*;
 - c. Pursuant to the authority granted by the *Biofuels Act of 2006*, the DOE shall, upon complaint or *motu proprio*, hear and decide administrative cases pertaining To the following violations of the law:
 - i. Prohibited acts under Section 12 (b) to (e) of the *Biofuels Act of 2006*, Section 33, Rule 9 of DC No. 2007-05-0006, and Section 1, Chapter VIII of JAO No. 2008-1.
 - ii. Refusal of businesses to comply with any order or instruction of the DOE Secretary in the exercise of his functions under the *Biofuels Act of 2006*.

SECTION 9. Prohibited Acts and Penalties.

d. In addition to the sanctions and penalties provided in this Circular, the DOE shall impose the following fines on any person, natural or juridical, found to be in violation of this Circular;

i. Five hundred pesos (Php500) for every liter of locally-produced bioethanol not purchased based on prescribed LMA reckoned aggregately on a quarterly basis:

ii. Five hundred pesos (Php500) for every liter of non-production of committed volume for reasons other than Force Majeure Event and qualified Major Equipment Breakdown as validated by REMB and resolved by the NBB-BC, reckoned aggregately on a quarterly basis and for bioethanol diverted, whether locally-produced or imported, for purposes other than those stated in the Biofuels Act of 2006, Its Implementing Rules and Regulations, Joint Administrative Order (JAO) No. 2008-1, series of 2008, entitled "Guidelines Governing the Biofuels Feedstocks Production and Biofuels and Biofuel Blend Production, Distribution and Sale under Republic Act No. 9367", the Certificate of Registration issued by the DOE, and any administrative

issuances that may be subsequently promulgated.

SECTION 10. Repealing Clause. DOE Circular No. 2011-12-0013 and other issuances inconsistent with this Circular are hereby deemed repealed, amended or modified accordingly.

SECTION 11, Separability Clause. If for any reason, any section or provision of this circular is declared unconstitutional or invalid, such parts not affected shall continue to remain in full force and effect.

SECTION 12. Periodic Review. This Circular shall be reviewed by the NBB when the circumstances so warrant.

SECTION 13. Effectivity. This Circular shall be effective upon its publication in two (2) newspapers of general circulation and shall remain in effect until revoked.

Issued at Energy Center. Bonifacio Global City, Taguig City.

Signed by:

CARLOS JERICO L. PETILLA
Secretary

ANNEX A

LIST OF MAJOR EQUIPMENT

1. Instrumentation

1.1. Distillery UPS

1.2. DCS (Boiler, Mill & Distillation)

2. Distillery

2.1. Distilling Columns, Condenser and Reboiler - Leakage and Material Failure

2.1.1. Mash

2.1.2. Dealdehyde

2.1.3. Rectifier

2.1.4. Recovery

2.1.5. Dehydration

2.2. Cooling Tower for Fermentation and Distillation

2.2.1. Induced Draft Fan Assembly

ANNEX B

CERTIFICATE OF SALE OF BIOETHANOL

This is to Certify that based on our records, **(Name of Oil Company/Buyer)** with business address at _____, has purchased the amount of **(volume purchased in KL)** of bioethanol covering the LMA period **(e.g. Jan -March LMA)** and lifted the amount of **(volume lifted in KL)** on **(date of lifting)**, **(If the lifted volume is in behalf of another oil company/buyer, the Bioethanol Producer should indicate the name of this company for whom the lifted volume is intended.)**

This Certification is being issued pursuant to the provision of Department Circular No. 2011-12-0013 on the Utilization of Locally-Produced Bioethanol in the Production of E-gasoline consistent with Biofuels Act of 2006

(Place of Issuance),

(Date of Issuance)

Issuing Bioethanol producer
(Signature over printed name)

Conforme (by Oil Company/Buyer Representative):

(Signature over printed name)

Note 1: The term 'sale' shall refer to the actual lifting of the bioethanol from the local producer/seller's facility.

Note 2: Date of sale/lifting shall be the referenced date in the determination of compliance to the LMA for a particular period. Lifting date shall be reckoned from start of loading the vessel up to full load of vessel.

Note 3: A certificate of sale shall be issued per lifting commenced.

Note 4: The certificate shall be submitted by the oil company to OIMB on the 15th day of the succeeding month after the reporting month, as part of the attachment/proof for the Monthly Bioethanol reports submitted.

Note 5: The Procurement plan shall now be replaced with the submission of the agreed 'Lifting Schedule' between the Bioethanol Local producer and the oil company. The 'Summary of the Lifting Schedule' for the month shall be submitted on or before the 15th day of the succeeding month after the reporting month. For the consequent months of the lifting Quarter, the "Lifting Schedule" shall be submitted before the beginning of the lifting month.

ANNEX C

SUMMARY OF MONTHLY PLANNED LIFTINGS

Republic of the Philippines
Department of Energy
Oil Industry Management Bureau (OIMB)

OIMB Form MR-E2
(February 2015)

Oil Company	Contact Tel. No.	Reporting Month
Prepared By: (Signature over printed name)	Reviewed By: (Signature over printed name)	Due Date: Before the beginning of the Lifting month

Bioethanol Producer	Volume lifted (in thousand lifters, KL)	Date of Lifting	LMA period covered

Conforme (by Local Producer):

Signature over printed name

ANNEX D

BIOETHANOL LOCAL PURCHASES

Republic of the Philippines Department of Energy Oil Industry Management Bureau (OIMB)	Revised OISMD Schedule I

Oil Company	Contact Tel. No.	Reporting Month (ex. July)
Prepared By:	Reviewed By:	Due Date: (ex. August 15) 15th of succeeding month to
(Signature over printed name)	(Signature over printed name)	the Reporting Month

Bioethanol Producer	Volume (in kl)	Actual Price	Date Lifted	DOE PLR Ref. No.	Period Covered by LMA

[illegible]

Note: Information to be included in this report should be based on corresponding import documents (e.g. Commercial Invoice; Bill of Lading)

*quantity in KL/CBM/bbl@20degreesC.

** cost component to be converted to \$/bbl. Based on the price indicated in the commercial invoice.

cost component to be converted to \$/bbl. *** country where the bioethanol originated

**** For Subic source, loading and arrival date could be replaced by lifting period.

Please ensure that every column of the report is properly and completely accomplished as every item in the report is important for OIMB's monitoring. DOE Ref# will help facilitate the monitoring of importation vis-a-vis NABI

ANNEX F

SUMMARY OF MONTHLY ACTUAL LIFTINGS

Republic of the Philippines Department of Energy Oil Industry Management Bureau (OIMB)	Revised OISMD Schedule I

Oil Company	Contact Tel. No.	Reporting Month
Prepared By:	Reviewed By:	Due Date
(Signature over printed name)	(Signature over printed name)	15th day of the succeeding month after the Reporting Month

Bioethanol Producer	Volume (in thousand liters, KL)	Date of Lifting	LMA period covered

DEPARTMENT CIRCULAR NO. DC2015 -07-0012

IMPLEMENTING THE PHILIPPINE NATIONAL STANDARD SPECIFICATION FOR ANHYDROUS BIOETHANOL FUEL

WHEREAS, Republic Act No. 7638, “An Act Creating the Department of Energy (DOE)”, tasks the DOE to formulate rules and regulations as may be necessary to guide government and private entities involved in energy resource supply and distribution;

WHEREAS, bioethanol is an energy resource that is environment-friendly, renewable and can be produced locally such that if blended with petroleum products, would support the Government’s five point energy independence program as well as the DOE’s thrust towards the development of indigenous and renewable energy resources, thus increasing the use of alternative fuels for the transport sector;

WHEREAS, in 2005, the DOE has adopted the Fuel Bioethanol Program to promote the use of bioethanol and has issued Department Circular No. 2006-06-011 entitled “Interim Guidelines for Accreditation of Oil Industry Participants in the Fuel Bioethanol Program,” providing for accreditation guidelines for Oil Industry Participants for the effective monitoring and implementation of the Fuel Bioethanol Program, ensuring also therein quality conformance of both imported and locally manufactured bioethanol to the Philippine National Standard (PNS).

WHEREAS, Republic Act No. 8749, otherwise known as the “Philippine Clean Air Act of 1999”, mandates the use of environmentally clean fuels which meet specified emission standards and directs the DOE, together with the Department of Environment and Natural Resources (DENR), Bureau of Philippine Standards (BPS), and the Department of Science and Technology (DOST) and other stakeholders, to set specifications for all types of fuel and fuel-related products and improve

fuel composition;

WHEREAS, in compliance with the above mandate, PNS /DOE QS 008:2012 for E-gasoline was promulgated and is now being implemented through the issuance of Department Circular No. DC 2013-09-0021 while PNS/DOE QS 007:2014 for Anhydrous Bioethanol and Bioethanol Fuel Specification which is used as blending component of E-gasoline, was promulgated by the BPS on May 6, 2014.

NOW, THEREFORE, in consideration of all the foregoing, the DOE hereby issues, adopts and promulgates the following:

SECTION 1. Standard Implementation.

Upon the effectivity of this Department Circular local bioethanol producers shall comply with PNS/DOE QS 007:2014 for their bioethanol and bioethanol fuel production while accredited Oil Industry Participants in the Fuel Bioethanol Program shall purchase bioethanol conforming to the said PNS.

SECTION 2. Quality Reporting Requirement.

All accredited Oil Industry Participants engaged in the importation of bioethanol and/or denaturing of the same shall submit to the DOE, a Certificate of Quality of the imported or locally purchased bioethanol within twenty (20) days after unloading from the source, showing conformance to all the properties listed in PNS/DOE QS 007:2014. This submission shall form part of the reportorial requirements of the oil companies and failure or refusal to submit the same shall be deemed a prohibited act.

Further, all Oil Industry Participants shall ensure that their imported and/or locally-

purchased bioethanol contains the desired and appropriate corrosion inhibitor additive for bioethanol.

SECTION 3. Information Campaign. Oil Industry Participants shall ensure that their gasoline retail outlets personnel are fully aware and conversant about the products that they sell/dispense at the retail stations. Moreover, Oil Industry Participants are enjoined to provide necessary information through, among others, the conduct of Information Education Campaigns to their customers, especially on their new product brand.

SECTION 4. Penalties / Sanctions. Any person who fails to comply with the provisions of this Department Circular shall be subject to appropriate sanctions imposed under applicable laws and implementing rules and regulations.

SECTION 5. Repealing Clause. All circulars and other issuances not consistent with this Circular are hereby deemed modified or repealed accordingly.

SECTION 6. Effectivity and Publication. This Circular shall be effective upon its publication in two (2) newspapers of general circulation and shall remain in effect until revoked.

Fort Bonifacio, Taguig City, Metro Manila,
June 29, 2015.

Signed by:

CARLOS JERICHO L. PETILLA
Secretary

Chapter V

MEMORANDUM CIRCULAR NO. 55

DIRECTING ALL DEPARTMENTS–BUREAUS, OFFICES AND INSTRUMENTALITIES OF THE GOVERNMENT, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS TO INCORPORATE THE USE OF ONE PERCENT (1%) BY VOLUME COCONUT METHYL ESTER IN THEIR DIESEL REQUIREMENTS

WHEREAS, under Section 2 (a) of R.A. No. 7638, known as the “Department of Energy Act of 1992”, it is declared the policy of the State to ensure a continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country’s energy requirements through the integrated and intensive exploration, production, management and development of the country’s indigenous energy resources, without sacrificing ecological concerns;

WHEREAS, under Sections 2 and 4 (a) of R.A. No. 8749, known as “The Philippine Clean Air Act (PCAA) of 1999”, it is declared the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature and recognize the citizens’ right to breathe clean air;

WHEREAS, the government is a major user of motor vehicles operating on diesel fuel;

WHEREAS, the Coconut Methyl Ester (CME) blended with petroleum diesel fuel can reduce harmful emissions such as carbon particulates and greenhouse gases thereby improving air quality and at the same time improving the performance of the engines;

WHEREAS, the World-wide Fuel Charter states that based on the technical effects of fatty acid methyl esters (FAME), which include CME, “... it is strongly advised the FAME content be restricted to less than or at five percent (5%).”

WHEREAS, the use of CME in the petroleum industry will create a new and significant application for coconut oil and reinvigorate the Philippine coconut industry through the creation of a new domestic market and increased productivity, thereby improving the lives of coconut farmers.

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. All departments, bureaus, offices and instrumentalities of the Government, including government-owned and controlled corporations, are hereby directed to use one percent (1%) CME by volume as a blend in petroleum diesel fuel.

SECTION 2. The Department of Energy (DOE) shall be the lead implementing agency for the CME-Diesel Program. The DOE shall coordinate with various government agencies

and private entities involved in CME activities and shall prepare a strategic plan outlining national goals in the development and expanded utilization of CME and provide policy direction for the effective implementation and monitoring of the program.

SECTION 3. The Philippine Coconut Authority (PCA) is hereby directed to include in its national program for the coconut industry the development of the supply chain for CME, and in consultation/coordination with the other government agencies and the private sector, shall formulate a program to encourage investment and technology for the production of CME to meet the needs of the domestic market.

SECTION 4. The DOE, in coordination, with the concerned government agencies shall formulate and issue the necessary implementing rules and regulations within thirty (30) days after the effectivity of this Circular.

SECTION 5. All departments, bureaus, offices

and instrumentalities of the Government, including government-owned and controlled corporations, are hereby directed to provide the necessary resources which will be utilized to implement the CME program subject to existing auditing and accounting rules and regulations.

SECTION 6. All orders, issuances, rules and regulations or parts thereof, which are inconsistent with this Circular are hereby repealed or modified accordingly.

SECTION 7. If for any reason or reasons, any part of this circular is declared unconstitutional or invalid, the validity of the other provisions shall not be affected by such declaration.

SECTION 8. This Memorandum Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 9th day of February, in the year of Our Lord, Two Thousand and Four.

DEPARTMENT CIRCULAR NO. DC 2004-04-003

RULES AND REGULATIONS IMPLEMENTING MEMORANDUM CIRCULAR NO. 55

Pursuant to Section 4 of Memorandum Circular No. 55 issued by the Office of the President on February 9, 2004, directing all departments, bureaus, offices, agencies and instrumentalities of the government, including government-owned and -controlled corporations to incorporate the use of one percent (1%) by volume Coconut Methyl Ester in their diesel requirements, the Department of Energy, in consultation with concerned government agencies and private entities, hereby promulgates and adopts the following rules and regulations.

SECTION 1. *Title.* – This Department Circular shall be known and cited as the *RULES AND REGULATIONS IMPLEMENTING MEMORANDUM CIRCULAR NO. 55.*

SECTION 2. *Objective.* – The purpose of this Department Circular is to provide guidelines on the implementation of Memorandum Circular No. 55.

SECTION 3. *Scope and Coverage.* – This Department Circular shall apply to all land transport diesel vehicles owned or registered in the name of all departments, bureaus,

offices, agencies and instrumentalities of the government, including government-owned and controlled corporations and local government units.

SECTION 4. *Definition of Terms.* –

- (a) “Coconut Methyl Ester or CME” – as defined by PNS 2020:2003, shall refer to fatty ester derived from coconut oil whose alkyl groups range in varying percentage from C8 to C18 suitable for compression ignition engines and other similar types of engines.
- (b) “CME-Diesel” – shall refer to diesel fuel with 1% blend of coconut methyl ester. The ratio of CME-Diesel blend is thus defined as 1% CME and 99% of diesel fuel.
- (c) “Product Registration” – shall refer to the fuel additive registration requirement under Section 12 of Republic Act (R.A.) No. 8479 (*Downstream Oil Industry Deregulation Law of 1998*) and Section 27 of R.A. No. 8749 (*Philippine Clean Air Act of 1999*).
- (d) “Accreditation” – shall refer to the certification issued to a CME manufacturer/supplier having complied with the prescribed technical criteria (to include, among others, capability to manufacture PNS-compliant CME, distribution network, etc.) of the DOE.
- (e) “PNS” – shall refer to the Philippine National Standard established by the inter-agency committee, Technical Committee on Petroleum Products and Additives (TCPA), created pursuant to R.A. No. 8749, on quality parameters, values, and limits of petroleum products including CME.
- (f) “Diesel Requirements” – shall refer to the diesel fuel consumption of all land transport diesel vehicles as defined in

Section 3 of this Department Circular.

SECTION 5. *Roles and Responsibilities of Agencies.* – The Department of Energy (DOE), created pursuant to R.A. No. 7638, shall be the lead implementing agency for the CME Program in petroleum applications beginning with the CME-Diesel blend. The DOE shall coordinate with various government agencies and private entities involved in CME activities and shall provide policy direction for the effective implementation of the program. The DOE shall register CME products, accredit CME manufacturers/suppliers and monitor the quality of CME. The DOE shall prepare a strategic plan outlining national goals in the development, utilization and promotion of CME.

The Department of Environment and Natural Resources (DENR), created pursuant to E.O. No. 192, shall coordinate with DOE and DOTC in terms of data generation of the results of emission testing using CME which will serve as inputs in the emission standard-setting necessary to maintain air quality.

The Department of Science and Technology (DOST), created pursuant to R.A. No. 2067, through the Philippine Council for Industry and Energy Research and Development (PCIERD) and Industrial Technology Development Institute (ITDI), shall coordinate and provide support on research and development works on the production and application of CME being undertaken by the academe, research institutions and others.

The Department of Transportation and Communications (DOTC), created pursuant to Executive Order Nos. 546 and 125-A, shall monitor and test emissions of CME-Diesel-run vehicles and provide DOE with annual statistics and inventory of land transport diesel vehicles owned and registered in the name of all departments, bureaus, offices, agencies and instrumentalities of the government, including government-owned and controlled corporations and local government units.

The Department of Trade and Industry (DTI), created pursuant to Executive Order No. 133, through the Board of Investments (BOI) may provide incentives to investment on CME production in conjunction with coconut processing provided that the resulting CME product conforms to PNS 2020:2003 promulgated by the Bureau of Product Standards (BPS).

The Department of Finance (DOF), created pursuant to Executive Order Nos. 127 and 127-A, shall develop and recommend fiscal and nonfiscal incentives as it may deem appropriate for participating petroleum and oleochemical companies to promote the sustainable development of this program.

The Philippine Coconut Authority (PCA), created pursuant to Presidential Decree No. 232, in partnership with coconut farmers, processors, refiners and traders shall ensure security of coconut oil supply by undertaking an aggressive program for planting, replanting, fertilization, agricultural research and development, and rehabilitation of the coconut industry and shall formulate a program to encourage investments and technology for the production of CME to meet the needs of the domestic market.

SECTION 6. Supply and Distribution of 1% CME-Diesel. – In the supply and distribution of 1% CME-Diesel the following guidelines shall be observed:

Table for Blending 1% CME

Diesel (in liters)	5	10	15	20	25	30	35	40	50
CME (in milliliters)	50	100	150	200	250	300	350	400	500

**For simplicity in implementation, above CME volume (in milliliters) were rounded off.*

- (a) Each government agency shall be solely responsible for the blending of CME for its diesel fuel requirements.
- (b) CME suppliers shall ensure sufficient supply and efficient distribution of CME based on the government agency's

specific requirements including storage, mode of procurement and existing logistics and infrastructure.

- (c) CME suppliers shall make the product available in small packages for government agencies without storage tanks/dispensing pumps, in recyclable/refillable containers.
- (d) CME requirements of the government agencies including government-owned and controlled corporations and their subsidiaries shall only be procured from DOE-accredited suppliers of DOE-registered CME products.
- (e) The DOE Energy Utilization Management Bureau (EUMB) shall issue accreditation to CME manufacturers/suppliers subject to the applicant's submission of an effective distribution scheme, IEC and after-sales support program, among others.
- (f) The DOE shall provide all government agencies with list of accredited CME manufacturers/suppliers and registered CME products.

SECTION 7. Mechanics of Blending. – CME can be blended directly in the diesel fuel tank or may be pre-blended with diesel fuel using the table below as guide.

SECTION 8. CME Quality Monitoring. – To ensure appropriate quality, government agencies shall procure CME only from suppliers accredited by the DOE-EUMB and whose CME has been duly registered by the DOE Oil Industry Management Bureau (OIMB) pursuant to R.A. No. 8479 and R.A. No. 8749.

CME products shall be properly labeled (i.e., DOE registration number, supplier and accreditation number, batch information/details including manufacture and expiry date, etc.) and must be accompanied by a Quality Certificate indicating the level for its properties (e.g., flash point, water and sediment, kinematic viscosity, copper strip corrosion, cloud point, acid number, free and total glycerine).

The DOE OIMB and Energy Research and Testing Laboratory Services (ERTLS) shall conduct random spot sampling and laboratory testing and analysis of CME products both at the manufacturing and distribution/marketing levels to determine compliance with PNS. The DOE Visayas and Mindanao Field Offices (VFO/MFO) shall conduct the sampling of CME products in their respective areas and forward the same to ERTLS. A monthly summary report shall be submitted to the Policy Advisory Group.

SECTION 9. Reportorial Requirements. – All government agencies shall submit monthly reports to the DOE EUMB. Reports from the Visayas and Mindanao shall be coordinated and collated by the DOE VFO/MFO and submitted to EUMB. The EUMB shall submit a monthly summary to the Policy Advisory Group. The report shall contain the following information:

- (a) Source of CME and diesel;
- (b) Purchase price;
- (c) Volume of CME and diesel fuel consumption;
- (d) Mileage; and
- (e) General observations (e.g., emissions, engine performance, among others).

SECTION 10. Information Database. – The DOE, in coordination with DOTC, DOST, DENR, PCA and other concerned entities, shall develop a database on vehicle information and CME-diesel fuel source and volume

requirements of government agencies including government-owned and controlled corporations and other related data which shall be accessible to the public in accordance with the guidelines provided in the rules implementing R.A. No. 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*.

DOE, in coordination with concerned entities, shall conduct audit on the data gathered and determine the integrity and accuracy of such data.

SECTION 11. Policy Advisory Group. – A Policy Advisory Group is hereby created to provide policy guidance in the implementation of this Department Circular. It shall be headed by a DOE Undersecretary to be assisted by second-ranking officials of DENR, DOST, DOTC, DTI, DOF, PCA, representative of the Office of the President and the CME manufacturers/suppliers.

SECTION 12. Working Group. – A Working Group, to be chaired by DOE and composed of DENR, DOST-PCIERD/ITDI, DOTC, DTI-BOI/BPS, DOF, PCA, DBM, DILG, DND, academe/research institutions (Technological University of the Philippines, Asian Institute of Petroleum Studies, Inc., Philippine National Oil Company–Energy Research and Development Center), oil companies, CME producers/suppliers, Chamber of Automotive Manufacturers of the Philippines Inc. (CAMPI), transport groups and other concerned entities, shall be created to:

- (a) Formulate a strategic plan outlining the national goals in the development of CME;
- (b) Conduct field tests and evaluate CME-related research/activities of various research and development institutions;
- (c) Evaluate the effects of CME on engines and fuel systems including, but not limited to, engine performance (power,

torque and durability), emissions, safety (storage, transport/handling and use) and economics (cost-benefit);

- (d) Formulate procedures and methodologies for monitoring emissions and operational performance;
- (e) Formulate safety standards in the storage, transport/handling, packaging and use of CME products;
- (f) Conduct information, education and communication (IEC) activities to induce public awareness;
- (g) Identify and address concerns of stakeholders (i.e., oil companies and car manufacturers) on the national CME program (i.e., product liability, supply sustainability, etc.);
- (h) Submit quarterly assessment reports and recommendations to the Policy Advisory Group;
- (i) Perform other CME-related functions as may be assigned by the Policy Advisory Group.

SECTION 13. Budget Appropriation. – Budget for the implementation of this program shall be chargeable to the available funds of the respective agencies subject to the usual accounting and auditing rules and regulations.

The procurement and supply of CME and diesel shall be done in accordance with R.A. No. 9184, otherwise known as the

Government Procurement Reform Act and its implementing rules and regulations.

SECTION 14. Sanctions. – Any person who violates any provision of this Department Circular shall be imposed the corresponding criminal, civil and/or administrative sanctions as provided under existing applicable laws, rules and regulations.

SECTION 15. Final Provisions. – All Department orders, rules and regulations inconsistent with or contrary to the provisions of this Department Circular are hereby repealed and modified accordingly.

If any provision of this Department Circular or the application of said provision to any person or circumstances is declared unconstitutional, the remainder of the Circular or the application of such provision to other persons or circumstances shall not be affected by the said declaration.

SECTION 16. Effectivity. – This Department Circular shall take effect ninety (90) days from the date of its publication in at least two (2) newspapers of general circulation.

The duration of this program shall be one (1) year from the effectivity of this Department Circular.

Fort Bonifacio, Taguig, Metro Manila, March 29, 2004.

VICENTE S. PÉREZ, JR.

PROMOTING THE USE OF COCO-BIODIESEL AS AN ALTERNATIVE CLEAN FUEL

WHEREAS, Republic Act No. 7638, *An Act Creating the Department of Energy* declares that it shall be the policy of the State to develop the country's indigenous energy resources taking into consideration the active participation of the private sector in the various areas of energy resource development.

WHEREAS, Republic Act 8749, otherwise known as the *Clean Air Act* mandates the use of environmentally clean fuels which meets specified emission standards to ensure a clean and healthy air for the citizenry and to contribute to the global effort of reducing Greenhouse Gases (GHG).

WHEREAS, the world crude oil reserve is near halfway mark and projected to be critical by the year 2040.

WHEREAS, it is imperative to address problem by actively pursuing development of clean fuels through alternative energies for the long-term energy security of the country.

WHEREAS, the development of alternative energies such as CNG, LNG, LPG, and Ethanol although underway, still require considerable leadtime for the needed logistic infrastructure and replacement or modification of engines.

WHEREAS, Coco-Biodiesel as a fuel is already in commercial production and is immediately available to supply 1% of the country's diesel fuel volume and requires no logistic infrastructure nor engine modifications for its full implementation.

WHEREAS, in recognizing the excellent environmental and economic potential of

Coco-Biodiesel, President Gloria Macapagal-Arroyo signed Memorandum Circular No. 55 (2004) mandating government agencies, offices and instrumentalities to mix 1% blend of Coco-Biodiesel in the fuel of their vehicles as the first step before full implementation of a national Coco-Biodiesel program.

WHEREAS, the Department of Energy has been tasked to monitor and ensure its compliance and success. However, its implementation is constrained by the lack of supply points.

WHEREAS, there is a need to develop the local market to enhance interest in accelerating coconut replanting as well as in promoting the entry of new plant investments.

NOW THEREFORE, premises considered the Department establishes the following guidelines:

- (1) Oil companies operating in the Philippines are enjoined to support the alternative energy program of the Department by making available Coco-Biodiesel (in bottle) as a retail shelf item in all their gas stations nationwide subject to the following requirements:
 - (a) The coco-biodiesel brand name must be duly registered with the Department of Energy and must have been issued a Certificate of Fuel Additive Registration No. (CFAR No.) by the Department of Energy to ensure proper quality of the product;
 - (b) The brand owner of the Coco-Biodiesel shall carry the product liability risk in the unlikely event that

damage to an engine can be proven as being caused by such Coco-Biodiesel brand;

(c) The supplier of such Coco-Biodiesel brand (and/or the oil company itself) shall conduct proper technical briefing, seminar, or training to gas station dealers to ensure that the benefits of coco-biodiesel can be properly communicated, explained, and promoted to the motoring public so that misconception, misinformation, or simply lack of knowledge, may not unduly destroy or sabotage the Coco-Biodiesel program.

(2) Oil companies are requested to lend the expertise of their Technical Managers

in the development of renewable fuels similar to the support given by auto manufacturers.

(3) Local Government Units (LGU's) are likewise enjoined to issue the proper ordinances to ensure compliance with this Circular.

This Circular shall take effect immediately.

Fort Bonifacio, Taguig, Metro Manila, March 1, 2005

VINCENT S. PÉREZ
Secretary

Supreme Court MEMORANDUM CIRCULAR NO. 07-2004

IN RE: USE OF COCONUT METHYL ESTER (CME) IN THE DIESEL REQUIREMENTS OF THE COURTS

WHEREAS, Her Excellency President Gloria Macapagal-Arroyo on 9 February 2004 signed Memorandum Circular No. 55 directing all departments, bureaus, offices and instrumentalities of the government including government-owned and controlled corporations to incorporate the use of one percent (1%) by volume Coconut Methyl Ester (CME) in their diesel requirements;

WHEREAS, pursuant to Section 4 of said Memorandum Circular, the Department of Energy, in consultation with concerned government agencies and private entities issued Department Circular No. DC 2004-04-003 dated 29 March 2004 to provide guidelines on the implementation of Memorandum Circular No. 55;

WHEREAS, on 27 April 2004, the Honorable Secretary Vincent S. Perez, Jr. of the Department of Energy (DOE) requested the Honorable Chief Justice to enjoin its various offices to support the program;

WHEREAS, the Court, through the Office of Administrative Services, has coordinated with the DOE as to the use, supply, mechanics of blending of CME with diesel fuel;

WHEREAS, the Supreme Court and collegiate courts under its supervision use motor vehicles operating on diesel fuel;

WHEREAS, the use of CME blended with petroleum diesel fuel can reduce harmful emission such as carbon particulates and greenhouse gases thereby improving air

quality and at the same time improving the performance of the engines.

NOW, THEREFORE, in compliance with Memorandum Circular No. 55 and pursuant to the implementing rules and regulations issued by the DOE:

(a) The Chief Administrative Officer of the Supreme Court is hereby directed to instruct the Chief, Motorpool Section, Property Division to:

- (1) make an inventory of all motor vehicles of the Court, including those of the Presidential Electoral Tribunal, the Philippine Judicial Academy, the Judicial and Bar Council and the Office of the Court Administrator, operating on diesel fuel;
- (2) disseminate information to all chauffeurs/drivers of the aforementioned diesel-fed vehicles as to the use of CME;
- (3) purchase CME from authorized dealers for use in all Court's diesel-fed vehicles; and

(4) make, monthly reports on the use of CME to the Energy Utilization Management Bureau, DOE as required in Section 9 of DOE's DC No.-2004-04-03.

(b) The Presiding Justices of the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals shall likewise instruct their respective Chief Administrative Officer to direct the Chief of their Motorpool Section, Property Division, to do the same as stated in (A) above insofar as their Courts are concerned.

Further, all officials and employees of the Judiciary who own vehicles operating on diesel fuel are hereby enjoined to support the program on the use of CME in their diesel requirements.

This Memorandum Circular shall take effect upon its issuance.

Issued this 23rd day of June 2004.

HILARIO G. DAVIDE, JR.
Chief Justice

Office of the President
MEMORANDUM CIRCULAR NO. 184

DIRECTING ALL DEPARTMENTS, BUREAUS, OFFICES AND INSTRUMENTALITIES OF THE GOVERNMENT, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS TO USE TEN PERCENT (10%) BY VOLUME BIOETHANOL IN THEIR GASOLINE REQUIREMENTS

WHEREAS, under Section 2 (a) of R. A. No. 7638, known as the "Department of Energy Act of 1992", it is declared the policy of the State to ensure a continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management and development

of the country's indigenous energy resources without sacrificing ecological concerns;

WHEREAS, under Sections 2 and 4 (a) of R.A. No. 8749, known as "The Philippine Clean Air Act (PCAA) of 1999", it is declared the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and

harmony of nature and recognize the citizen's right to breathe clean air;

WHEREAS, Republic Act No. 9367 or the "Biofuels Act of 2006" was passed in 2006 as a measure to "ensure the availability of alternative and renewable clean energy, without any detriment to the natural ecosystem, biodiversity and food reserves of the country", thereby mandating a "minimum ten percent (10%) blend of bioethanol by volume (Sec. 5.2);"

WHEREAS, the Government is a major user of motor vehicles operating on gasoline fuel;

WHEREAS, the bioethanol blended with petroleum gasoline fuel can reduce harmful emissions and carbon monoxide thereby improving air quality;

WHEREAS, the World Wide Fuel Charter permits the blend of bioethanol up to ten percent (10%) by volume;

WHEREAS, the use of bioethanol in the petroleum industry will reinvigorate the Philippine sugar industry through the creation of a new domestic market and increased productivity, thereby improving the lives of sugarcane farmers;

WHEREAS, ten percent (10%) bioethanol blended gasoline fuel is available in the gasoline retail stations nationwide;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. All departments, bureaus, offices and instrumentalities of the Government, including, including government-owned and controlled corporations, are hereby directed to strictly purchase E10 blended gasoline fuel from oil companies/gas stations as fuel for their motor vehicles operating on gasoline fuel.

SECTION 2. The DOE, in coordination with the concerned government agencies, shall formulate and issue the necessary implementing rules and regulations within thirty (3) days after the effectivity of this Circular.

SECTION 3. All departments, bureaus, offices and instrumentalities of the Government, including government-owned and controlled corporations are hereby directed to provide the necessary resources to be utilized to implement the utilization of E10 blended gasoline fuel, subject to existing auditing and accounting rules and regulations.

SECTION 4. The DOE shall conduct information, education and communication (IEC) activities to induce public awareness, identify the concerns of stakeholders on the use of E10 blended gasoline fuel and take the necessary steps in order to address them.

SECTION 5. All departments, bureaus, offices and instrumentalities of the Government, including GOCCs, shall issue internal directive in their respective offices implementing this Circular not later than one (1) month after the effectivity hereof, copy of which shall be furnished to the Office of the President and the Department of Energy.

SECTION 6. All orders, issuances, rules and regulations or parts thereof, which are inconsistent with this Circular are hereby repealed or modified accordingly.

SECTION 7. If for any reason or reasons, any part of this Circular is declared unconstitutional or invalid, the validity of other provisions shall not be affected by such declaration.

SECTION 8. This Memorandum Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 26th day of October, in the year of Our Lord, Two Thousand and Nine.

Chapter VI

ADMINISTRATIVE ORDER NO. 228

ADDRESSING THE RISING COST OF ENERGY

I, GLORIA M. ARROYO, President of the Philippines, by the powers vested in me by law, do hereby order:

SECTION 1. All agencies shall reduce transport fuel consumption in liters by ten percent (10%) starting June 2008.

SEC. 2. Government buildings shall turn off airconditioners at 4:30 p.m., except those with 24-hour work.

SEC. 3. Agencies shall implement, starting July, plans to replace all incandescent bulbs.

SEC. 4. Agencies shall convert twenty percent (20%) of their vehicles in major cities to

liquefied petroleum gas by September 2008.

SEC. 5. Agencies shall install and/or adopt other energy saving technology, with the help of the Department of Energy and/or the Department of Science and Technology.

Done on this 2nd day of June in the year of Our Lord, Two Thousand and Eight.

(sgd)
GLORIA MACAPAGAL-ARROYO

By the President:

EDUARDO R. ERMITA
Executive Secretary

Chapter VII

REPUBLIC ACT NO. 8749

AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES

Chapter I General Provisions

Article 1 Basic Air Quality Policies

SECTION 1. *Short Title.* – This Act shall be known as the “*Philippine Clean Air Act of 1999.*”

SECTION 2. *Declaration of Principles.* – The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

The State shall promote and protect the global environment to attain sustainable development while recognizing the primary responsibility of local government units to deal with environmental problems.

The State recognizes that the responsibility of cleaning the habitat and environment is primarily area-based.

The State also recognizes the principle that “polluters must pay.”

Finally, the State recognizes that a clean and healthy environment is for the good of all and should, therefore, be the concern of all.

SECTION 3. *Declaration of Policies.* – The State shall pursue a policy of balancing development and environmental protection. To achieve this end, the framework for sustainable development shall be pursued. It shall be the policy of the State to:

- (a) Formulate a holistic national program of air pollution management that shall be implemented by the government through proper delegation and effective coordination of functions and activities;
- (b) Encourage cooperation and self-regulation among citizens and industries through the application of market-based instruments;
- (c) Focus primarily on pollution prevention rather than on control and provide for a comprehensive management program for air pollution;
- (d) Promote public information and education to encourage the participation of an informed and active public in air quality planning and monitoring; and
- (e) Formulate and enforce a system of accountability for short and long-term adverse environmental impact of a project, program or activity. This shall include the setting up of a funding or

guarantee mechanism for clean-up and environmental rehabilitation and compensation for personal damages.

SECTION 4. *Recognition of Rights.* – Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:

- (a) The right to breathe clean air;
- (b) The right to utilize and enjoy all natural resources according to the principle of sustainable development;
- (c) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
- (d) The right to participate in the decision-making process concerning development policies, plans and programs, projects or activities that may have adverse impact on the environment and public health;
- (e) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;
- (f) The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act;
- (g) The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and

- (h) The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

Article 2

Definition of Terms

SECTION 5. *Definitions.* – As used in this Act:

- a) “Air pollutant” means any matter found in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, and the inert gases in their natural or normal concentrations, that is detrimental to health or the environment, which includes, but not limited to smoke, dust, soot, cinders, fly ash, solid particles of any kind, gases, fumes, chemical mists, steam and radio-active substances;
- b) “Air pollution” means any alteration of the physical, chemical and biological properties of the atmospheric air, or any discharge thereto of any liquid, gaseous or solid substances that will or is likely to create or to render the air resources of the country harmful, detrimental, or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes;
- c) “Ambient air quality guideline values” means the concentration of air over specified periods classified as short-term and long-term which are intended to serve as goals or objectives for the protection of health and/or public welfare. These values shall be used for air quality management purposes such as determining time trends, evaluating stages of deterioration or enhancement of the air quality, and in general, used as basis for taking positive action in preventing, controlling, or abating air pollution;

- d) “Ambient air quality” means the general amount of pollution present in a broad area; and refers to the atmosphere’s average purity as distinguished from discharge measurements taken at the source of pollution;
- e) “Certificate of Conformity” means a certificate issued by the Department of Environment and Natural Resources to a vehicle manufacturer/assembler or importer certifying that a particular new vehicle or vehicle type meets the requirements provided under this Act and its rules and regulations;
- f) “Department” means the Department of Environment and Natural Resources;
- g) “Eco-profile” means the geographic-based instrument for planners and decision-makers which present an evaluation of the environmental quality and carrying capacity of an area. It is the result of the integration of primary data and secondary data and information on natural resources and anthropogenic activities on the land which are evaluated by various environmental risk assessment and forecasting methodologies that enable the Department to anticipate the type of development control necessary in the planning area;
- h) “Emission” means any air contaminant, pollutant, gas stream or unwanted sound from a known source which is passed into the atmosphere;
- i) “Greenhouse gases” means those gases that can potentially or can reasonably be expected to induce global warming, which include carbon dioxide, methane oxides of nitrogen, chlorofluorocarbons, and the like;
- j) “Hazardous substances” means those substances which present either: (1) short-term acute hazards such as acute toxicity by ingestion, inhalation, or skin absorption, corrosivity or other skin or eye contact hazard or the risk of fire explosion; or (2) long-term toxicity upon repeated exposure, carcinogenicity (which in some cases result in acute exposure but with a long latent period), resistance to detoxification process such as biodegradation, the potential to pollute underground or surface waters;
- k) “Infectious waste” means that portion of medical waste that could transmit an infectious disease;
- l) “Medical waste” means the materials generated as a result of patient diagnosis, treatment, or immunization of human beings or animals;
- m) “Mobile source” means any vehicle propelled by or through combustion of carbon-based or other fuel, constructed and operated principally for the conveyance of persons or the transportation of property goods;
- n) “Motor vehicle” means any vehicle propelled by a gasoline or diesel engine or by any other means than human or animal power, constructed and operated principally for the conveyance of persons or the transportation of property or goods in a public highway or street open to public use;
- o) “Municipal waste” means the waste materials generated from communities within a specific locality;
- p) “New vehicle” means a vehicle constructed entirely from new parts that has never been sold or registered with the DOTC or with the appropriate agency or authority, and operated on the highways of the Philippines, any foreign state or country;

- q) “Octane Rating or the Anti-Knock Index (AKI)” means the rating of the anti-knock characteristics of a grade or type of automotive gasoline as determined by dividing by two (2) the sum of the Research Octane Number (RON), plus the Motor Octane Number (MON); the octane requirement, with respect to automotive gasoline for use in a motor vehicle or a class thereof, whether imported, manufactured, or assembled by a manufacturer, shall refer to the minimum octane rating of such automotive gasoline which such manufacturer recommends for the efficient operation of such motor vehicle, or a substantial portion of such class, without knocking;
- r) “Ozone Depleting Substances (ODS)” means those substances that significantly deplete or otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment such as, but not limited to, chlorofluorocarbons, halons and the like;
- s) “Persistent Organic Pollutants (POPs)” means the organic compounds that persist in the environment, bioaccumulate through the food web, and pose a risk of causing adverse effects to human health and the environment. These compounds resist photolytic, chemical and biological degradation, which shall include but not be limited to dioxin, furan, Polychlorinated Biphenyls (PCBs), organochlorine pesticides, such as aldrin, dieldrin, DDT, hexachlorobenzene, lindane, toxaphene and chlordane;
- t) “Poisonous and toxic fumes” means any emissions and fumes which are beyond internationally-accepted standards, including but not limited to the World Health Organization (WHO) guideline values;
- u) “Pollution control device” means any device or apparatus used to prevent, control or abate the pollution of air caused by emissions from identified pollution sources at levels within the air pollution control standards established by the Department;
- v) “Pollution control technology” means the pollution control devices, production process, fuel combustion processes or other means that effectively prevent or reduce emissions or effluent;
- w) “Standard of performance” means a standard for emissions of air pollutant which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirement which the Department determines, and adequately demonstrates; and
- x) “Stationary source” means any building or immobile structure, facility or installation which emits or may emit any air pollutant.

Chapter II

Air Quality Management System

Article 1

General Provisions

SECTION 6. *Air Quality Monitoring and Information Network.* – The Department shall prepare an annual National Air Quality Status Report which shall be used as the basis in formulating the Integrated Air Quality Improvement Framework, as provided for in Section 7. The said report shall include, but shall not be limited to the following:

- a) Extent of pollution in the country, per type of pollutant and per type of source, based on reports of the Department’s monitoring stations;

- b) Analysis and evaluation of the current state, trends and projections of air pollution at the various levels provided herein;
- c) Identification of critical areas, activities, or projects which will need closer monitoring or regulation;
- d) Recommendations for necessary executive and legislative action; and
- e) Other pertinent qualitative and quantitative information concerning the extent of air pollution and the air quality performance rating of industries in the country.

The Department, in cooperation with the National Statistical Coordination Board (NSCB), shall design and develop an information network for data storage, retrieval and exchange.

The Department shall serve as the central depository of all data and information related to air quality.

SECTION 7. *Integrated Air Quality Improvement Framework.* – The Department shall within six (6) months after the effectivity of this Act, establish, with the participation of LGUs, NGOs, POs, the academe and other concerned entities from the private sector, formulate and implement the Integrated Air Quality Improvement Framework for a comprehensive air pollution management and control program. The framework shall, among others, prescribe the emission reduction goals using permissible standards, control strategies and control measures to be undertaken within a specified time period, including cost-effective use of economic incentives, management strategies, collective action and environmental education and information.

The Integrated Air Quality Improvement Framework shall be adopted as the official

blueprint with which all government agencies must comply with to attain and maintain ambient air quality standards.

SECTION 8. *Air Quality Control Action Plan.*

– Within six (6) months after the formulation of the framework, the Department shall, with public participation, formulate and implement an air quality control action plan consistent with Section 7 of this Act. The action plan shall:

- a) Include enforceable emission limitations and other control measures, means or techniques, as well as schedules and time tables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;
- b) Provide for the establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality;
- c) Include a program to provide for the following: (1) enforcement of the measures described in subparagraph (a); (2) regulation of the modification and construction of any stationary source within the areas covered by the plan, in accordance with land use policy to ensure that ambient air quality standards are achieved;
- d) Contain adequate provisions, consistent with the provisions of this Act, prohibiting any source or other types of emissions activity within the country from emitting any air pollutant in amounts which will significantly contribute to the non-attainment or will interfere with the maintenance by the Department of any such ambient air quality standard required to be included in the implementation plan to prevent significant deterioration of air quality or to protect visibility;

- e) Include control strategies and control measures to be undertaken within a specified time period, including cost effective use of economic incentives, management strategies, collection action and environmental education and information;
- f) Designate airsheds; and
- g) All other measures necessary for the effective control and abatement of air pollution.

The adoption of the plan shall clarify the legal effects on the financial, manpower and budgetary resources of the affected government agencies, and on the alignment of their programs with the plans.

In addition to direct regulations, the plan shall be characterized by a participatory approach to the pollution problem. The involvement of private entities in the monitoring and testing of emissions from mobile and/or stationary sources shall be considered.

Likewise, the LGUs, with the assistance from the Department, shall prepare and develop an action plan consistent with the Integrated Air Quality Improvement Framework to attain and maintain the ambient air quality standards within their respective airsheds as provided in Section 9 hereof.

The local government units shall develop and submit to the Department a procedure for carrying out the action plan for their jurisdiction. The Department, however, shall maintain its authority to independently inspect the enforcement procedure adopted. The Department shall have the power to closely supervise all or parts of the air quality action plan until such time the local government unit concerned can assume the function to enforce the standards set by the Department.

A multi-sectoral monitoring team with broad public representation shall be convened by the Department for each LGU to conduct periodic inspections of air pollution sources to assess compliance with emission limitations contained in their permits.

SECTION 9. *Airsheds.* – Pursuant to Section 8 of this Act, the designation of airsheds shall be on the basis of, but not limited to, areas with similar climate, meteorology and topology which affect the interchange and diffusion of pollutants in the atmosphere, or areas which share common interest or face similar development programs, prospects or problems.

For a more effective air quality management, a system of planning and coordination shall be established and a common action plan shall be formulated for each airshed.

To effectively carry out the formulated action plans, a Governing Board is hereby created, hereinafter referred to as the Board.

The Board shall be headed by the Secretary of the Department of Environment and Natural Resources as chairman. The members shall be as follows:

- a) Provincial Governors from areas belonging to the airshed;
- b) City/Municipal Mayors from areas belonging to the airshed;
- c) A representative from each concerned government agency;
- d) Representatives from people's organizations;
- e) Representatives from non-government organizations; and
- f) Representatives from the private sector.

The Board shall perform the following functions:

- a) Formulation of policies;
- b) Preparation of a common action plan;
- c) Coordination of functions among its members; and
- d) Submission and publication of an annual Air Quality Status Report for each airshed.

Upon consultation with appropriate local government authorities, the Department shall, from time to time, revise the designation of airsheds utilizing eco-profiling techniques and undertaking scientific studies.

Emissions trading may be allowed among pollution sources within an airshed.

SECTION 10. *Management of Non-attainment Areas.* – The Department shall designate areas where specific pollutants have already exceeded ambient standards as non-attainment areas. The Department shall prepare and implement a program that will prohibit new sources of exceeded air pollutant without a corresponding reduction in existing resources.

In coordination with other appropriate government agencies, the LGUs shall prepare and implement a program and other measures including relocation, whenever necessary, to protect the health and welfare of residents in the area.

For those designated as nonattainment areas, the Department, after consultation with local government authorities, non-government organizations (NGOs), people’s organizations (POs) and concerned sectors may revise the designation of such areas and expand its coverage to cover larger areas depending on the condition of the areas.

SECTION 11. *Air Quality Control Techniques.* – Simultaneous with the issuance of the guideline values and standards, the Department, through the research

and development program contained in this Act and upon consultation with the appropriate advisory committees, government agencies and LGUs, shall issue, and from time to time, revise information on air pollution control techniques.

Such information shall include:

- a) Best available technology and alternative methods of prevention, management and control of air pollution;
- b) Best available technology economically achievable which shall refer to the technological basis/standards for emission limits applicable to existing, direct industrial emitters of non-conventional and toxic pollutants; and
- c) Alternative fuels, processes and operating methods which will result in the elimination or significant reduction of emissions.

Such information may also include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact or the emission control technology.

The issuance of air quality guideline values, standards and information on air quality control techniques shall be made available to the general public: *Provided*, That the issuance of information on air quality control techniques shall not be construed as requiring the purchase of certain pollution control devices by the public.

SECTION 12. *Ambient Air Quality Guideline Values and Standards.* – The Department, in coordination with other concerned agencies, shall review and/or revise and publish annually a list of hazardous air pollutants with corresponding ambient guideline values and/or standard necessary to protect public health and safety, and general welfare. The initial list and values of the hazardous air pollutants shall be as follows:

a) For National Ambient Air Quality Guideline for Criteria Pollutants:

Pollutants	Short Term ^a			Long Term ^b		Ave. Time
	µg/Ncm	ppm	Averaging Time	µg/Ncm	ppm	
Suspended Particulate Matter-TSP ^c	230 ^d		24 hours	90	----	1 year ^e
-PM-10	150 ^f		24 hours	60	----	1 year ^e
Sulfur Dioxide ^e	180	0.07	24 hours	80	0.03	1 year
Nitrogen Dioxide	150	0.08	24 hours	----	----	----
Photochemical Oxidants	140	0.07	1 hour Pollutants	----	----	----
As Ozone	60	0.03	8 hours	----	----	----
Carbon Monoxide 35	30 mg/Ncm	1 hour	----	----	----	----
	10 mg/Ncm	9	8 hours	----	----	----
Lead ^g	1.5	----	3 months ^g	1.0	----	1 year

^a Maximum limits represented by ninety-eight percentile (98%) values not to be exceed more than once a year.

^b Arithmetic mean

^c SO₂ and Suspended Particulate matter are sampled once every six days when using the manual methods. A minimum of twelve sampling days per quarter of forty-eight sampling days each year is required for these methods. Daily sampling may be done in the future once continuous analyzers are procured and become available.

^d Limits for Total Suspended Particulate Matter with mass median diameter less than 25-50 µm.

^e Annual Geometric Mean

^f Provisional limits for Suspended Particulate Matter with mass median diameter less than 10 microns and below until sufficient monitoring data are gathered to base a proper guideline.

^g Evaluation of this guideline is carried out for 24-hour averaging time and averaged over three moving calendar months. The monitored average value for any three months shall not exceed the guideline value.

b) For National Ambient Air Quality Standards for Source Specific Air Pollutants from:

Industrial Sources/ Operations:

Pollutants ¹	Concentration ²		Averaging time (min.)	Method of Analysis/ Measurement ³
	µ/Ncm	ppm		
1. Ammonia	200	0.28	30	Nesslerization/ Indo Phenol
2. Carbon Disulfide	30	0.01	30	Tischer Method
3. Chlorine and Chlorine Compounds expressed as Cl ₂	100	0.03	5	Methyl Orange
4. Formaldehyde	50	0.04	30	Chromotropic acid Method or MBTH Colorimetric Method
5. Hydrogen Chloride	200	0.13	30	Volhard Titration with Iodine Solution
6. Hydrogen Sulfide	100	0.07	30	Methylene Blue
7. Lead	20		30	AASc
8. Nitrogen Dioxide	375,260	0.20,0.14	30,60	Greiss-Saltzman
9. Phenol	100	0.03	30	4-Aminoantiphrine
10. Sulfur Dioxide	470, 340	0.18, 0.13	30,60	Colorimetric-Pararosaniline
11. Suspended Particulate Matter-TSP	300	----	60	Gravimetric

¹ Pertinent ambient standards for Antimony, Arsenic, Cadmium, Asbestos, Nitric Acid and Sulfuric Acid Mists in the 1978 NPCC Rules and Regulations may be considered as guides in determining compliance.

² Ninety-eight percentile (98%) values of 30-minute sampling measured at 250C and one atmosphere pressure.

³ Other equivalent methods approved by the Department may be used.

The basis in setting up the ambient air quality guideline values and standards shall reflect, among others, the latest scientific knowledge including information on:

- a) Variable, factors, including atmospheric conditions, which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;
- b) The other types of air pollutants which may interact with such pollutant to produce an adverse effect on public health or welfare; and
- c) The kind and extent of all identifiable effects on public health or welfare which may be expected from presence of such pollutant in the ambient air, in varying quantities.

The Department shall base such ambient air quality standards on World Health Organization (WHO) standards, but shall not be limited to nor be less stringent than such standards.

SECTION 13. *Emission Charge System.* – The Department, in case of industrial dischargers, and the Department of Transportation and Communication (DOTC), in case of motor vehicle dischargers, shall, based on environmental techniques, design, impose on and collect regular emission fees from said dischargers as part of the emission permitting system or vehicle registration renewal system, as the case may be. The system shall encourage the industries and motor vehicles to abate, reduce, or prevent pollution. The basis of the fees include, but is not limited to, the volume and toxicity of any emitted pollutant. Industries, which shall install pollution control devices or retrofit their existing facilities with mechanisms that reduce pollution shall be entitled to tax incentives such as but not limited to tax credits and/or accelerated depreciation deductions.

SECTION 14. *Air Quality Management Fund.*

– An Air Quality Management Fund to be administered by the Department as a special account in the National Treasury is hereby established to finance containment, removal, and clean-up operations of the Government in air pollution cases, guarantee restoration of ecosystems and rehabilitate areas affected by the acts of violators of this Act, to support research, enforcement and monitoring activities and capabilities of the relevant agencies, as well as to provide technical assistance to the relevant agencies. Such fund may likewise be allocated per airshed for the undertakings herein stated.

The Fund shall be sourced from the fines imposed and damages awarded to the Republic of the Philippines by the Pollution Adjudication Board (PAB), proceeds of licenses and permits issued by the Department under this Act, emission fees and from donations, endowments and grants in the forms of contributions. Contributions to the Fund shall be exempted from donor taxes and all other taxes, charges or fees imposed by the Government.

SECTION 15. *Air Pollution Research and Development Program.*

– The Department, in coordination with the Department of Science and Technology (DOST), other agencies, the private sector, the academe, NGOs and POs, shall establish a National Research and Development Program for the prevention and control of air pollution. The Department shall give special emphasis to research on and the development of improved methods having industry-wide application for the prevention and control of air pollution.

Such a research and development program shall develop air quality guideline values and standards in addition to internationally-accepted standards. It shall also consider the socio-cultural, political and economic implications of air quality management and pollution control.

Article 2

Air Pollution Clearances and Permits for Stationary Sources

SECTION 16. *Permits.* – Consistent with the provisions of this Act, the Department shall have the authority to issue permits as it may determine necessary for the prevention and abatement of air pollution.

Said permits shall cover emission limitations for the regulated air pollutants to help attain and maintain the ambient air quality standards. These permits shall serve as management tools for the LGUs in the development of their action plan.

SECTION 17. *Emission Quotas.* – The Department may allow each regional industrial center that is designated as special airshed to allocate emission quotas to pollution sources within its jurisdiction that qualify under an environmental impact assessment system programmatic compliance program pursuant to the implementing rules and regulations of Presidential Decree No. 1586.

SECTION 18. *Financial Liability for Environmental Rehabilitation.* – As part of the environmental management plan attached to the environmental compliance certificate pursuant to Presidential Decree No. 1586 and rules and regulations set therefor, the Department shall require program and project proponents to put up financial guarantee mechanisms to finance the needs for emergency response, clean-up rehabilitation of areas that may be damaged during the program or project's actual implementation. Liability for damages shall continue even after the termination of a program or project, where such damages are clearly attributable

to that program or project and for a definite period to be determined by the Department and incorporated into the environmental compliance certificate.

Financial liability instruments may be in the form of a trust fund, environmental insurance, surety bonds, letters of credit, as well as self-insurance. The choice of the guarantee instrument or combinations thereof shall depend, among others, on the assessment of the risks involved. Proponents required to put up guarantee instruments shall furnish the Department with evidence of availment of such instruments.

Article 3

Pollution from Stationary Sources

SECTION 19. *Pollution From Stationary Sources.* – The Department shall, within two (2) years from the effectivity of this Act, and every two (2) years thereafter, review, or as the need therefor arises, revise and publish emission standards, to further improve the emission standards for stationary sources of air pollution. Such emission standards shall be based on mass rate of emission for all stationary sources of air pollution based on internationally-accepted standards, but not be limited to, nor be less stringent than such standards and with the standards set forth in this section. The standards, whichever is applicable, shall be the limit on the acceptable level of pollutants emitted from a stationary source for the protection of the public's health and welfare.

With respect to any trade, industry, process and fuel-burning equipment or industrial plant emitting air pollutants, the concentration at the point of emission shall not exceed the following limits:

Pollutants	Standard Applicable to Source	Maximum Permissible Limits (mg/Ncm)	Method of Analysis ^a
1. Antimony and Its compounds	Any source	10 as Sb	AAS ^b
2. Arsenic and its compounds	Any source	10 as As	AAS ^b
3. Cadmium and its compounds	Any source	10 as Cd	AAS ^b
4. Carbon Monoxide	Any industrial Source	500 as CO	Orsat analysis
5. Copper and its Compounds	Any industrial source	100 as Cu	AAS ^b
6. Hydrofluoric Acids and Fluoride compounds	Any source other than the manufacture of Aluminum from Alumina	50 as HF	Titration with Ammonium Thiocyanate
7. Hydrogen Sulfide	i) Geothermal Power Plants	c, d	Cadmium Sulfide Method
	ii) Geothermal Exploration and well-testing	e	
	iii) Any source other than (i) and (ii)	7 as H ₂ S	Cadmium Sulfide Method
8. Lead	Any trade, industry or process	10 as Pb	AAS ^b
9. Mercury	Any Source	5 as elemental Hg	AAS ^b /Cold-Vapor Technique or Hg Analyzer
10. Nickel and its compounds, except Nickel Carbonyl ^f	Any source	20 as Ni	AAS ^b
11. NO _x	i) Manufacture of Nitric Acid	2,000 as acid and NO _x and calculated as NO ₂	Phenol-disulfonic acid Method
	ii) Fuel burning steam generators	1,500 as NO ₂	Phenol-disulfonic acid Method
	Existing Source	1,000 as NO ₂	
	New Source	500 as NO ₂	
	• Coal-Fired		
	• Oil-Fired		
iii) Any source other than (i) and (ii)	Existing Source	1000 as NO ₂	Phenol-disulfonic acid Method
	New Source	500 as NO ₂	
12. Phosphorus Pentoxide	Any source	200 as P ₂ O ₅	Spectrophotometry
13. Zinc and its Compounds	Any source	100 as Zn	AAS ^b

^a Other equivalent methods approved by the Department may be used.

^b Atomic Absorption Spectrophotometry

^c All new geothermal power plants starting construction by 01 January 1995 shall control H₂S emissions to not more than 150 g/GMW-Hr

^d All existing geothermal power plants shall control H₂S emissions to not more than 200 g/GMW-Hr within 5 years from the date of effectivity of these revised regulations.

^e Best practicable control technology for air emissions and liquid discharges. Compliance with air and water quality standards is required.

^f Emission limit of Nickel Carbonyl shall not exceed 0.5 mg/Ncm.

^g Provisional Guideline

Provided, That the maximum limits in mg/NCM particulates in said sources shall be:

1. Fuel Burning Equipment	
a) Urban or Industrial Area	150 mg/Ncm
b) Other Area	200 mg/Ncm
2. Cement Plants (Kilns, etc.)	150 mg/Ncm
3. Smelting Furnaces	150 mg/Ncm
4. Other Stationary Sources ^a	200 mg/Ncm

^a Other Stationary Sources means a trade, process, industrial plant, or fuel burning equipment other than thermal power plants, industrial boilers, cement plants, incinerators and smelting furnaces.

Provided, further, That the maximum limits for sulfur oxides in said sources shall be:

(1) Existing Sources	
(i) Manufacture of Sulfuric Acid and Sulf(on)ation Process	2.0gm.Ncm as SO ₃
(ii) Fuel burning Equipment	1.5gm.Ncm as SO ₂
(iii) Other Stationary Sources ^a	1.0gm.Ncm as SO ₃
(2) New Sources	
(i) Manufacture of Sulfuric Acid and Sulf(on)ation Process	1.5 gm.Ncm as SO ₃
(ii) Fuel Burning Equipment	0.7 gm.Ncm as SO ₂
(iii) Other Stationary Sources ^a	0.2 gm.Ncm as SO ₃

^a Other Stationary Sources refer to existing and new stationary sources other than those caused by the manufacture of sulfuric acid and sulfonation process, fuel burning equipment and incineration.

For stationary sources of pollution not specifically included in the immediately preceding paragraph, the following emission standards shall not be exceeded in the exhaust gas:

I. Daily And Half Hourly Average Values

	Daily Average Values	Half Hourly Average Values
Total dust	10 mg/m ³	30 mg/m ³
Gaseous and vaporous organic substances, expressed as total organic carbon	10 mg/m ³	20 mg/m ³
Hydrogen chloride (HCl)	10 mg/m ³	60 mg/m ³
Hydrogen fluoride (HF)	1 mg/m ³	4 mg/m ³
Sulfur dioxide (SO ₂)	50 mg/m ³	200 mg/m ³
Nitrogen monoxide (NO) and Nitrogen dioxide (NO ₂), expressed as nitrogen dioxide for incineration plants with a capacity exceeding 3 tonnes per hour	200 mg/m ³	400 mg/m ³
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as nitrogen dioxide for incineration plants with a capacity of 3 tonnes per hour or less	300 mg/m ³	
Ammonia	10 mg/m ³	20 mg/m ³

II. All the Average Values Over the Sample Period of a Minimum of 4 and Maximum of 8 Hours.

Cadmium and its compounds, expressed as cadmium (Cd)	total 0.05
Thallium and its compounds, expressed as thallium (Tl)	mg/m ³
Mercury and its Compounds, expressed as mercury (Hg)	0.05 mg/m ³
Antimony and its compounds, expressed as antimony (Sb)	
Arsenic and its compounds, expressed as arsenic (As)	total 0.5 mg/m ³
Lead and its compounds, expressed as lead (Pb)	
Chromium and its compounds, expressed as chromium (Cr)	
Cobalt and its compounds, expressed as cobalt (Co)	
Copper and its compounds, expressed as copper (Cu)	
Manganese and its compounds, expressed as manganese (Mn)	
Nickel and its compounds, expressed as nickel (Ni)	
Vanadium and its compounds, expressed as vanadium (V)	
Tin and its compounds, expressed as tin (Sn)	

These average values cover also gaseous and the vapor forms of the relevant heavy metal emissions as well as their compounds: *Provided*, That the emission of dioxins and furans into the air shall be reduced by the most progressive techniques: *Provided, further*, That all average of dioxin and furans measured over the sample period of a minimum of 6 hours and maximum of 8 hours must not exceed the limit value of 0.1 nanogram/m³.

Pursuant to Section 8 of this Act, the Department shall prepare a detailed action plan setting the emission standards or standards of performance for any stationary source, the procedure for testing emissions for each type of pollutant, and the procedure for enforcement of said standards.

Existing industries, which are proven to exceed emission rates established by the Department in consultation with stakeholders, after a thorough, credible and transparent measurement process shall be allowed a grace period of eighteen (18) months for the establishment of an environmental management system and the installation of an appropriate air pollution control device: *Provided*, That an extension of not more than twelve (12) months may be allowed by the Department on meritorious grounds.

SECTION 20. Ban on Incineration. – Incineration, hereby defined as the burning of municipal, biomedical and hazardous waste, which process emits poisonous and toxic fumes is hereby prohibited: *Provided, however*, That the prohibition shall not apply to traditional small-scale method of community/neighborhood sanitation “*siga*”, traditional, agricultural, cultural, health, and food preparation and crematoria: *Provided, further*, That existing incinerators dealing with a biomedical wastes shall be phased out within three (3) years after the effectivity of this Act: *Provided, finally*, that in the interim, such units shall be limited to the burning of pathological and infectious wastes, and subject to close monitoring by

the Department.

Local government units are hereby mandated to promote, encourage and implement in their respective jurisdiction a comprehensive ecological waste management that includes waste segregation, recycling and composting.

With due concern on the effects of climate change, the Department shall promote the use of state-of-the-art, environmentally-sound and safe non-burn technologies for the handling, treatment, thermal destruction, utilization, and disposal of sorted, unrecycled, uncomposted municipal, biomedical and hazardous wastes.

Article 4

Pollution from Motor Vehicles

SECTION 21. Pollution from Motor Vehicles.

– a) The DOTC shall implement the emission standards for motor vehicles set pursuant to and as provided in this Act. To further improve the emission standards, the Department shall review, revise and publish the standards every two (2) years, or as the need arises. It shall consider the maximum limits for all major pollutants to ensure substantial improvement in air quality for the health, safety and welfare of the general public.

The following emission standards for type approval of motor vehicles shall be effective by the year 2003:

a) For light duty vehicles, the exhaust emission limits for gaseous pollutants shall be:

Emission Limits for Light Duty Vehicles

**Type Approval
(Directive 91/441/EEC)**

CO (g/km)	HC + NO _x (g/km)	PM ^a (g/km)
2.72	0.97	0.14

^a for compression-ignition engines only

- b) For light commercial vehicles, the exhaust emission limit of gaseous pollutants as a function of the given reference mass shall be:

Emission Limits for Light Commercial Vehicles Type Approval (Directive 93/59/EEC)

	Reference Weight (RW) (kg)	CO (g/km)	HC + NOx (g/km)	PM ^a (g/km)
Category 1	1250< RW	2.72	0.97	0.14
Category 2	1250< RW<1700	5.17	1.4	0.19
Category 3	RW>1700	6.9	1.7	0.25

^a for compression-ignition engines only

- c) For heavy–duty vehicles, the exhaust emission limits of gaseous pollutants shall be:

Emission Limits for Heavy Duty Vehicles Type Approval (Directive 93/59/EEC)

CO (g/k/Wh)	HC (g/k/Wh)	NOx (g/k/Wh)	PM (g/k/Wh)
4.5	1.1	8.0	0.36 ^a

^a In the case of engines of 85 kW or less, the limit value for particular emissions is increased by multiplying the quoted limit by a coefficient of 1.7

Fuel evaporative emission for spark-ignition engines shall not exceed 2.0 grams hydrocarbons per test. Likewise, it shall not allow any emission of gases from crankcase ventilation system into the atmosphere.

The Department, in collaboration with the DOTC, DTI and LGUs, shall develop an action plan for the control and management of air pollution from motor vehicles consistent with the Integrated Air Quality Framework. The DOTC shall enforce compliance with the emission standards for motor vehicles set by the Department. The DOTC may deputize other law enforcement agencies and LGUs for this purpose. To this end, the DOTC shall have the power to:

- (1) Inspect and monitor the emissions of motor vehicles;
- (2) Prohibit or enjoin the use of motor vehicles or a class of motor vehicles in

any area or street at specified times; and

- (3) Authorize private emission testing centers duly accredited by the DTI.

The DOTC, together with the DTI and the Department, shall establish the procedures for the inspection of motor vehicles and the testing of their emissions for the purpose of determining the concentration and/or rate of pollutants discharged by said sources.

In order to ensure the substantial reduction of emissions from motor vehicles, the Department of Trade and Industry (DTI), together with the DOTC and the Department, shall formulate and implement a national motor vehicle inspection and maintenance program that will promote efficient and safe operation of all motor vehicles. In this regard, the DTI shall develop and implement standards and procedures for the certification of training institutions, instructors and facilities and the licensing of qualified private service centers and their technicians as prerequisite for performing the testing, servicing, repair and the required adjustment to the vehicle emission system. The DTI shall likewise prescribe regulations requiring the disclosure of odometer readings and the use of tamper-resistant odometers for all motor vehicles including tamper-resistant fuel management systems for the effective implementation of the inspection and maintenance program.

SEC. 22. *Regulation of All Motor Vehicles and Engines.* – Any imported new or locally-assembled new motor vehicle shall not be registered unless it complies with the emission standards set pursuant to this Act, as evidenced by a Certificate of Conformity (COC) issued by the Department.

Any imported new motor vehicle engine shall not be introduced into commerce, sold or used unless it complies with emission standards set pursuant to this Act.

Any imported used motor vehicle or rebuilt motor vehicle using new or used engines, major parts or components shall not be registered unless it complies with the emission standards set pursuant to this Act.

In case of non-compliance, the importer or consignee may be allowed to modify or rebuild the vehicle or engine so it will be in compliance with applicable emission standards.

No motor vehicle registration (MVR) shall be issued unless such motor vehicle passes the emission testing requirement promulgated in accordance with this Act. Such testing shall be conducted by the DOTC or its authorized inspection centers within sixty (60) days prior to date of registration.

The DTI shall promulgate the necessary regulations prescribing the useful life of vehicles and engines including devices in order to ensure that such vehicles will conform to the emissions which they were certified to meet. These regulations shall include provisions for ensuring the durability of emission devices.

SECTION 23. *Second-Hand Motor Vehicle Engines.* – Any imported second-hand motor vehicle engine shall not be introduced into commerce, sold or used unless it complies with emission standards set pursuant to this Act.

Article 5

Pollution from Other Sources

SECTION 24. *Pollution from Smoking.* – Smoking inside a public building or an enclosed public place including public vehicles and other means of transport or in any enclosed area outside of one's private residence, private place of work or any duly designated smoking area is hereby prohibited under this Act. This provision shall be implemented by the LGUs.

SECTION 25. *Pollution from Other Mobile Sources.* – The Department, in coordination with appropriate agencies, shall formulate and establish the necessary standards for all mobile sources other than those referred to in Section 21 of this Act. The imposition of the appropriate fines and penalties from these sources for any violation of emission standards shall be under the jurisdiction of the DOTC.

Chapter III

Fuels, Additives, Substances and Pollutants

Article 1

Fuels, Additives and Substances

SECTION 26. *Fuels and Additives.* – Pursuant to the Air Quality Framework to be established under Section 7 of this Act, the Department of Energy (DOE), co-chaired by the Department of Environment and Natural Resources (DENR), in consultation with the Bureau of Product Standards (BPS) of the DTI, the DOST, the representatives of the fuel and automotive industries, academe and the consumers shall set the specifications for all types of fuel and fuel-related products, to improve fuel composition for increased efficiency and reduced emissions: *Provided, however,* That the specifications for all types of fuel and fuel-related products set-forth pursuant to this section shall be adopted by the BPS as Philippine National Standards (PNS).

The DOE shall also specify the allowable content of additives in all types of fuels and fuel-related products. Such standards shall be based primarily on threshold levels of health and research studies. On the basis of such specifications, the DOE shall likewise limit the content or begin that phase-out of additives in all types of fuels and fuel-related products as it may deem necessary. Other agencies involved in the performance of this function shall be required to coordinate with the DOE and transfer all documents and information necessary for the implementation of this provision.

Consistent with the provisions of the preceding paragraphs under this section, it is declared that:

- a) not later than eighteen (18) months after the effectivity of this Act, no person shall manufacture, import, sell, supply, offer for sale, dispense, transport or introduce into commerce unleaded premium gasoline fuel which has an anti-knock index (AKI) of not less than 87.5 and Reid vapor pressure of not more than 9 psi. Within six (6) months after the effectivity of this Act, unleaded gasoline fuel shall contain aromatics not to exceed forty-five percent (45%) by volume and benzene not to exceed four percent (4%) by volume: *Provided, That* by year 2003, unleaded gasoline fuel should contain aromatics not to exceed thirty-five percent (35%) by volume and benzene not to exceed two percent (2%) by volume;
- b) not later than eighteen (18) months after the effectivity of this Act, no person shall manufacture, import, sell, supply, offer for sale, dispense, transport or introduce into commerce automotive diesel fuel which contains a concentration of sulfur in excess of 0.20% by weight with a cetane number of index of not less than forty-eight (48): *Provided, That* by year 2004, content of said sulfur shall be 0.05% by weight; and

- c) not later than eighteen (18) months after the effectivity of this Act, no person shall manufacture, import, sell, supply, offer for sale, dispense, transport or introduce into commerce industrial diesel fuel which contains a concentration of sulfur in excess of 0.30% (by weight).

Every two (2) years thereafter or as the need arises, the specifications of unleaded gasoline and of automotive and industrial diesel fuels shall be reviewed and revised for further improvement in formulation and in accordance with the provisions of this Act.

The fuels characterized above shall be commercially available. Likewise, the same shall be the reference fuels for emission and testing procedures to be established in accordance with the provisions of this Act.

Any proposed additive shall not in any way increase emissions of any of the regulated gases which shall include, but not limited to carbon monoxide, hydrocarbons, and oxides of nitrogen and particulate matter, in order to be approved and certified by the Department.

SECTION 27. *Regulation of Fuels and Fuel Additives.* – The DOE, in coordination with the Department and the BPS, shall regulate the use of any fuel or fuel additive. No manufacturer, processor or trader of any fuel or additive may import, sell, offer for sale, or introduce into commerce such fuel or additive unless the same has been registered with the DOE. Prior to registration, the manufacturer, processor or trader shall provide the DOE with the following relevant information:

- a) Product identity and composition to determine the potential health effects of such fuel additives;
- b) Description of the analytical technique that can be used to detect and measure the additive in any fuel;
- c) Recommended range of concentration; and

d) Purpose in the use of the fuel and additive.

SECTION 28. *Misfueling.* – In order to prevent the disabling of any emission control device by lead contamination, no person shall introduce or cause or allow the introduction of leaded gasoline into any motor vehicle equipped with a gasoline tank filler inlet and labeled “unleaded gasoline only”. This prohibition shall also apply to any person who knows or should know that such vehicle is designed solely for the use of unleaded gasoline.

SECTION 29. *Prohibition on Manufacture, Import and Sale of Leaded Gasoline and of Engines and/or Components Requiring Leaded Gasoline.* – Effective not later than eighteen (18) months after the enactment of this Act, no person shall manufacture, import, sell, offer for sale, introduce into commerce, convey or otherwise dispose of, in any manner, leaded gasoline and engines and components requiring the use of leaded gasoline.

For existing vehicles, the DTI shall formulate standards and procedures that will allow non-conforming engines to comply with the use of unleaded fuel within five(5) years after the effectivity of this Act.

Article 2

Other Pollutants

SECTION 30. *Ozone-Depleting Substances.* – Consistent with the terms and conditions of the Montreal Protocol on Substances that Deplete the Ozone Layer and other international agreements and protocols to which the Philippines is a signatory, the Department shall phase out ozone-depleting substances.

Within sixty (60) days after the enactment of this Act, the Department shall publish a list of substances which are known to cause harmful effects on the stratospheric ozone

layer.

SECTION 31. *Greenhouse Gases.* – The Philippine Atmospheric, Geophysical and Astronomical Service Administration (PAGASA) shall regularly monitor meteorological factors affecting environmental conditions including ozone depletion and greenhouse gases and coordinate with the Department in order to effectively guide air pollution monitoring and standard-setting activities.

The Department, together with concerned agencies and local government units, shall prepare and fully implement a national plan consistent with the United Nations Framework Convention on Climate Change and other international agreements, conventions and protocols on the reduction of greenhouse gas emissions in the country.

SECTION 32. *Persistent Organic Pollutants.* – The Department shall, within a period of two (2) years after the enactment of this Act, establish an inventory list of all sources of Persistent Organic Pollutants (POPs) in the country. The Department shall develop short-term and long-term national government programs on the reduction and elimination of POPs such as dioxins and furans. Such programs shall be formulated within a year after the establishment of the inventory list.

SECTION 33. *Radioactive Emissions.* – All projects which will involve the use of atomic and/or nuclear energy, and will entail release and emission of radioactive substances into the environment, incident to the establishment or possession of nuclear energy facilities and radioactive materials, handling, transport, production, storage, and use of radioactive materials, shall be regulated in the interest of public health and welfare by the Philippine Nuclear Research Institute (PNRI), in coordination with Department and other appropriate government agencies.

Chapter IV

Institutional Mechanism

SECTION 34. *Lead Agency.* – The Department, unless otherwise provided herein, shall be the primary government agency responsible for the implementation and enforcement of this Act. To be more effective in this regard, the Department’s Environmental Management Bureau (EMB) shall be converted from a staff bureau to a line bureau for a period of no more than two (2) years, unless a separate, comprehensive environmental management agency is created.

SECTION 35. *Linkage Mechanism.* – The Department shall consult, participate, cooperate and enter into agreement with other government agencies, or with affected non-governmental (NGOs) or people’s organizations (POs), or private enterprises in the furtherance of the objectives of this Act.

SECTION 36. *Role of Local Government Units.* – Local Government Units (LGUs) shall share the responsibility in the management and maintenance of air quality within their territorial jurisdiction. Consistent with Sections 7, 8 and 9 of this Act, LGUs shall implement air quality standards set by the Board in areas within their jurisdiction: *Provided, however,* That in case where the board has not been duly constituted and has not promulgated its standards, the standards set forth in this Act shall apply.

The Department shall provide the LGUs with technical assistance, trainings and a continuing capability-building program to prepare them to undertake full administration of the air quality management and regulation within their territorial jurisdiction.

SECTION 37. *Environmental and Natural Resources Office.* – There may be established an Environment and Natural Resources Office in every province, city, or municipality which shall be headed by the environment and natural resources officer and shall be

appointed by the Chief Executive of every province, city or municipality in accordance with the provisions of Section 484 of Republic Act No. 7160. Its powers and duties, among others, are:

- a) To prepare comprehensive air quality management programs, plans and strategies within the limits set forth in Republic Act. No. 7160 and this Act which shall be implemented within its territorial jurisdiction upon the approval of the *sanggunian*;
- b) To provide technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and the provision of adequate facilities relative to air quality;
- c) To take the lead in all efforts concerning air quality protection and rehabilitation;
- d) To recommend to the Board air quality standards which shall not exceed the maximum permissible standards set by rational laws;
- e) To coordinate with other government agencies and non-governmental organizations in the implementation of measures to prevent and control air pollution; and
- f) Exercise such other powers and perform such duties and functions as may be prescribed by law or ordinance: *Provided, however,* That in provinces/cities/municipalities where there are no environment and natural resources officers, the local executive concerned may designate any of his official and/or chief of office preferably the provincial, city or municipal agriculturist, or any of his employee: *Provided, finally,* That in case an employee is designated as such, he must have sufficient experience in environmental and natural resources

management, conservation and utilization.

SECTION 38. *Record-keeping, Inspection, Monitoring and Entry by the Department.* – The Department or its duly accredited entity shall, after proper consultation and notice, require any person who owns or operates any emission source or who is subject to any requirement of this Act to:

- (a) establish and maintain relevant records;
- (b) make relevant reports;
- (c) install, use and maintain monitoring equipment or methods;
- (d) sample emission, in accordance with the methods, locations, intervals and manner prescribed by the Department;
- (e) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical; and
- (f) provide such other information as the Department may reasonably require.

Pursuant to this Act, the Department, through its authorized representatives, shall have the right of:

- (a) entry or access to any premises including documents and relevant materials as referred to in the herein preceding paragraphs;
- (b) inspect any pollution or waste source, control device, monitoring equipment or method required; and
- (c) test any emission.

Any record, report or information obtained under this section shall be made available to the public, except upon a satisfactory showing to the Department by the entity concerned that the record, report or information, or parts thereof, if made public, would divulge secret methods or processes entitled to protection

as intellectual property. Such record, report or information shall likewise be incorporated in the Department's industrial rating system.

SECTION 39. *Public Education and Information Campaign.* – A continuing air quality information and education campaign shall be promoted by the Department, the Department of Education, Culture and Sports (DECS), the Department of the Interior and Local Government (DILG), the Department of Agriculture (DA) and the Philippine Information Agency (PIA). Consistent with Section 7 of this Act, such campaign shall encourage the participation of other government agencies and the private sector including NGOs, POs, the academe, environmental groups and other private entities in a multi-sectoral information campaign.

Chapter V **Actions**

SECTION 40. *Administrative Action.* – Without prejudice to the right of any affected person to file an administrative action, the Department shall, on its own instance or upon verified complaint by any person, institute administrative proceedings against any person who violates:

- (a) Standards or limitation provided under this Act; or
- (b) Any order, rule or regulation issued by the Department with respect to such standard or limitation.

SECTION 41. *Citizen Suits.* – For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

- (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or

- (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: *Provided, however,* That no suit can be filed until thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall, likewise, upon *prima facie* showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days, the court shall make a determination if the compliant herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

SECTION 42. *Independence of Action.* – The filing of an administrative suit against such person/entity does not preclude the right of any other person to file any criminal or civil action. Such civil action shall proceed independently.

SECTION 43. *Suits and Strategic Legal Actions Against Public Participation and the Enforcement of This Act.* – Where a suit is brought against a person who filed an action as provided in Section 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty

of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

SECTION 44. *Lien Upon Personal and Immovable Properties of Violators.* – Fines and penalties imposed pursuant to this Act shall be liens upon personal or immovable properties of the violator. Such lien shall, in case of insolvency of the respondent violator, enjoy preference subsequent to laborer's wages under Articles 2241 and 2242 of Republic Act No. 386, otherwise known as the *New Civil Code of the Philippines*.

Chapter VI

Fines and Penalties

SECTION 45. *Violation of Standards for Stationary Sources.* – For actual exceedance of any pollution or air quality standards under this Act or its rules and regulations, the Department, through the Pollution Adjudication Board (PAB), shall impose a fine of not more than One hundred thousand pesos (Php 100,000.00) for every day of violation against the owner or operator of a stationary source until such time that the standards have been complied with.

For purposes of the application of the fines, the PAB shall prepare a fine rating system to adjust the maximum fine based on the violator's ability to pay, degree of willfulness, degree of negligence, history of non-compliance and degree of recalcitrance:

Provided, That in case of negligence, the first time offender's ability to pay may likewise be considered by the Pollution Adjudication Board: *Provided, further*, That in the absence of any extenuating or aggravating circumstances, the amount of fine for negligence shall be equivalent to one-half of the fine for willful violation.

The fines herein prescribed shall be increased by at least ten percent (10%), every three (3) years to compensate for inflation and to maintain the deterrent function of such fines.

In addition to the fines, the PAB shall order closure, suspension of development, construction, or operations of the stationary sources until such time that proper environmental safeguards are put in place: *Provided*, That an establishment found liable for a third offense shall suffer permanent closure immediately. This paragraph shall be without prejudice to the immediate issuance of an *ex parte* order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case upon prima facie evidence that there is imminent threat to life, public health, safety or general welfare, or to plant or animal life, or whenever there is an exceedance of the emission standards set by the Department and/or the Board and/or the appropriate LGU.

SECTION 46. *Violation of Standards for Motor Vehicles.* – No motor vehicle shall be registered with the DOTC unless it meets the emission standards set by the Department as provided in Section 21 hereof.

Any vehicle suspected of violation of emission standards through visual signs, such as, but not limited to smoke-belching, shall be subjected to an emission test by a duly authorized testing center, for this purpose, the DOTC or its authorized testing center shall establish a roadside inspection system. Should it be shown that there was no violation of emission standards, the vehicle

shall be immediately released. Otherwise, a testing result indicating an exceedance of the emission standards would warrant the continuing custody of the impounded vehicle unless the appropriate penalties are fully paid, and the license plate is surrendered to the DOTC pending the fulfillment of the undertaking by the owner/operator of the motor vehicle to make the necessary repairs so as to comply with the standards. A pass shall herein be issued by the DOTC to authorize the use of the motor vehicle within a specified period that shall not exceed seven (7) days for the sole purpose of making the necessary repairs on the said vehicle. The owner/operator of the vehicle shall be required to correct its defects and show proof of compliance to the appropriate pollution control office before the vehicle can be allowed to be driven on any public or subdivision roads.

In addition, the driver and operator of the apprehended vehicle shall undergo a seminar on pollution control management conducted by the DOTC and shall also suffer the following penalties:

- a) First Offense – a fine not to exceed Two Thousand Pesos (Php2,000.00);
- b) Second Offense – a fine not less than Two Thousand Pesos (Php2,000.00) and not to exceed Four Thousand Pesos (Php4,000.00); and
- c) Third offense – one (1) year suspension of the Motor Vehicle Registration (MVR) and a fine of not less than Four Thousand Pesos (Php4,000.00) and not more than Six thousand pesos (Php6,000.00).

Any violation of the provisions of Section 21 paragraph (d) with regard to national inspection and maintenance program, including technicians and facility compliance shall penalized with a fine of not less than Thirty Thousand Pesos (Php30,000.00) or cancellation of license of both the technician

and the center, or both, as determined by the DTI.

All law enforcement officials and deputized agents accredited to conduct vehicle emissions testing and apprehensions shall undergo a mandatory training on emission standards and regulations. For this purpose, the Department, together with the DOTC, DTI, DOST, Philippine National Police (PNP) and other concerned agencies and private entities shall design a training program.

SECTION 47. *Fines and Penalties for Violations of Other Provisions in the Act.* – For violations of all other provisions provided in this Act and of the rules and regulations thereof, a fine of not less than Ten thousand pesos (Php 10,000) but not more than One Hundred thousand Pesos (Php 100,000) or six (6) months to six (6) years imprisonment or both shall be imposed. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

SECTION 48. *Gross Violations.* – In case of gross violation of this Act or its implementing rules and regulations, the PAB shall recommend to the proper government agencies to file the appropriate criminal charges against the violators. The PAB shall assist the public prosecutor in the litigation of the case. Gross violation shall mean:

- (a) three (3) or more specific offenses within a period of one (1) year;
- (b) three (3) or more specific offenses within three (3) consecutive years;
- (c) blatant disregard of the orders of the PAB, such as but not limited to the breaking of seal, padlocks and other similar devices, or operating despite the existence of an order for closure, discontinuance or cessation of operation; and
- (d) irreparable or grave damage to the environment as a consequence of any violation of the provisions of this Act.

Offenders shall be punished with imprisonment of not less than six (6) years but not more than ten (10) years at the discretion of the court. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

Chapter VII

Final Provisions

SECTION 49. *Potential Loss or Shifts of Employment.* – The Secretary of Labor is hereby authorized to establish a compensation, retraining and relocation program to assist workers laid off due to a company's compliance with the provisions of this Act.

SECTION 50. *Appropriations.* – An amount of Seven Hundred Fifty Million Pesos (Php 750,000,000.00) shall be appropriated for the initial implementation of this Act, of which, the amount of Three Hundred Million Pesos (Php 300,000,000.00) shall be appropriated to the Department; Two Hundred Million Pesos (Php 200,000,000.00) to the DTI; One Hundred Fifty Million Pesos (Php 150,000,000.00) to the DOTC; and One Hundred Million Pesos (Php 100,000,000.00) to the DOE.

Thereafter, the amount necessary to effectively carry out the provisions of this Act shall be included in the General Appropriations Act.

SECTION 51. *Implementing Rules and Regulations.* – The Department, in coordination with the Committees on Environment and Ecology of the Senate and House of Representatives, respectively and other concerned agencies, shall promulgate the implementing rules and regulations for this Act, within one (1) year after the enactment of this Act: *Provided*, That rules and regulations issued by other government agencies and instrumentalities for the prevention and/or abatement of

pollution not inconsistent with this Act shall supplement the rules and regulations issued by the Department pursuant to the provisions of this Act.

The draft of the implementing rules and regulations shall be published and be the subject of public consultations with affected sectors.

There shall be a mandatory review of the implementing rules and regulations and standards set pursuant to the provisions of this Act.

SECTION 52. *Report to Congress.* – The Department shall report to Congress, not later than March 30 of every year following the approval of this Act, the progress of the pollution control efforts and make the necessary recommendations in areas where there is need for legislative action.

SECTION 53. *Joint Congressional Oversight Committee.* – There is hereby created a joint congressional oversight committee to monitor the implementation of this Act. The committee shall be composed of five (5) senators and five (5) representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The oversight committee shall be co-chaired by a senator and a representative

designated by the Senate President and the Speaker of the House of Representatives, respectively.

The mandate given to the joint congressional oversight committee under this Act shall be without prejudice to the performance of the duties and functions by the respective existing oversight committees of the Senate and the House of Representatives.

SECTION 54. *Separability of Provisions.* – If any provision of this Act or the application of such provision to any person or circumstances is declared unconstitutional, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SECTION 55. *Repealing Clause.* – Presidential Decree No. 1181 is hereby repealed. Presidential Decrees Nos. 1152, 1586 and Presidential Decree No. 984 are partly modified. All other laws, orders, issuance, rules and regulations inconsistent herewith are hereby repealed or modified accordingly.

SECTION 56. *Effectivity.* – This Act shall take effect fifteen (15) days from the date of its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved, 23 June 1999

EXECUTIVE ORDER NO. 446

MANDATING THE PHASE-OUT OF LEADED GASOLINE AS ONE OF THE MEANS OF SOLVING AIR POLLUTION

WHEREAS, Section 16, Article II of the 1987 Constitution provides that “The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;”

WHEREAS, Section 4, Chapter I, Title XIV, Book IV of the *Administrative Code of 1987* empowers the Department of Environment and Natural Resources (DENR) to “formulate, implement

and supervise the implementation of the government’s policies, plans and programs pertaining to the management, conservation, development, use and replenishment of the country’s natural resource;”

WHEREAS, the use of lead in gasoline is one of the main causes of air pollution particularly in Metro Manila;

WHEREAS, lead affects virtually every part of the body and has long been recognized as a neurotoxin with deleterious effects on the intelligence of human beings; on the other hand, it is an additive for gasoline to prevent knocking of engines as well as provide lubricity to engines with soft valves, and the removal of such would require changes in the gasoline formulation and/or use of replacement additives;

WHEREAS, changes in the fuel formulation may need corresponding complementing measures on its use, storage, handling and distribution; and

WHEREAS, it is the role of the government to ensure adequate and continuous supply of fuels, and at the same time ensure that other possible additives, contaminants, and components shall not reach harmful levels.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. The DENR, in coordination with the Department of Energy (DOE), the Department of Trade and Industry (DTI), and the Department of Finance (DOF) shall mandate the phase-out of leaded gasoline and the phase-in of unleaded gasoline and other suitable unleaded replacement not later than 01 January 2000, in Metro Manila, and nationwide by 01 January 2001 provided that unleaded gasoline and other unleaded replacements shall not result in the aggravation of pollution problems an undue economic difficulties to users.

SECTION 2. The DENR, in coordination with the DOE, DTI and the Department of Science and Technology (DOST) shall formulate and implement appropriate measures such as, but not limited to, quality standards for the fuel and facilities in the manufacture, storage, handling and distribution of unleaded gasoline and other suitable unleaded substitutes.

SECTION 3. The DENR, in coordination with the Department of Transportation and Communication (DOTC), DOE, DTI, and DOST shall promote the adoption of necessary measures such as, but not limited to, the inspection, maintenance and use of emission control systems in motor vehicles to control and reduce the pollution from motor vehicle emissions.

SECTION 4. The DENR, in coordination with the DOE, DOTC, DTI and non-governmental organizations(NGOs) shall conduct continuous evaluation, monitoring and assessment of the phase-out activities and their impacts.

SECTION 5. The DENR in coordination with the Department of Education, Culture and Sports (DECS), the Philippine Information Agency (PIA), the Department of Interior and Local Government (DILG), and other concerned agencies and NGOs shall be involved in a concerted effort for public information dissemination on this matter.

SECTION 6. In the implementation of this Executive Order, the Secretary of Environment and Natural Resources shall require manufacturers and suppliers of fuel additives, and motor vehicles, as well as other entities that may be identified to:

- (1) Coordinate with the DENR, DOE, DTI, Department of Health (DOH) and DOST in the conduct of test/studies to determine potential public health effects of such fuel or additive, including, but not limited to carcinogenic, teratogenic, or mutagenic effects; and
- (2) Furnish the description of any analytical technique that can be used to detect and measure the recommended range or concentration of additive, and other necessary information to determine:
 - (i) the emissions resulting from the use of the fuel or the additive contained in such fuel;

- (ii) the effect of such fuel or additive on the emission control performance of any vehicle engine; and
- (iii) the effect of fuel emission on public health or welfare.

SECTION 7. Consistent with the Philippine Agenda 21, the DENR, in coordination and consultation with the concerned agencies and sectors including business, labor and civil society, shall, within six (6) months,

promulgate such rules and regulations as may be necessary for the effective implementation of this Executive Order.

SECTION 8. This Executive Order shall take effect thirty (30) days following its publication in a newspaper of general circulation.

Done in the City of Manila, this 26th day of September in the year of Our Lord, Nineteen Hundred and Ninety-Seven.

DENR ADMINISTRATIVE ORDER NO. 47

Series of 1998

IMPLEMENTING RULES AND REGULATIONS (IRR) FOR MANDATING THE PHASE-OUT OF LEADED GASOLINE AS ONE OF THE MEANS OF SOLVING AIR POLLUTION.

Pursuant to Executive Order No. 446, series of 1997, entitled “Mandating the Phase-out of Leaded Gasoline as One of the Means of Solving Air Pollution,” the Department of Environment and Natural Resources hereby adopts and promulgates the following Rules and Regulations:

Chapter I

General Provisions and Administrative Procedures

SECTION 1. Title. – These Rules and Regulations shall be cited as the “Implementing Rules and Regulations Mandating the Phase-out of Leaded Gasoline as One of the Means of Solving Air Pollution (1998).”

SECTION 2. Scope. – These Rules and Regulations shall govern the implementation and enforcement of Executive Order No. 446.

SECTION 3. Definitions. – For the purpose of these Rules and Regulations, the following terms shall, unless the context otherwise indicates, have the following meanings:

- 3.1 Bulk Plant/Terminal/Depot – refers to an intermediate gasoline distribution facility where delivery of gasoline to and from the facility is solely by trucks, ships, barges, pipes, and other modes of transport.
- 3.2 Department – refers to the Department of Environment and Natural Resources.
- 3.3 Final distribution facility – refers to the facility where the gasoline will be dispensed to the motor vehicles.
- 3.4 Gasoline – refers to a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines.
- 3.5 Gross Vehicle Mass or “GVM” – refers to the technically permissible maximum mass declared by the vehicle manufacturer.
- 3.6 Import facility – refers to the facility which first receives the imported gasoline into the country.

- 3.7 Production facility – refers to a facility that produces gasoline.
- 3.8 Refiner – refers to any person who owns, leases, operates, controls or supervises a refinery.
- 3.9 Supply – means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.
- 3.10 Motor Vehicle – means any vehicle propelled by a gasoline or diesel engine or any other means other than human or animal power, constructed and operated principally for the conveyance of persons or the transporting of property or goods on a public highway or street opened to public use.
- 3.11 Refinery – refers to a facility which produces liquid fuels by distillation and other processes.

SECTION 4. *Department of Environment and Natural Resources (DENR) as Lead Agency.*

– The DENR, through the Environmental Management Bureau (EMB) shall take the lead in implementing these rules and regulations, and shall in coordination and consultation with other government agencies, non-government organizations, private entities and institutions, pursuant to Sections 1 to 6 of Executive Order No. 446, enter into a Memorandum of Agreement (MOA) and/or other necessary and appropriate legally binding instruments for the effective administration and enforcement of these Rules and Regulations. Copies of all pertinent reports, researches, studies, surveys, plans, programs and other documents to be submitted under these rules shall be furnished to the EMB-DENR for the centralization of all necessary data.

SECTION 5. *Applicability of Standards.* –

- 5.1 Beginning January 1, 2000, no person shall sell, offer for sale, supply or offer

for supply, gasoline from bulk plant or final distribution facility in Metro Manila unless the gasoline complies with the latest issue of the Philippine National Standards (PNS): 1131 “Specifications for Unleaded Motor Gasoline.” Nor shall any person import leaded gasoline and lead-containing fuel additives after December 31, 1999, except those that shall be used in areas outside of Metro Manila.

- 5.2 Beginning January 1, 2001, no person shall manufacture, sell, offer for sale, dispense, transport or introduce into commerce gasoline unless the gasoline complies with the latest issue of PNS: 1131. However, beginning October 1, 2000, no person shall import leaded gasoline and lead-containing fuel additives.

Chapter II

Fuels and Facilities Quality Standards

SECTION 6. *Standards: Fuel Quality Standards.* –

- 6.1 Scope: Standard for unleaded motor gasoline shall refer to the latest issue of PNS 1131.
- 6.2 The specifications for unleaded motor gasoline facilities such as but not limited to distribution pipes, storage tanks, dispensing units, shall be in accordance with the PNS for such facilities.

Chapter III

Monitoring, Evaluation and Assessment

SECTION 7. *Scope.* – This Chapter shall cover the provisions on the monitoring, evaluation and assessment of the lead phase-out activities and the corresponding institution to undertake the same.

SECTION 8. *Functions, Duties and Responsibilities.* – In line with Section 4 of these Rules and Regulations, and in order to ensure the effective monitoring, evaluation and assessment of these rules and regulations,

the following shall be the functions, duties and responsibilities of the various relevant government agencies, which should not exclude however, all other functions, duties and responsibilities that are necessary and incidental to the implementation of these Rules and Regulations.

The DENR shall conduct ambient air sampling activities to determine the level of lead and other fuel-related emissions in the air; conduct statistical evaluation of the results of the ambient air sampling activities; monitor the full and strict compliance of gasoline manufacturers, suppliers, distributors or dealers of their duly approved phase-out programs; and monitor the reduction of greenhouse gases and other toxic gases emissions.

The Department of Energy (DOE) shall monitor compliance with PNS 1131 through periodic random sampling and testing of unleaded gasoline samples from various facilities nationwide such as manufacturers, suppliers, dealers and other sources. It shall also conduct studies on the effects of the phase-out to the relevant sectors but not limited to the gasoline manufacturers, dealers as well as the fuel users.

The Department of Transportation and Communication (DOTC) and the University of the Philippines/National Center for Transport Studies (UP/NCTS) shall establish estimates on the type of vehicles using lead and unleaded gasoline.

The Department of Health (DOH) shall conduct monitoring activities on the health impacts of the ambient air quality levels.

The National Economic Development Authority (NEDA) shall conduct monitoring activities on the economic impacts of the phase-out of leaded gasoline.

The Department of Trade and Industry (DTI) shall act on complaints related to fuel quality

and regulate importation of spare parts designed for leaded gasoline.

Chapter IV

Inspection/Maintenance and Emission Control System

SECTION 9. Scope. – This Chapter shall pertain to the control of exhaust emissions for gasoline-fueled motor vehicles emphasizing regular and proper vehicle maintenance and utilizing appropriate test procedures and equipment.

SECTION 10. Mandatory Periodic Inspection. – The mandatory periodic emission inspection for this type of vehicle shall be undertaken by the DOTC/Land Transportation Office (DOTC/LTO) in coordination with the DENR under the latter's pertinent rules and regulations.

SECTION 11. The DTI, in coordination with the Chamber of Automotive Manufacturers of the Philippines, Inc. (CAMPI) shall ensure that all newly-manufactured/assembled gasoline-fuelled motor vehicles, including motorcycles and mopeds to be introduced into the market or imported effective January 1, 2000 shall be designed to operate on unleaded gasoline.

SECTION 12. Effective January 1, 2000, all newly-manufactured/assembled vehicles, including motorcycles and mopeds shall be equipped with anti-pollution devices necessary to meet the standards on exhaust emission.

Chapter V

Public Information Dissemination

SECTION 13. The following shall be the duties and responsibilities of the various institutions concerned:

The Philippine Information Agency (PIA) shall coordinate the formulation and implementation of an integrated Communications Plan on unleaded gasoline, and produce the necessary information,

education and communications materials of such Plan, which shall include but not be limited to the environmental, health, economic and social implications and effects of the lead phase-out, and the phase-out schedules, programs and specific requirements of gasoline manufacturers, suppliers, distributors and dealers. It shall also provide technical assistance in the conceptualization of IEC materials on unleaded gasoline and utilize its regional information centers in the dissemination of information on the environmental, health, economic and social benefits of unleaded gasoline.

The DENR/EMB, Public Affairs Office and the Regional Offices, shall support the Communications Plan implementation by producing IEC materials such as radio and television plugs, brochures giving particular emphasis on the environmental implications and effects of unleaded gasoline.

The Department of Education, Culture and Sports (DECS), the Communication on Higher Education (CHED) and the Technical Education and Skills Development Authority (TESDA) shall mandate in schools the inclusion of the teaching of the benefits of clean air and unleaded gasoline in their curricula and teacher training programs. It shall also launch and initiate information dissemination campaigns on unleaded gasoline to the school system, in the formal and non-formal levels.

The Department of Interior and Local Government (DILG) shall support the Communications Plan implementation by producing IEC material on leaded gasoline phase-out.

All concerned agencies shall conduct public information campaigns in support of the Communication Plan on unleaded gasoline phase-out.

Chapter VI

Research and Development

SECTION 14. *Emission Control.* – The DOST, in coordination with the concerned agencies (DOTC/LTO, DENR/EMB, UP/COE, UP/College of Public Health (CPH), DOH and NCTS shall come up with a research/study on the emission control applicable to the unleaded gasoline. Likewise, in coordination with concerned agencies, it shall undertake research to assess the effectiveness of various air pollution gadgets (e.g. catalytic converter) in reducing greenhouse and toxic gases (carbon monoxide, nitrogen oxides, sulfur oxides, aromatics and benzene) emitted by unleaded gasoline-fed vehicles and assess the resulting environmental and health improvements of these gadgets.

The DOST and DOH shall undertake the quantitative analysis of volatile organics and benzene on ambient air in Metro Manila and appraise the potential health impacts of these substances.

The UP/College of Engineering (COE) shall undertake study on the engine performance (e.g., fuel combustion, accumulation of gasoline residues, etc.) on unleaded gasoline-fed vehicles.

The DOH and UP-CPH shall undertake research on the health impact of unleaded gasoline emissions.

SECTION 15. *Fuel Additives.* – The DOST shall undertake research on the use of other octane-enhancer additives (e.g. methyl tertiary butyl ether etc. for unleaded gasoline); engine performance efficiency using the alternative additives in comparison with the leaded gasoline; and the quality and quantity of gas emitted using the alternative additives.

The DOST, in coordination with DOE and other concerned agencies shall conduct study/research on the alternative fuel additives for unleaded gasoline.

Chapter VII

Prohibited Acts and Penalties

SECTION 16. Prohibitions. –

- 16.1 No person shall import, sell, offer for sale, supply, or offer for supply gasoline and lead containing fuel additive, the specifications of which are not in conformity with those indicated in Sections (5) and (6) of these rules and regulations.
- 16.2 No person shall import, sell, register or operate any new imported or locally manufactured/assembled motor vehicle including motorcycle and moped that is not designed to use unleaded gasoline immediately upon the publication of these Rules and Regulations.
- 16.3 No person shall do other acts that are prohibited under these Rules and Regulations.

SECTION 17. Penalties. – All acts and omissions in violation of the provisions of these rules and regulations shall be subject to the appropriate penalties provided for in the pertinent laws, Rules and Regulations of the concerned government agencies.

Chapter VIII

Final Provisions

SECTION 18. Separability Clause. – If any section or provision of these Rules and Regulations or part thereof, is declared unconstitutional or invalid by a competent court, other sections or provisions thereof, which are not thereby affected, shall continue to be in full force and effect as though the sections or provisions so annulled or voided had never been incorporated herein.

SECTION 19. Amendments. – These rules and regulations may be amended accordingly whenever deemed necessary and appropriate by the Department.

SECTION 20. Repealing Clause. – All other issuances, policies, rules and regulations inconsistent with these rules are hereby revised, amended, modified, and/or superseded accordingly.

SECTION 21. Effectivity. – These rules and regulations shall take effect fifteen days after publication in a newspaper of general circulation.

VICTOR O. RAMOS

Secretary
29 June 1998

DENR ADMINISTRATIVE ORDER NO. 81, Series of 2000

Subject: IMPLEMENTING RULES AND REGULATIONS FOR RA 8749

Pursuant to the provisions of Section 51 of Republic Act No. 8749, otherwise known as the “Philippine Clean Air Act of 1999,” and by virtue of Executive Order No. 192, Series of 1987, the Department of Environment and Natural Resources hereby adopts and promulgates the following rules and regulations:

**PART I
GENERAL PROVISIONS**

**RULE I
PRELIMINARY PROVISIONS**

SECTION 1. Title

These Rules shall be known and cited as the “Implementing Rules and Regulations of the *Philippine Clean Air Act of 1999.*”

SECTION 2. Purpose

The purpose of these Rules is to provide guidelines on the operationalization of the *Philippine Clean Air Act of 1999*.

SECTION 3. Scope

These Rules shall lay down the powers and functions of the Department of Environment and Natural Resources, the Department of Transportation and Communication, the Department of Trade and Industry, the Department of Energy and all other concerned agencies, the rights and obligations of stakeholders and the rights and duties of the people with respect to the Air Quality Management and Control Program.

SECTION 4. Construction

These Implementing Rules and Regulations shall be liberally construed to carry out the national policy of balancing development and environmental protection through the pursuance of the framework of sustainable development. Sustainable development shall refer to development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

RULE II

DECLARATION OF STATE POLICY

SECTION 1. Declaration of Policy

It is the policy of the State to protect and advance the right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

It is also the policy of the State to attain and maintain a balance between development and environmental protection.

Finally, it is the policy of the State to maintain a quality of air that protects human health and welfare.

RULE III

AIR QUALITY PRINCIPLES

SECTION 1. Air Quality Principles

- a. The State shall promote and protect the global environment to attain sustainable development while recognizing the primary responsibility of local government units to deal with environmental problems.
- b. The State recognizes that the responsibility of cleaning the habitat and environment is primarily area-based and that air quality management and control is most effective at the level of airsheds.
- c. The State recognizes the principle that “polluters must pay” and the important role of economic instruments in air quality management and control.
- d. The State recognizes that a clean and healthy environment is for the good of all and should therefore be a concern of all.

RULE IV

AIR QUALITY POLICIES

SECTION 1. Air Quality Policies

It is the policy of the State to:

- a. Formulate a comprehensive national program of air pollution management that shall be implemented by the government through proper delegation and effective coordination of functions and activities;
- b. Encourage cooperation and self-regulation among citizens and industries through the application of market-based instruments;
- c. Focus primarily on pollution prevention rather than on control and provide for a comprehensive management program for air pollution, such as the promotion

of non-motorized transport, emphasis on public transport, and travel demand measures;

- d. Promote public information and education and to encourage the participation of an informed and active public in air quality planning and monitoring; and
- e. Formulate and enforce a system of accountability for short and long-term adverse environmental impact of a project, program or activity. This shall include the setting up of a funding or guarantee mechanism for clean-up and environmental rehabilitation and compensation for personal damages.

RULE V
RIGHTS

SECTION 1. Recognition of Rights

Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:

- a. The right to breathe clean air;
- b. The right to utilize and enjoy all natural resources according to the principles of sustainable development;
- c. The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
- d. The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health;
- e. The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be

served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;

- f. The right of access to public records which a citizen may need to exercise his or her rights effectively under the Act;
- g. The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and clean-up of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and
- h. The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

RULE VI
DEFINITION OF TERMS

SECTION 1. Definitions

The following terms as used in these Implementing Rules and Regulations shall be defined as follows:

“Act” refers to Republic Act No. 8749, otherwise known as the *“Philippine Clean Air Act of 1999;”*

“Air pollutant” means any matter found in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, and the inert gases all in their natural or normal concentrations, that is detrimental to health or the environment, which includes but not limited to smoke, dust, soot, cinder, fly ash, solid particles of any kind, gases, fumes, chemical mists, contaminated steam and radioactive substances;

“Air pollution” means any alteration of the physical, chemical and biological properties of the atmosphere, or any discharge thereto of any liquid, gaseous or solid substances that will or is likely to create or to render the air resources of the country harmful, detrimental, or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes;

“Air quality performance rating” refers to a rating system to be developed by the Department through the Bureau. the air quality performance ratings will be grouped by industry, and will compare emissions data for industrial sources to the relevant National Ambient Air Quality Standards and the relevant National Emissions Standards for Source Specific Air Pollutants;

“Airshed” refers to areas with common weather or meteorological conditions and sources of air pollution which affect the interchange and diffusion of pollution in the surrounding atmosphere;

“Ambient air quality” refers to the atmosphere’s average purity in a broad area as distinguished from discharge measurements taken at the source of pollution or the present characteristic or nature of the surrounding atmosphere;

“Ambient air quality guideline values” refers to the concentration of air over specified periods classified as short-term and/or long-term which are intended to serve as goals or objectives for the protection of health and/or public welfare. These values shall be used for air quality management purposes such as determining time trends, evaluating stages of deterioration or enhancement of the air quality. In general, used as a basis for taking positive action in preventing, controlling, or abating health impacts from air pollution;

“Ambient air quality standard” means the concentration of an air pollutant which,

in order to protect public health and/or public welfare, shall not be exceeded in the breathing zone, at any time. Standards are enforceable and must be complied with by the owner or person in-charge of an industrial operation, process or trade;

“Authority to Construct” refers to the legal authorization granted by the Bureau to install a new source or modify an existing source;

“Best Available Control Technology” refers to approaches, techniques or equipment which when used, result in lower air emissions but in a cost-effective manner. BACT results in lower emission rates than those specified in the National Emission Standards for Source Specific Air Pollutants;

“Bio-medical waste” refers to pathological wastes, pharmaceutical wastes, chemical wastes and sharps defined as follows:

“Pathological wastes” include all human tissue (whether infected or not) such as limbs, organs, fetuses and body fluid; animal carcasses and tissue, together with all related swabs and dressings;

“Pharmaceutical wastes” include pharmaceutical products; drugs and chemicals that have been returned from wards; have been spilled or soiled; are expired or contaminated; or are to be discarded for any reason;

“Chemical wastes” include discarded solid, liquid or gaseous chemicals from laboratories or other sources such as diagnostic work, environmental work, cleaning, housekeeping and disinfecting procedures;

“Sharps” include needles, syringes, scalpels, blades and any other items that could cut or puncture;

“Bureau” refers to the Central Office of the Environmental Management Bureau and its Regional Offices under the Department;

“Cease and Desist Order” refers to the *ex parte* Order directing the discontinuance of the operation resulting in the emission or discharge of pollutants exceeding the emission standards or whenever such emission or discharge constitutes imminent threat to human, animal or plant life, public health or public safety. Non-compliance with an undertaking or agreement submitted to the Department shall likewise be a ground for issuance of a CDO;

“Certificate of Compliance to Emission Standard” refers to a certificate issued by DOTC to a rebuilt vehicle(s) or second hand vehicle(s) imported into the country based on an inspection by the DOTC MVIS in accordance with the emission standards of these Implementing Rules and Regulations, and as a requirement for initial registration of the subject vehicle(s);

“Certificate of Conformity” refers to the certificate issued by the Department to a vehicle manufacturer/assembler or importer certifying that a particular new vehicle or vehicle type meets the requirements provided under this Act and its Implementing Rules and Regulations;

“Certificate of Emission Compliance” refers to a certificate issued by the DOTC or its authorized emission testing center(s) for a vehicle apprehended during roadside inspection, certifying that the particular vehicle meets the emission requirements of these Implementing Rules and Regulations, and which shall have no validity period;

“Completely Built-up Unit (CBU)” refers to vehicles imported into the country either brand new or used and ready for operation;

“Compliance Plan” refers to a plan submitted to the Bureau for approval which details how an existing stationary air emissions source will be brought into compliance. The owner of the facility must submit the plan within two months of notification of non-compliance by

the Bureau. The plan must include a schedule that will be enforceable;

“Compression Ignition Engine” means an internal combustion engine in which atomized fuel temperature is raised through compression, resulting in ignition, e.g. diesel engines;

“Completely Knocked-Down”(CKD) refers to new parts and components and/or engines that are imported in disassembled condition for purposes of assembly. It may include not only parts and components but also sub-assemblies and assemblies, e.g. engines, transmissions, axle assemblies, chassis and body assemblies;

“Conformity of Production” refers to the verification of the production units’ conformity with the requirements of the *Clean Air Act* and these Implementing Rules and Regulations;

“Continuous Emission Monitoring System” means the total equipment, required under these Implementing Rules and Regulations or as directed by the Bureau, used to sample and condition (if applicable), analyze, and provide a permanent record of emissions or process parameters. Such record shall be the basis of the firm’s compliance with the emission standards. Further, it may be an approved monitoring system for continuously measuring the emission of a pollutant from an affected source or facility and as such, may be used in computing annual emission fees;

“Criteria Pollutants” are air pollutants for which National Ambient Air Quality Guideline Values have been established;

“Department” refers to the Department of Environment and Natural Resources;

“Detoxification process” refers to the process of diminishing or removing the poisonous quality of any substance using chelating agents to prevent or reverse toxicity particularly for

those substances (e.g., heavy metals) that are cumulative or persistent in the body;

“Director” means the Director of the Bureau;

“Eco-profile” shall refer to the geographic-based instrument for planners and decision-makers which presents an evaluation of the environmental quality and carrying capacity of an area. It is the result of the integration of various primary and secondary data and information on natural resources and anthropogenic activities on the land which are evaluated by various environmental risk assessment and forecasting methodologies. This will enable the Department to anticipate the type of development control that is necessary in the planning area;

“Emission” means any measurable air contaminant, pollutant, gas stream or unwanted sound from a known source which is passed into the atmosphere;

“Emission averaging” is a technique whereby a facility having more than one source of a given pollutant may, under certain circumstances and with Bureau approval, reduce emissions from one or more sources sufficiently so that the average of all the facility’s source emissions is equal to or below the applicable standard for a particular pollutant. Emission averaging is computed on an annual potential ton per year basis;

“Emission Charge” refers to a fee corresponding to the quality, quantity, volume and toxicity of emissions from an industrial or mobile source;

“Emission Credits” are generated by sources that reduce their annual mass emissions below the equivalent minimum regulatory level by either installing and operating pollution control devices or by using other Bureau approved methods. The equivalent minimum regulatory level is based upon the lowest annual emissions in tons that results when the source operates at its permitted

emission rate for its typical annual operating hours. Sources that are subject to different allowable emission rates, such as National Emission Standards and Ambient Air Quality Standards, must estimate the minimum regulatory level on the standard that provides the lowest annual allowable tonnage. An emission credit is equal to one ton of an air pollutant;

“Emission Factor” refers to a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. Emission factors may be used to calculate emission fees, as indicated in Rule XVI, Section 5. These factors are usually expressed as the weight of pollutant divided by a unit weight, distance, or duration of the activity emitting the pollutant (e.g., kilograms of particulate emitted per megagram of coal burned). Such factors facilitate estimation of emissions from various sources of air pollution. In most cases, these factors are simply averages of all available data of acceptable quality. The general equation for emission estimation is: $E = A \times EF \times (1-ER/100)$ where: E= emissions; A = activity rate; EF = emission factor; and ER = overall emission reduction efficiency. %ER is further defined as the product of the control device destruction or removal efficiency and the capture efficiency of the control system. When estimating emissions for a long time period (e.g., one year), both the device and the capture efficiency terms should account for upset periods as well as routine operations;

“Emission offset” refers to an emission reduction credit that compensates for an emission increase of an affected pollutant from a new or modified source.

“Emissions Trading” refers to a market-based approach to air pollution control which allows for transferring emission credits between different facilities for use as a form of regulatory compliance;

“Environmental Management Systems” that part of the overall, management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy;

“Environmental Management Plan/Program” this is the plan or program for achieving the environmental objectives and targets of a project or undertaking. It includes the designation of responsibility for achieving objectives and targets and the means and time-frame by which they are to be achieved. It details the prevention, mitigation, compensation, contingency and monitoring measures to enhance positive impacts and minimize negative impacts of a project or undertaking;

“Environmental Management Systems Audit” a systematic and documented verification process of objectively obtaining and evaluating evidence to determine whether an organization’s EMS conforms to the EMS audit criteria set by the organization and for communication of the results of this process to management;

“Episode” means a series of short-term air pollution events that significantly alter the ambient air quality of an affected area;

“Equivalent Method” refers to any technique or procedure for sampling and/or analyzing an air pollutant which has been approved by the Bureau and demonstrated to have a consistent and quantitatively known relationship with the designated standard method;

“Existing Source” means any source already erected, installed, and in operation; or any source for which construction has been offered for bidding or actual construction has commenced prior to the date of effectivity of these Implementing Rules and Regulations.

Any existing source which in the opinion of the Department has undergone a modification after the date of adoption of an applicable rule and regulation, shall be reclassified and considered a new source;

“Governing Board” refers to a multi-sectoral body created under Section 9 of the Act to effectively carry out and implement the air quality action plan of an airshed;

“Greenhouse gases” refers to those gases such as carbon dioxide, methane, and oxides of nitrogen, chlorofluoro-carbons, and the others that can potentially or can reasonably be expected to induce global warming;

“Gross Vehicle Mass or Weight” means the sum of the vehicle mass or weight and the allowable maximum payload as declared by the vehicle manufacturer;

“Guideline” means an official recommendation or guidance on the protection of human beings or receptors in the environment from the adverse effects of air pollutants;

“Hazardous substances” refers to those substances which present either: (1) short-term acute hazards such as acute toxicity by ingestion, inhalation, or skin absorption, corrosivity or other skin or eye contact hazard or the risk of fire explosion; or (2) long-term toxicity upon repeated exposure, including carcinogenicity (which in some cases may result in acute exposure but with a long latent period), resistance to the detoxification process, or the potential to pollute underground or surface waters, whether shipped into the country or generated locally;

“Hazardous wastes” are hazardous substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or brought from the country of origin for dumping or disposal into or in transit through any part of the territory

of the Philippines. Hazardous wastes shall also refer to hazardous substances that are by-products, side-products, process residues, spent reaction media, contaminated plant or equipment or other substances from manufacturing operations, and as consumer discards of manufactured products;

“Imported Used/Second-Hand Vehicle” means any used or second-hand motor vehicle imported and registered in the country of origin;

“Incineration” means the burning of municipal, bio-medical and hazardous wastes which process emits toxic and poisonous fumes;

“Infectious waste” refers to soiled surgical dressings, swabs and other contaminated waste from treatment areas; materials which have been in contact with persons or animals suffering from infectious diseases; cultures and stocks of infectious agents from laboratory work; dialysis equipment; apparatus and disposable gowns, aprons, gloves, towels, etc; waste from dialysis treatment area; waste from patients in isolation wards; all materials which may contain pathogens in sufficient concentration or quality that exposure to could result in disease;

“Installation” means any structure, equipment, facility or appurtenances thereto, operation of which may be a source of pollution or a means to control the same;

“In-Use Vehicle” means a motor vehicle duly registered with the LTO;

“Light Duty Vehicles” are motor vehicles whose gross vehicle weight is equal to or less than 3,500 kgs, in accordance with the definition contained in Philippine National Standards (PNS) 1891. This also refers to “Light Commercial Vehicles;”

“Lowest Achievable Emission Rate” refers to any technology or combination of

technologies and process controls that result in the lowest possible emissions of a given air pollutant. Cost is not a consideration in determining applicable LAER for a given source; however, technical feasibility is. The technology must be reasonably demonstrated to be appropriate and reliable for each application;

“Mandatory Inspection” refers to the interval between testing and the tests performed, as partial pre-condition for the renewal of registration of in-use motor vehicles;

“Manufacturer or Assembler” means any entity or person who manufactures or assembles motor vehicles, for eventual use in the Philippines;

“Medical waste” means any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals;

“Medium/Heavy Duty Vehicles” refers to motor vehicles whose gross vehicle weight is greater than 3,500 kgs, in accordance with the definition contained in PNS 1891;

“Mobile source” means any vehicle/machine propelled by or through oxidation or reduction reactions, including combustion of carbon-based or other fuel, constructed and operated principally for the conveyance of persons or the transportation of property or goods, that emit air pollutants as a reaction product;

“Modification” means any physical change or alteration in the method of operation of an existing source which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that source, or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously permitted. The following are exempted from the said definition:

Routine maintenance, repair and replacement shall not be considered physical changes if not intended to extend the useful life beyond the equipment manufacturer's design;

An increase in the production rate provided the facility is permitted to operate at the increased level and such increase does not exceed the designed capacity of the existing source; and

An increase in hours of operation provided that the facility is permitted to operate for the increase in hours.

"Motorcycle" refers to any two-wheeled motor vehicle with at least one headlight, taillight and stoplight, and one or more saddle seats. For purposes of these rules, motorcycles shall include motorcycles with attached cars also known as "tricycles;"

"Motor Vehicle" means any vehicle propelled by a gasoline or diesel engine or by any means other than human or animal power constructed and operated principally for the conveyance of persons or the transportation of goods;

"Motor Vehicle Registration" refers to the official recording of a motor vehicle by the Land Transportation Office (LTO) subject to the conformance of the vehicle to the safety and emission standards provided under Section 21 of the Act, including the pre-evaluation of the documents/requirements pursuant to Section 5 of Republic Act 4136, as amended, otherwise known as the *Land Transportation Code*;

"Municipal waste" refers to the waste materials generated from communities within a specific locality;

"National Ambient Air Quality Guideline Values" are limits on criteria air pollutant concentrations published by the Department,

intended for the protection of public health, safety, and general welfare;

"National Motor Vehicle Inspection and Maintenance Program" refers to the set of projects and other activities and efforts all designed to reduce the damaging impact of air pollution and unsafe vehicles on health and safety of the people, through adoption of standards for emission and vehicle safety, and a series of measures to ensure compliance with them;

"New Motor Vehicle" means a vehicle constructed entirely from new parts that has never been sold or registered with the DOTC or with the appropriate agency or authority, and operated on the highways of the Philippines, any foreign state or country;

"New Source" means any plant, equipment, or installation in any trade, business or establishment which generates, emits or disposes air emissions into the atmosphere and constructed after the date of effectivity of these Implementing Rules and Regulations. This includes any existing stationary source transferred or moved to a different location or site for the purpose of installation, operation or use after such date;

"Normal Cubic Meter" (Ncm) means the volume of dry gas which occupies a cubic meter measured at twenty five degrees Celsius (25°) at an absolute pressure equivalent to seven hundred sixty (760) mm Hg;

"Octane Rating" or the **"Anti-Knock Index"** (AKI) means the rating of the anti-knock characteristics of a grade or type of automotive gasoline as determined by dividing by two (2) the sum of the Research Octane Number (RON), plus the Motor Octane Number (MON). The octane requirement, with respect to automotive gasoline for use in a motor vehicle or a class thereof, whether imported, manufactured, or assembled by a manufacturer, refers to the minimum octane rating or such automotive gasoline which

such manufacturer recommends for the efficient operation of such motor vehicle, or substantial portion of such class, without knocking;

“Opacity” means the amount of light obscured by particle pollution in the atmosphere;

“Operator” means a person or entity that manages a transport business but not necessarily a vehicle owner;

“Owner” means the person or entity identified as the motor vehicle owner in the motor vehicle registration or by a valid deed of sale;

“Ozone Depleting Substances” (ODS) refers to those substances that significantly deplete or otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment such as, but not limited to, chlorofluorocarbons, halons, and the like;

“Particulate Matter” or **“Suspended Particulate”** means any material, other than uncombined water, which exists in a finely divided form as a liquid or solid;

“Passenger Car” refers to a four-wheeled motor vehicle used for the carriage of not more than six passengers including the driver and having a gross vehicle mass not exceeding 2,500 kg in accordance with the definition contained in PNS 1891;

“Permit” refers to the legal authorization to engage in or conduct any construction, operation, modification or expansion of any installation, operation or activity which will be reasonably expected to be a source of pollution;

“Permittee” refers to the owner, operator or entity who owns, leases, operates, controls or supervises any source, facility, machine or equipment;

“Permit to Operate” refers to the legal authorization granted by the Bureau to operate or maintain any installation for a specified period of time;

“Permit Condition” refers to a statement or stipulation issued with a permit, compliance with which is necessary for continued validity of the permit;

“Persistent Organic Pollutants” (POPs) means organic compounds that persist in the environment, bio-accumulate through the food web, and pose a risk of causing adverse effects to human health and the environment. These compounds resist photolytic, chemical and biological degradation, and include but are not limited to dioxin, furan, Polychlorinated Biphenyls (PCBs), organochlorine pesticides, such as aldrin, dieldrin, DDT, hexachlorobenzene, lindane, toxaphene and chlordane;

“Poisonous and toxic fumes” means any emission and fumes which do not conform to internationally-accepted standards, including but not limited to, World Health Organization (WHO) guideline values;

“Pollution control device” refers to any device or apparatus that is used to prevent, control, or abate the pollution of air caused by emissions from identified sources at levels within the air pollution standards established by the Department;

“Pollution control technology” refers to pollution control devices, production processes, fuel combustion processes or other means that effectively prevent or reduce emissions or effluents;

“Potential to emit” refers to the annual mass emissions that would result from a source when operating 8,760 hours per year. Actual emissions are based on the actual hours of operation per year;

“Rebuilt Motor Vehicle” means a locally assembled vehicle using new or used engine, major parts or components;

“Reference Mass or Weight” means the mass or weight of the vehicle in running order with a full fuel tank and including the set of tools and spare wheel, plus 100 kilograms but does not include the mass or weight of the passengers and driver;

“Regional Director” means the Regional Director of any Regional Office;

“Regional Office” means one of the Regional Offices of the Bureau;

“Ringelmann Chart” means the chart described in the U.S. Bureau of Mines, Information Circular No. 8333 and No. 7718, and used for measuring smoke opacity;

“Siga” means the traditional small scale method of burning of wastes resulting from cleaning the backyard such as fallen leaves, twigs, stems, and other similar matter from plants and trees in the backyard where the burning is done;

“Smoke Opacity Meter (or Opacimeter)” means an instrument which determines the smoke opacity in exhaust gases emitted by the engine system.

“Spark-Ignition Engine” means an internal combustion engine in which the air/fuel mixture is ignited by a spark plug, e.g., a gasoline engine;

“Standard of performance” means a standard for emission of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, taking into account the cost of achieving such reduction and any non-air quality health and environment impact and energy requirement as determined by the Department through the Bureau;

“Stationary source” refers to any building or fixed structure, facility or installation that emits or may emit any air pollutant;

“Type Approval” refers to the official ratification of the compliance of a vehicle type with applicable national or international regulations;

“Useful Life of Vehicles and Engines” refers to the period of time a vehicle and/or engine can be used, and meet standards of road worthiness and engine emissions;

“Vehicle Type” means a category of power-driven vehicles which do not differ in such essentials as reference mass or weight, engine type, number of cylinders, body configuration, manner of transmission, fuel used and similar characteristics;

PART II

NATIONAL AMBIENT AIR QUALITY GUIDELINES

RULE VII

NATIONAL AIR QUALITY

SECTION 1. National Ambient Air Quality Guideline Values

- a. Pursuant to Section 12 of Republic Act 8749, the initial set of National Ambient Air Quality Guideline Values necessary to protect public health and safety and general welfare shall be as follows:

Table 1 National Ambient Air Quality Guideline Values

Pollutants	Short Term ^a			Long Term ^b		
	µg/NCM	ppm	Averaging Time	µg/NCM	ppm	Averaging Time
Suspended Particulate Matter ^c – TSP	230 ^d		24 hours	90		1 year ^e
PM-10	150 ^f		24 hours	60		1 year ^e
Sulfur Dioxide ^c	180	0.07	24 hours	80	0.03	1 year
Nitrogen Dioxide	150	0.08	24 hours			
Photochemical Oxidants as Ozone	140	0.07	1 hour			
	60	0.03	8 hours			
Carbon Monoxide	35 mg/NCM	30	1 hour			
	10 mg/NCM	9	8 hours			
Lead ^g	1.5		3 months ^g	1.0		1 year

^a Maximum limits represented by ninety-eight percentile (98%) values not to exceed more than once a year.

^b Arithmetic mean.

^c SO₂ and Suspended Particulate matter are sampled once every six days when using the manual methods. A minimum of twelve sampling days per quarter or forty-eight sampling days each year is required for these methods. Daily sampling may be done in the future once continuous analyzers are procured and become available.

^d Limits for Total Suspended Particulate Matter with mass median diameter less than 25-50 m m.

^e Annual Geometric Mean.

^f Provisional limits for Suspended Particulate Matter with mass median diameter less than 10 m m and below until sufficient monitoring data are gathered to base a proper guideline.

^g Evaluation of this guideline is carried out for 24-hour averaging time and averaged over three moving calendar months. The monitored average value for any three months shall not exceed the guideline value.

(b) The applicable methods for sampling measurement of the above pollutants are as follows:

TSP – High Volume – Gravimetric, USEPA 40 CFR, Part 50, Appendix B

PM-10 – High Volume with 10 micron particle-size inlet; Gravimetric, USEPA 40 CFR, Part 50, Appendix J

Sulfur Dioxide – Gas Bubbler and Pararosaniline Method (West and Gaeke Method), or Flame Photometric Detector, USEPA 40 CFR, Part 50, Appendix A

Nitrogen Dioxide – Gas Bubbler Griess-Saltzman, or Chemiluminescence Method, USEPA 40 CFR, Part 50, Appendix F

Ozone – Neutral Buffer Potassium Iodide (NBKI), or Chemiluminescence Method, USEPA 40 CFR, Part 50, Appendix D

Carbon Monoxide – Non-dispersive Infra-red Spectrophotometry (NDIR), USEPA 40 CFR, Part 50, Appendix C

Lead – High Volume and Atomic Absorption Spectrophotometry, USEPA 40 CFR, Part 50, Appendix G

(c) An analyzer based on the principles and methods cited above will be considered a reference method only if it has been designated as a reference method in accordance with 40 CFR, Part 53.

- (d) Other equivalent methods approved by the Bureau may be adopted.

SECTION 2. Review of Air Quality Guideline Values

The Department through the Bureau shall, on a routine basis, in coordination with other concerned agencies and programs such as the National Research and Development Program for the Prevention and Control of Air Pollution, review the list of Hazardous Air Pollutants and Guideline Values and recommend to the Secretary of the Department the revision thereof whenever necessary to protect public health and safety, and general welfare, consistent with the requirements of Rule XVII, Section 3.

SECTION 3. Publication of Revised Values

Upon approval by the Secretary, the revised Ambient Air Quality Guideline Values shall be published in one (1) newspaper of general circulation and shall be posted on a public Internet website.

SECTION 4. Air Quality Indices

The Department through the Bureau, and in conjunction with the Department of Health (DOH) may formulate a pollution standard index of air quality to protect public health, safety and general welfare. Implementation and enforcement of corrective actions contained in the index will be at the local government unit (LGU) level. Annex A contains the air quality indices and recommended actions that each LGU may opt to follow.

PART III

MAINTENANCE OF ATTAINMENT AREAS

RULE VIII

ATTAINMENT AREAS – GENERAL

SECTION 1. Designation of Attainment Areas

The Bureau shall delineate areas where the existing ambient air quality is at or below (that is, complies with) National Ambient Air Quality Guideline Values given in Part II, and shall designate such areas as “attainment areas.” Designation of attainment areas will be based on monitoring data collected using the reference methods in Part II and/or other relevant information, including meteorological data, and data covering existing nearby sources. The Department through the Bureau will designate attainment and non-attainment areas, and will review and revise these designations from time to time as relevant data become available.

SECTION 2. Review of Area Designation

The Bureau shall revise area designations as additional data, whether monitoring, source or general knowledge, become available. Results from reviews of area designations will be made available for public comment.

RULE IX

EXISTING SOURCES IN ATTAINMENT AREAS

SECTION 1. Standards

Existing sources must comply with National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

SECTION 2. Non-compliance

Sources not in compliance with Section 1 above must submit a Compliance Plan to the Bureau for approval, which details how the source will be brought into compliance. The owner of the facility must submit the plan within two (2) months of notification of non-compliance by the Bureau. The plan must include a schedule that will be enforceable and may provide for as long as eighteen (18) months to meet the applicable standards after notice of non-compliance by the Bureau. The Bureau may grant an extension of up to twelve (12) months for good-faith actions from the source owner.

SECTION 3. Emission Averaging and Emission Trading

Compliance plans submitted under Section 2 above may include use of emission averaging and emission trading as approved by the Bureau and described in Rules XXI and XXII respectively.

SECTION 4. Modification of Sources

Any existing source in an attainment area making a change or modification to its process or production which results in an increase of POTENTIAL emissions equal to or greater than the following shall be considered significant and subject to Rule X for the affected pollutant(s).

Carbon Monoxide	100 tons per year
Nitrogen Oxides	40 tons per year
Sulfur Dioxide.....	40 tons per year
TSP	25 tons per year
PM10.....	15 tons per year
Volatile Organic Compounds.....	40 tons per year
Hydrogen Sulfide.....	10 tons per year

RULE X
NEW/MODIFIED SOURCES
IN ATTAINMENT AREAS

SECTION 1. Standards

New or modified sources must comply with National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

SECTION 2. Best Available Control Technology

Sources subject to this Rule shall, in addition to meeting the requirements of Section 1 of this Rule, install and operate Best Available Control Technology for each regulated pollutant with the potential to be emitted in quantities equal to or greater than 100 tons per year. Selection of the appropriate control technology will be made in consultation and with the approval of the Bureau but in no

case shall it result in non-compliance with requirements of Section 1. Installation of the control equipment will be at the time of source construction or modification.

SECTION 3. Increment Consumption

No new source may be constructed or existing source modified if emissions from the proposed source or modification will, based on computer dispersion modeling, result in:

Exceedance of the National Ambient Air Quality Guideline Values; or

An increase in existing ambient air levels above the levels shown below

PM-10, annual arithmetic mean 17 micrograms per cubic meter

PM-10, 24-hr maximum 30 micrograms per cubic meter

Sulfur Dioxide, annual arithmetic mean 20 micrograms per cubic meter

Sulfur Dioxide, 24-hr maximum 91 micrograms per cubic meter

Nitrogen Dioxide, annual arithmetic mean 25 micrograms per cubic meter

In the case of multiple point sources at a single facility, the net emissions from all affected sources shall be included in a single increment analysis.

SECTION 4. Emission Averaging and Emission Trading

Sources subject to provision of this Rule shall not be eligible for emission averaging however they may generate emission credits for purposes of an acceptable emission trading program.

SECTION 5. Continuous Emission Monitoring

New and modified sources shall install and operate, according to manufacturer specifications, continuous emission

monitoring systems (CEMS) for each applicable pollutant listed in Section 4, Rule IX that the source has the POTENTIAL to emit in quantities equal to or greater than 100 tons per year. TSP and PM-10 fractions are not differentiated for purposes of this section; therefore, applicability will be determined by the total particulate matter expected to be emitted for new sources, or as collected by 40 CFR Part 60, Appendix A, Method 5 for modified sources. CEMS shall be applied as follows:

All sources subject to this section: Sources shall install and operate a CEMS for carbon dioxide and oxygen that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 3. Additionally, each source shall, as appropriate meet the following requirements:

- a. Particulate matter: Sources shall install and operate a CEMS for opacity that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 1. The owner shall have the additional requirement of establishing a calibration curve showing the relationship between opacity as measured by the CEMS and mass particulate emission rate as determined by Method 5. The calibration curve shall cover the full range of reasonably expected operating conditions and/or process rates of the source and shall consist of at least three data points, one at maximum permitted operations, one at maximum design capacity, and one at 80% of the maximum permitted rate. The Bureau may waive one test point if the permitted rate and maximum design capacity rate are the same.
- b. Sulfur Dioxide and Nitrogen Oxides: Sources shall install and operate a CEMS for these parameters that meet criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 2.

- c. Carbon Monoxide: Sources shall install and operate a CEMS for this parameter that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 4 or 4A.
- d. Hydrogen Sulfide: Sources shall install and operate a CEMS for this parameter that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 7.

The CEMS requirements under this Section shall not apply to refinery flares, as well as to volatile organic compounds, unless a specific provision requires CEMS for volatile organic compounds is included in the facility's permit to operate.

PART IV MANAGEMENT OF NON-ATTAINMENT AREAS

RULE XI NON-ATTAINMENT AREAS – GENERAL

SECTION 1. Designation of Non-Attainment Areas

The Bureau shall designate and delineate areas where the existing ambient air quality is not in conformance with National Ambient Air Quality Guideline values given in Part II as “non-attainment areas.” Designation of non-attainment areas will be based on monitoring data collected using the reference methods in Part II or as may be reasonably expected from existing nearby sources and meteorological conditions. Special consideration will be given to populated areas where greater numbers of people may be exposed to unhealthy air. The Department through the Bureau will designate attainment and non-attainment areas, and will review and revise these designations from time to time as relevant data becomes available.

An area may be designated as non-attainment for one or more criteria pollutants, and may

be an attainment area for the remaining criteria pollutants.

SECTION 2. Review of Area Designation

The Bureau shall revise and/or confirm area designations as additional data, whether monitoring, sampling, source specific or general knowledge, becomes available. Results from reviews of area designations will be made available for public comment/review.

RULE XII
EXISTING SOURCES IN
NON-ATTAINMENT AREAS

SECTION 1. Standards

Existing sources must comply with all National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

SECTION 2. Non-compliance

Sources not in compliance with Section 1 above must submit a Compliance Plan to the Bureau for approval which details how the source will be brought into compliance. The owner of the facility must submit the plan within two (2) months of notification of non-compliance by the Bureau. The plan must include a schedule that will be enforceable and may provide for as long as eighteen (18) months to meet the applicable standards after notice of non-compliance by the Bureau. Extensions or grace periods will not be allowed in non-attainment areas.

Should the source failed to comply with its commitment within the specified period in the compliance plan, the Bureau shall impose penalties and fines to be computed retroactive from the time the notification of non-compliance was served.

SECTION 3. Emission Averaging and Emission Trading

Existing sources located in non-attainment areas will be allowed to use emission averaging for compliance purposes however, they will not be allowed to participate in emission trading for the pollutant or pollutants for which the area is designated as a non-attainment area, except as a generator (not user) of emission reduction credits.

SECTION 4. Modification of Sources

Any existing source located in a non-attainment area and making a change in process or production which increases POTENTIAL emissions from the source of the pollutant for which the area is designated non-attainment, shall be classified as modified and subject to Rule XIII. Equipment overhaul, refurbishment, or upgrade to extend the life of the equipment beyond its normal useful life is considered to be a modification if it result in the increase of POTENTIAL emissions for purposes of this Section.

SECTION 5. Emission Fee Surcharge

Sources subject to the non-attainment provisions will be assessed a 50% surcharge (i.e., 150% of base) on the annual emission fees for the pollutant(s) for which the area is designated non-attainment.

SECTION 6. Penalty and Fine Surcharge

Sources subject to the non-attainment provisions will be subject to a 100% surcharge (i.e., 200% of base) for any penalties or fines relating to a violation of the non-attainment provisions.

RULE XIII
NEW/MODIFIED SOURCES IN NON-
ATTAINMENT AREAS

SECTION 1. Standards

New or modified sources must comply with all National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

SECTION 2. Lowest Achievable Emission Rate

New and modified sources (as defined in Section 4 of Rule XII) shall install and operate air pollution control technology which will provide the lowest achievable emission rate (LAER) of the pollutant for which the area is designated non-attainment. The affected firm will propose technologies it believes will meet the intent of this regulation. The Bureau will approve the use of lowest achievable emission rate control technologies on a case-by-case basis.

SECTION 3. Emission Offsets

New and modified sources must provide offsets in existing actual emission within the non-attainment area in a ratio of 1:1.2 to the POTENTIAL emission level of the proposed new or modified source. The offsets may be made from any existing source in the non-attainment area but must be actual, demonstrable, enforceable and permanent. The proposed offsets are subject to approval by the Bureau.

SECTION 4. Emission Averaging and Emission Trading

New and modified sources subject to the non-attainment provisions may not use emission trading or emission averaging for compliance purposes.

SECTION 5. Continuous Emission Monitoring

New and modified sources must install and operate, according to manufacturer specifications, continuous emission monitoring devices for each pollutant for which the area is in non-attainment and which the source emits. Application, installation and operation of the CEMS shall meet criteria provided in Rule X Section 5.

SECTION 6. Emission Fee, Penalty and Fine Surcharge

Sections 5 and 6 of Rule XII above shall apply to new and modified sources in non-

attainment areas.

**PART V
AIR QUALITY MANAGEMENT SYSTEM**

**RULE XIV
AIR QUALITY MANAGEMENT
INFORMATION SYSTEM**

SECTION 1. Ambient Air Monitoring Network

The Bureau shall, within two (2) years from the effectivity of these Rules, design and establish an Ambient Air Monitoring Network for the assessment of ambient air quality. The Ambient Air Monitoring Network shall be expanded gradually to cover the entire country.

SECTION 2. Emissions Inventory

The Bureau shall, within three (3) years from the date of effectivity of these Rules, and every three (3) years thereafter, make an inventory of emissions from stationary, mobile and area sources. Where possible, the Bureau shall coordinate with the Governing Boards.

SECTION 3. Air Quality Database

The Bureau and the National Statistical Coordination Board shall design the Air Quality Database which shall be computerized and stored in a manner accessible to the public and shall contain data collected from the Ambient Air Monitoring Network and the Emissions Inventory. The Bureau shall maintain and update the Air Quality Database.

SECTION 4. National Air Quality Status Report

The Bureau shall prepare the Annual National Air Quality Status Report which shall contain:

- a. A summary of the extent of air pollution in the country, per type of pollutant and per type of source;
- b. An analysis and evaluation of the current state, trends and projections of air pollution;

- c. An identification of critical areas, activities, or projects which will need closer monitoring or regulation;
- d. Recommendations for necessary executive and legislative action, and
- e. Other pertinent qualitative and quantitative information concerning the extent of air pollution and the air quality performance rating of industries in the country.

Upon approval by the Secretary of the Department, the National Air Quality Status Report shall be submitted to the Office of the President and to Congress on or before March 31 of every year and shall cover the preceding calendar year. The National Air Quality Status Report and other related reports shall be made available to the public.

RULE XV AIRSHEDS

SECTION 1. Authority

The Secretary of the Department, upon the recommendation of the Bureau, shall divide the geo-political regions of the country into airsheds.

SECTION 2. Designation of Airsheds

Designation of airsheds shall be on the basis of, but not limited to, areas with similar climate, weather, meteorology and topology which affect the interchange and diffusion of pollutants in the atmosphere, or areas which share common interest or face similar development programs, prospects or problems. Designation of airsheds shall be revised as additional data, needs or situations arise.

For a more effective air quality management, a system of planning and coordination shall be established and a common action plan shall be formulated for each airshed.

SECTION 3. Initial Designation of Airsheds

The Department through the Bureau will designate the airshed, determine the attainment and non-attainment areas, and will review and revise these designations from time to time as relevant data becomes available.

SECTION 4. Governing Board

Pursuant to Section 9 of the Act, a Governing Board will be created for each airshed, to effectively carry out the formulated action plans.

SECTION 5. Composition and Organizational Set-up of the Board

Each Governing Board shall be headed by the Secretary of the Department as Chairman. The members shall be as follows:

- a. Provincial Governors from areas belonging to the airshed;
- b. City/Municipal Mayors from areas belonging to the airshed or the MMDA Chairman in the case of Metro Manila;
- c. A representative from each concerned government agency;
- d. Representatives from people's organizations;
- e. Representatives from non-government organizations; and
- f. Representatives from the private sector.

There shall be two Deputy Chairpersons, namely, the Department's Regional Executive Director and the Bureau's Regional Director in the region where the airshed is located. The ratio of Board representatives from government agencies to those from the private sector and from civil society shall be on the order of 5:2:2.

Within six (6) months from the designation of a particular airshed, concerned POs, NGOs and private business sector in the airshed or with recognized interests in the airshed shall

choose their representatives by and among themselves through sectoral assemblies convened for the purpose.

Members of the governing board shall serve for a term of three (3) years (or such lesser time as may be permitted by the term of office if publicly-elected officials) without compensation, except for actual and necessary expenses (i.e. traveling) incurred in the performance of their duty. When a vacancy occurs during the term of a member from a PO, NGO or the private business sector, a new member shall be appointed by the Governing Board for the remainder of the unfinished term.

SECTION 6. Functions of the Board

Each Governing Board shall perform the following functions within its jurisdiction (airshed):

- a. Formulation of policies and standard-setting subject to laws of national application;
- b. Preparation of a common action plan;
- c. Coordination of functions among its members; and
- d. Submission and publication of an annual Air Quality Status Report for each airshed.

SECTION 7. Executive Committee

An Executive Committee will be formed, for the purpose of carrying out the day-to-day functions of the Governing Board, consisting of nine (9) persons: the Chairperson, two (2) Deputy Chairpersons and six (6) members while respecting the ratio of government representatives to representatives from the private sector and civil society of 5:2:2. The members of the Committee shall be elected by the governing board at large for a term of two (2) years. Where possible, members of the Committee will be selected for their expertise in the subject area. Representatives will be selected from the appropriate region.

SECTION 8. Technical Working Groups

Technical working groups will be formed to ensure broad-based participation in the work of the Governing Boards.

SECTION 9. Technical Administrative Secretariat

The Bureau shall serve as the technical-administrative secretariat for each Governing Board.

SECTION 10. Meetings

The Department shall provide basic funding from the Air Quality Management Fund for the conduct of regular meetings of the Governing Boards, the Executive Committee, Technical Working Groups and other activities to be conducted in the implementation of the Act. Additional funding shall be made available to support civil society activities aligned with the implementation of the Act provided these activities are included in the common action plan of the concerned airshed.

SECTION 11. Governing Rules

Governing rules shall be formulated by and for the individual Governing Boards. These governing rules shall be submitted for review and comments by the Department to advise the Governing Boards of conflict in policies and laws of national application.

SECTION 12. Re-designation of Airshed Boundaries

Upon consultation with appropriate local government authorities, the Secretary of the Department, upon recommendation of the Bureau shall, from time to time, revise the designation of airsheds utilizing eco-profiling techniques and undertaking scientific studies.

RULE XVI

AIR QUALITY MANAGEMENT FUND

SECTION 1. Air Quality Management Fund

An Air Quality Management Fund (AQMF) to be administered by the Department through the Bureau as a special account in

the National Treasury is hereby established to finance containment, removal, and clean-up operations of the Government in air pollution cases, guarantee restoration of ecosystems and rehabilitate areas affected by the acts of violators of this Act, to support research, enforcement and monitoring activities and capabilities of the relevant agencies, as well as to provide technical assistance to the relevant agencies. Such fund may likewise be allocated per airshed for the undertakings herein stated.

SECTION 2. Uses of Fund

The AQMF will be used for activities that are in direct support of objectives outlined in the Air Quality Action Plan of the airsheds. The AQMF will be reserved for national purposes and will be allocated among the airsheds. This can mean support, grant, finance or otherwise assist activities such as, but not limited to:

- a. purchase of equipment related to air quality monitoring, reporting or management;
- b. running costs for special campaigns, monitoring, enforcement or public awareness raising;
- c. costs for special events related to air quality monitoring, enforcement etc.
- d. funding of temporary staff positions in accredited organizations, of persons who have a TOR directly related to implementation of AQAP;
- e. research on air related issues; and
- f. running costs of Governing Boards and their Technical Secretariats

SECTION 3. Sources for the Air Quality Management Fund

Sources for the AQMF shall include:

- a. air emission charges from industrial facilities;
- b. air emission charges from motor vehicles;

- c. fines and penalties for non-compliance with environmental standards. This relates to both vehicular and industrial related air pollution;
- d. grants from both private sector and donor organizations.; and
- e. a limited percentage (5-10%) of the proceeds of the Program Loan for the Metro Manila Air Quality Improvement Sector Development Program.

SECTION 4. Decision Making on the Use of the Air Quality Management Fund (AQMF)

The Department through the Bureau shall formulate a detailed set of criteria (project design, project management, project reporting and project accounting) of qualified or eligible projects and activities to be supported by the AQMF. Individual Governing Boards shall follow these criteria in allocating those funds that are put at their disposal by the Department. Individual Governing Boards shall set up special committees for this purpose with members drawn from both the government, private sector and civil society members of each Governing Board.

In order to promote transparency and accountability, the Department will formulate business standards, which will describe the scrutiny mechanisms of proposals as well as maximum response times. The Department will ensure the publication of an Annual Report which specifies income and expenditure of the AQMF, together with a summary of initiatives supported and refused. This Annual Report will be available within two (2) months after the end of the fiscal year.

SECTION 5. Air Emission Fees for Stationary Sources and for Mobile Sources

Air emission fees will initially be determined based on the amount of revenue necessary to assure the successful implementation of the Act as described in these Implementing Rules and Regulations. The air emission fees shall then be apportioned to stationary and

mobile sources based on estimated annual mass emissions.

The Bureau shall use data contained in a facility's operating permit to estimate annual mass emissions. Other data sources such as annual fuel consumption and/or production rates may also be used as well as appropriate emission factors. Facility owners may, at their option, install CEMS to determine actual emission rates for purposes of calculating annual emission fees. CEMS used for this purpose must be installed and operated as per criteria provided in Rule X Section 5.

The base air emission fee may be adjusted in later years as new data becomes available regarding the success of individual components of the Act.

RULE XVII

**AIR POLLUTION RESEARCH AND
DEVELOPMENT PROGRAM**

**SECTION 1. National Research and
Development Program for the Prevention
and Control of Air Pollution**

The Department through the Bureau, in coordination with the Department of Science and Technology (DOST), other agencies, the private sector, the academe, NGOs and POs shall, establish a National Research and Development Program for the Prevention and Control of Air Pollution.

**SECTION 2. Development of Industry-wide
Applicable Methods**

The Bureau shall give special emphasis to research on and the development of improved methods having industry-wide application for the prevention and control of air pollution.

**SECTION 3. Development of Air Quality
Guidelines**

The National Research and Development Program for the Prevention and Control of Air

Pollution shall develop air quality guideline values in addition to internationally-accepted standards. It shall consider the socio-cultural, political and economic implications of air quality management and pollution control.

RULE XVIII

EMISSION QUOTAS

SECTION 1. Emission Quotas

Subject to approval of the Department through the Bureau, each regional industrial center designated as a special airshed can allocate emission quotas to pollution sources within its jurisdiction that qualify under an environmental impact assessment system programmatic compliance program pursuant to the implementing rules and regulations of Presidential Decree No. 1586. However, such sources shall remain subject to the requirements of these Implementing Rules and Regulations.

Prior to implementation thereof, the Department through the Bureau shall consider, among others, the emission inventory and the mass rate emission standards.

PART VI

**AIR POLLUTION CLEARANCES AND
PERMITS FOR STATIONARY SOURCES**

RULE XIX

PERMIT REGULATIONS

SECTION 1. Permits Required

All sources of air pollution subject to these Implementing Rules and Regulations must have a valid Permit to Operate issued by the Director. New or modified sources must first obtain an Authority to Construct issued by the Director.

SECTION 2. Filing Fees for Applications

A fee to be determined by the Department through the Bureau shall be paid upon the filing of any of the following applications:

- a. Authority to Construct;
- b. Permit to Operate;
- c. Transfer of an existing and valid Permit to Operate by reason of transfer of location of the installation or change of permittee or both;
- d. Revision of any existing and valid Authority to Construct or Permit to Operate involving alteration or replacement of the installation;
- e. Renewal of an expired Authority to Construct or Permit to Operate;
- f. Any other application for a permit not otherwise enumerated above.

Filing fees for applications which have been denied shall not be refunded nor applied to subsequent applications.

SECTION 3. Authority to Construct

All proposed or planned construction or modification of sources that has the potential to emit 100 tons per year or more of any of the regulated pollutants are hereby required an Authority to Construct approved by the Bureau before construction or modification activities can take place. Applications shall be filed in four (4) copies and supported by the official receipt of the filing fees and by such documents, information and data as may be required by the Bureau, including the following:

- a. An engineering report covering the plant description and operations, the estimated types, concentrations and quantities of all emissions to the atmosphere, the proposed control facilities, the emission rate and annual mass emission objectives, the design criteria for air pollution control equipment to be used, and other relevant information. The design criteria, if warranted, shall be based on the results of laboratory and pilot plant scale studies. The design efficiencies of the proposed air control equipment and the quantities and types of pollutants

in the final emissions shall be indicated. Where confidential records are involved, the Bureau may limit the full disclosure of the same after discussions with the applicant;

- b. The plans and specifications of the installation and its control facilities (in standard size of 50 cm by 90 cm) duly certified by a registered professional mechanical engineer, sanitary engineer or chemical engineer or a combination of any two or all of them as may be required by the Bureau depending upon the nature of the construction, operation or activity sought to be covered by the Authority to Construct. The plans shall clearly show in adequate detail the proposed arrangement, location and size of the pollution control equipment or facilities, including their accessories, cross-sections and construction details. The specifications shall be in sufficient detail so that, when read in conjunction with the plans, they clearly reveal the proposed means and methods for the control of pollution and their expected performance efficiency.
- c. The project proponent shall conduct an air quality impact analysis using Bureau-approved computer dispersion models and techniques. The impact analysis shall estimate the resulting ambient air concentrations for all significant pollutants from the facility, and shall include the existing ambient air concentrations as a baseline. The impact analysis will be used by the Bureau, together with other relevant information, to determine if the proposed construction or modification will result in a violation of an applicable air quality standard.
- d. A vicinity map adequately identifying the street address, if any, of the location or premises of the installation.

The Bureau shall, within a reasonable time, act on the application for Authority to Construct either by issuing the corresponding Authority

to Construct or by denying the application in writing stating the reason or reasons thereof.

The Authority to Construct shall be issued subject to such conditions as the Department through the Bureau may deem reasonable to impose and upon payment of the fees in accordance with the schedule to be prepared by the Bureau.

In case the application is denied, the applicant may, within ten (10) days from notice of such denial, file only one written petition for reconsideration. The decision on said petition shall become final after ten (10) days from receipt thereof.

SECTION 4. Conversion of Authority to Construct to Permit to Operate

Once new source construction or modification is completed the source owner shall, within sixty (60) days of startup, request the authorizing agency (generally the Department through the Bureau) to convert the Authority to Construct to a Permit to Operate. A valid Permit to Operate will be issued once the owner has demonstrated to the satisfaction of the authorizing agency that all permit conditions have been or will be met and that no air quality standards or guidelines will be exceeded. The owner shall conduct source testing using methods and techniques approved by the Bureau as part of the demonstration.

SECTION 5. Application for Permit to Operate

An application for a Permit to Operate shall be filed for each source emitting regulated air pollutants. Facilities having more than one source may group the sources under a single permit application, provided the requirements below are met for each individual source. Applications shall be made in a format prescribed by the Department through the Bureau, filed in triplicate copies, together with a copy of the official receipt of the filing fees and including the following:

- a. The information listed in Section 3 of this Rule;
- b. A statement of compliance or non-compliance with Rule XXV (or, in the case of incinerators, a statement of compliance or non-compliance with Rule XXVIII. The statement of compliance shall be supported with actual test data (such as stack sampling test data), or data gathering techniques acceptable to the Bureau.
- c. A statement of compliance or non-compliance with Rule XXVI, Ambient Air Quality Standards. The statement of compliance shall be supported by dispersion modeling data using modeling techniques and sampling approved by the Bureau. For cases in which source sampling and analysis is not practical, the Bureau may approve the use of actual ambient air test data to demonstrate compliance with the Ambient Air Quality Standards, so long as the location and conditions of the testing conform to a "worst case" scenario as demonstrated by air dispersion modeling.
- d. A compliance action plan for sources not meeting regulatory requirements. The Compliance Plan may include provision for use of emission averaging and/or trading as allowed under Parts III and IV.
- e. A certification signed by the applicant attesting to the accuracy and completeness of the application.
- f. A signed copy of the appointment or designation of the pollution control officer of the applicant; and
- g. Other documents, information and data as may be required by the Department through the Bureau.

Requirements in the Permit to Operate will be based on operating conditions at the time of the test. For example, if the facility passes the stack sampling test at 50% operating capacity, then the Permit to Operate will require the facility to operate at or below 50% operating capacity.

SECTION 6. Action on the Application for Permit to Operate

Within thirty (30) days from submission of the complete requirements, the Department through the Bureau shall act on the application for Permit to Operate by approving or denying the same in writing. The Department through the Bureau may deny an application having incomplete requirements when the applicant fails or refuses to complete the same despite being given reasonable time to do so.

The Permit to Operate shall be issued or renewed every year subject to such conditions as the Department through the Bureau may deem reasonable to impose, and upon payment of the permit fees for air pollution source and control facilities.

In case the application is denied, the applicant may, within ten (10) days from notice of such denial file only one written petition for reconsideration. The decision on said petition shall become final after ten (10) days from receipt thereof.

Applications for a Permit to Operate shall be available for public review at the Department Regional Office for the Region in which the applicant's facility is located. Any interested person may oppose the application for a Permit to Operate in writing before its approval. In such a case, the Bureau may conduct a public hearing on the application.

SECTION 7. Temporary Permit to Operate

For purposes of sampling, planning, research and other similar purposes, the Department through the Bureau, upon submission of satisfactory proof, may issue a Temporary Permit to Operate not to exceed ninety (90) days, provided that the applicant has a pending application for a Permit to Operate under Section 5.

SECTION 8. Life and General Conditions of Permit

A permit duly issued by the Department through the Bureau shall be valid for the

period specified therein but not beyond one (1) year from the date of issuance unless sooner suspended or revoked. It may be renewed by filing an application for renewal at least thirty (30) days before its expiration date and upon payment of the required fees and compliance with requirements.

Issuance of the permit shall not relieve the permittee from complying with the requirements of the Act and these Rules and that commencement of the work or operation under such permit shall be deemed acceptance of all the conditions therein specified.

SECTION 9. Grounds for Modification of Permit Conditions

After due notice and public hearing, the Department through the Bureau may modify any existing and valid permit by imposing new or additional conditions, provided that the permittee is given reasonable time to comply with such new or additional conditions, upon showing:

- a. That an improvement in emission quality or quantity can be accomplished because of technological advance without unreasonable hardship;
- b. That a higher degree of treatment is necessary to effect the intents and purposes of the applicable provisions of these Rules and Regulations;
- c. That a change in the environment or surrounding conditions requires a modification of the installation covered by a permit to conform to applicable air quality standards, as the case may be;
- d. That the area in which the permitted facility is located has been changed from an undesignated area or an attainment area to a non-attainment area for one or more criteria pollutants, or;
- e. That the Act or these Rules and Regulations requires the modification of the permit conditions.

SECTION 10. Grounds for Suspension or Revocation of Permits

After due notice and hearing, the Department through the Bureau may suspend or revoke any existing and valid permit on any of the following grounds:

- a. Non-compliance with, or violation of any provision of act, these Rules and Regulations, and/or permit conditions;
- b. False or inaccurate information in the application for permit that led to the issuance of the permit;
- c. False or inaccurate information in the monitoring data or in reports required by the Permit to Operate;
- d. Refusal to allow lawful inspection conducted by the Department through the Bureau of duly authorized personnel;
- e. Non-payment of the appropriate fees;
- f. Other valid purposes.

SECTION 11. Posting of Permit

The permittee shall display the permit upon the installation itself in such manner as to be clearly visible and accessible at all times. In the event that the permit cannot be so placed, it shall be mounted in an accessible and visible place near the installation covered by the permit.

No person shall willfully deface, alter, forge, counterfeit, or falsify any permit.

SECTION 12. Transfer of Permits

In case of sale or legal transfer of a facility covered by a permit, the permittee shall notify the Department through the Bureau of such and the name and address of the transferee within thirty (30) days from the date of sale or transfer. In case of failure to do so, he shall be liable for any violation of these Rules and Regulations that the transferee may commit by reason of such transfer. It shall be the duty of the transferee to file an application for

transfer of the permit in his name within ten (10) days from notification of the Department through the Bureau.

SECTION 13. Plant Operational Problems

In the event that the permittee is temporarily unable to comply with any of the conditions of the Permit to Operate due to a breakdown of the installation covered by the permit for any cause, he or his pollution control officer shall immediately notify within 24 hours from occurrence of such breakdown the Department through the Bureau of such cause(s), and the steps being taken to solve the problem and prevent its recurrence, including the estimated duration of the breakdown, the intent toward reconstruction or repair of such installation and such other relevant information or data as may be required by the Department through the Bureau. The Department through the Bureau shall be immediately notified when the condition causing the failure or breakdown has been corrected and such source equipment or facility is again in operation.

In such a case, the permittee may be subject to the payment of fines or penalties as provided under Part XIII of these Implementing Rules and Regulations.

SECTION 14. Monitoring and Reporting

The owner or the pollution control officer in charge of the installation subject to the provisions of these Implementing Rules and Regulations shall keep a record of its operational data and control test indicating its operational efficiency, and shall furnish a copy of the same to the Department through the Bureau quarterly in accordance with the procedures and/or programs approved by the Department through the Bureau for this purpose.

A permit issued by the Department through the Bureau will generally contain source-specific monitoring and reporting requirements for air pollutant concentrations

at the point of emission, for determination of compliance with the requirements of Rule XXV. These requirements may include, where applicable, a provision that sample results for particulate matter shall be corrected to standard operating (or combustion) conditions such as 12% carbon dioxide.

RULE XX

**FINANCIAL LIABILITY FOR ENVIRONMENTAL
REHABILITATION**

SECTION 1. Financial Guarantee Mechanisms

As part of the environmental management plan attached to the environmental compliance certificate (ECC) pursuant to Presidential Decree No. 1586 and its rules and regulations, the Bureau shall require program and project proponents to put up financial guarantee mechanisms to finance the needs for emergency response, clean-up or rehabilitation of areas that may be damaged during the program or actual project implementation. Liability for damages shall continue even after the termination of a program or project, where such damages are clearly attributable to that program or project and for a definite period to be determined by the Bureau and incorporated into the ECC.

The Bureau may promulgate guidelines for the effective implementation of said financial guarantee mechanisms.

SECTION 2. Financial Liability Instruments

Financial liability instruments may be in the form of a trust fund, environmental insurance, surety bonds, letters of credit, as well as self-insurance. The choice of the guarantee instrument or combinations thereof shall depend, among others, on the assessment of risks involved. Proponents required to put up guarantee instruments shall furnish the Bureau with evidence of availment of such instruments.

RULE XXI

EMISSION AVERAGING

SECTION 1. Applicability

Facilities having multiple sources within a contiguous property and owned by the same entity may use emission averaging for compliance purposes if provided for in either Part III or Part IV.

SECTION 2. Approach

Facility owners wishing to use emission averaging for compliance purposes must do so through an enforceable Compliance Plan submitted as a part of the operating permit application. The Bureau must approve the Compliance Plan and application of emission averaging for it to be effective.

SECTION 3. Requirements

Facilities must install a CEMS approved by the Bureau for the pollutant(s) to which emission averaging is being applied. The continuous emission monitoring system must be installed on each source subject to emission averaging. Application, installation and operation of the CEMS shall meet criteria provided in Rule X Section 5.

RULE XXII

EMISSIONS TRADING

SECTION 1. Applicability

Emissions trading may be allowed among pollution sources within an airshed as provided in Parts III and IV. Facilities located in different airsheds may use trading as approved by the Bureau.

SECTION 2. Approach

Facility owners wishing to use emission trading for compliance purposes must do so through an enforceable Compliance Plan submitted as a part of the operating permit application of each facility. The Bureau must approve the Compliance Plan and application of emission trading for it to be effective.

SECTION 3. Requirements

Facilities must install a CEMS approved by the Bureau for the pollutant(s) to which emission

trading is being applied. The continuous emission monitoring system must be installed on each source that is being used to generate the emission reduction credits. Application, installation and operation of the CEMS shall meet criteria provided in Rule X Section 5.

RULE XXIII
SYSTEM OF INCENTIVES

SECTION 1. Tax Incentives

Industries, which shall install pollution control devices or retrofit their existing facilities with mechanisms that reduce pollution, shall be entitled to tax incentives such as but not limited to tax credits and/or accelerated depreciation deductions. The Department in coordination with the DTI, DOF, NEDA and other concerned agencies shall develop the guidelines on tax incentives.

RULE XXIV
**RECORD KEEPING, INSPECTION,
MONITORING AND ENTRY**

SECTION 1. Required Relevant Reports and Records

The Bureau or its duly accredited entity shall, after proper consultation and notice, require any person who owns or operates any emissions source or who is subject to any requirement of this Act to : (a) establish and maintain relevant records; (b) make relevant reports; (c) install, use and maintain monitoring equipment or methods; (d) sample emission, in accordance with the methods, locations, intervals and manner prescribed by the Environmental Management Bureau; (e) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical; and (f) provide such other information as the Environmental Management Bureau may reasonably require.

SECTION 2. Right of Entry, Inspection and Testing

Pursuant to the Act, the Bureau, through its authorized representatives, shall have the right of:

- (a) entry or access to any premises including documents and relevant materials as referred to in the herein proceeding paragraph;
- (b) inspect any pollution or waste source, control device, monitoring equipment or method required; and
- (c) test any emission.

SECTION 3. Records Available to the Public

Any record, report or information obtained under this section shall be made available to the public, except upon a satisfactory showing to the Bureau by the entity concerned that the record, report or information, or parts thereof, if made public, would divulge secret methods or processes entitled to protection as intellectual property. Such record, report or information shall likewise be incorporated in the Bureau's industrial rating system.

PART VII
POLLUTION FROM STATIONARY SOURCES

RULE XXV
STATIONARY SOURCES – GENERAL

Section 1. National Emission Standards for Source Specific Air Pollutants

For any trade, industry, process, fuel-burning equipment or industrial plant emitting air pollutants, the concentration at the point of emission shall not exceed the limits set in Table 2.

Table 2

National Emission Standards for Source Specific Air Pollutants (NESSAP)

POLLUTANT	STANDARD APPLICABLE TO SOURCE	MAXIMUM PERMISSIBLE LIMITS (mg/NCM)	METHOD OF SAMPLING ^a	METHOD OF ANALYSIS ^a
Antimony and its Cmpds.	Any source	10 as Sb	USEPA Methods 1 through 5 or 29	AAS ^b or per sampling method
Arsenic and its Cmpds.	Any source	10 as As	USEPA Methods 1 through 5 or 29	AAS ^b or per sampling method
Cadmium and its Cmpds.	Any source	10 as Cd	USEPA Methods 1 through 5 or 29	AAS ^b or per sampling method
Carbon Monoxide	Any industrial source	500 as CO	USEPA Method 3 or 10	Orsat Analysis or NDIR
Copper and its Cmpds.	Any industrial source	100 as Cu	USEPA Methods 1 through 5 or 29	AAS ^b or per sampling method
Hydrofluoric Acid and Fluoride Compounds	Any source other than manufacture of Aluminum from Alumina	50 as HF	USEPA Method 13 or 14 as appropriate	As per sampling method
Hydrogen Sulfide	i) Geothermal power plants ii) Geothermal Exploration And Well Testing iii) Any source other than (i) and (ii)	^{c, d} ^e 7 as H ₂ S	USEPA Method 11, 15 or 16 as appropriate	Cadmium Sulfide Method or per sampling method
Lead	Any trade, industry or process	10 as Pb	USEPA Methods 1 through 5 or 12 or 29	AAS ^b or per sampling method
Mercury	Any source	5 as elemental Hg	USEPA Methods 1 through 5 or 29 or 101	AAS ^b / Cold-Vapor Technique or Hg Analyzer
Nickel and its Cmpds. Except Nickel Carbonyl ^f	Any source	20 as Ni	USEPA Methods 1 through 5 or 29	AAS ^b or per sampling method
NO _x	1. Manufacture of Nitric Acid 2. Fuel burning steam generators a. Existing Source b. New Source i. Coal-fired ii. Oil-fired 3. Diesel-powered electricity generators 4. Any source other than (1), (2) and (3) a. Existing Source b. New Source	2,000 as acid & NO ₂ calculated as NO ₂ 1,500 as NO ₂ 1,000 as NO ₂ 500 as NO ₂ 2,000 as NO ₂ 1,000 as NO ₂ 500 as NO ₂	USEPA Methods 1 through 4 and Method 7	Phenol-disulfonic acid Method or per sampling method
Particulates	1. Fuel Burning Equipment a. Urban ^g and Industrial Area ^h b. Other Area ⁱ 2. Cement Plants (kilns, etc.) 3. Smelting Furnaces 4. Other Stationary Sources ^j	150 200 150 150 200	USEPA Methods 1 through 5	Gravimetric per sampling method
Phosphorus Pentoxide ^k	Any source	200 as P ₂ O ₅	USEPA Methods 1 through 5 or 29	Spectrophotometry or per sampling method
Sulfur Oxides	1. Existing Sources a. Manufacture of Sulfuric Acid and Sulf(on)ation Process b. Fuel Burning Equipment c. Other Stationary Sources ^l 2. New Sources a. Manufacture of Sulfuric Acid and Sulf(on)ation Process b. Fuel Burning Equipment c. Other Stationary Sources ^l	2,000 as SO ₃ 1,500 as SO ₂ 1,000 as SO ₃ 1,500 as SO ₃ 700 as SO ₂ 200 as SO ₃	USEPA Methods 1 through 4 and 6 or 8 as appropriate	As per sampling method
Zinc and its Compounds	Any source	100 as Zn	USEPA Methods 1 through 5 or 29	AAS ^b or per sampling method

^aOther equivalent methods approved by the Department may be used.

^b Atomic Absorption Spectrophotometry.

^c All new geothermal power plants starting construction by 01 January 1995 shall control H₂S emissions to not more than 150 g/GMW-Hr.

^d All existing geothermal power plants shall control H₂S emissions to not more than 200 g/GMW-Hr.

^e Best available control technology for air emissions and liquid discharges. Compliance with air and water quality standards is required.

^f Emission limit of Nickel Carbonyl shall not exceed 0.5 mg/NCM.

^g Urban Area means a poblacion or central district of cities or municipalities having at least 50,000 population, or twin political subdivisions with contiguous boundary which essentially form one community whose population is more than 50,000 inhabitants. Inside these centers or population are some scattered industrial establishments.

^h Industrial Area means a well-defined, exclusive land use area in various stages of development that are primarily established for industrial subdivisions, manufacturing and other industry mixes with provisions for common

support infrastructures, facilities and services such as roads, water supply, power supply, communication systems, housing, storm drainage, sanitary sewerage systems, industrial wastewater treatment facilities, etc. These areas which are usually from 200 to 500 hectares in size as registered with the (Housing and Land Use Regulatory Board (HLURB)) or any other duly authorized government entities as industrial estates, parks or area. Export processing zones also fall under this category of land use.

ⁱ Other Areas mean all areas other than an urban or industrial area.

^j Other Stationary Sources (particulate) means a trade, process, industrial plant, or fuel burning equipment other than thermal power plant, industrial boilers, cement plants, incinerators, smelting furnaces.

^k Provisional guideline.

^l Other Stationary Sources (sulfur oxides) refers to existing and new stationary sources other than those caused by the manufacture of sulfuric acid and sulfonation process, fuel burning equipment and incineration.

SECTION 2. Visible Emission Standards for Smoke and Opacity

Visible opacity standards for smoke are as follows:

- a. The opacity of light or dark smoke emitted from any emission point in all stationary sources shall be such that, when compared in the appropriate manner with the Ringelmann Chart method, or using USEPA Method 9 (40 CFR, Part 60, Appendix A), or an equivalent method approved by the Department through the Bureau, visible emissions shall not appear darker than shade 1 on the Ringelmann Chart, nor exceed 20% opacity using USEPA Method 9.
- b. Exceptions to the requirements stated herein may be allowed under the following circumstances: The opacity limit hereinbefore prescribed shall not apply to the emission of dark smoke for less than five (5) minutes in a period of one (1) hour provided that the total period of such emission shall not exceed

an aggregate of fifteen (15) minutes in any twenty-four (24) hours; provided further, that at no time should the opacity be darker than shade 3 of the chart; and provided finally, that this provisions shall not apply to cases of dark emissions resulting from cold-start and up-set conditions. Measurements of opacity shall be made in the manner specified by the approved method employed for this purpose.

SECTION 3. Absence of Emission Standard for Other Air Pollutants

Where no emission or ambient standard is prescribed hereof for a specific air pollutant that is potentially harmful to public health and/or public welfare, the owner or operator of an industrial plant or stationary source shall conduct its operation or process by the best practicable means as may be necessary to prevent or minimize air pollution through the employment of cleaner production technology and sound environmental management practices.

The absence of the ambient air or emission standard for a specific air pollutant shall not preclude the Department through the Bureau to take appropriate action to control such pollutants to assure the health, welfare and comfort of the general population.

SECTION 4. Sampling Methods

Sampling for compliance purposes shall be conducted using the methods prescribed above or other equivalent method as approved by the Department through the Bureau. Sampling shall be conducted under routine operating conditions at the facility. Operating conditions at the facility during compliance testing will be used by the Bureau to establish permit conditions under which the facility may operate.

SECTION 5. Miscellaneous provisions and Equipment

a. Stationary Fuel-Burning Equipment

1. The owner or operator of a stationary fuel-burning equipment shall, if so required by the Department through the Bureau, provide a means to the satisfaction of Secretary whereby a person in charge of such a plant or equipment may at all times ascertain without leaving the boiler room, furnace room, or control room, whether or not dark smoke is discharging from any stack or such installation, such mean may include one or more of the following:
 - a. Window or opening through which an unobstructed view of the top of the stack may be obtained from the boiler room, furnace room or control room;
 - b. A mirror so placed as to reflect the top of the stack, which reflection shall be visible from the boiler room, furnace room, or control room;

- c. A smoke density indicator and alarm installed so as to indicate adequately in the boiler room, furnace room and control room the density of smoke being discharged;
 - d. A closed circuit television installation with the receiver located in the boiler room, furnace room, or control room;
 - e. Any similar device which may be approved by the Secretary.
2. All oil-burning equipment shall have heaters capable of heating oil to a temperature appropriate for the oil and burner.
3. The following major industries are required to install continuous emission monitoring systems (CEMS) for particulate and sulfur oxide emissions:
 - a. Fossil fuel-fired power plant over 10 MW rating (including NOx);
 - b. Petroleum refinery, petrochemical Industries (including NOx);
 - c. Primary copper smelter (including NOx);
 - d. Steel plant, ferro-alloy production facility (particulate only); and
 - e. Cement Plant (par ticulate only).
4. New and existing sources falling under paragraph (3) a), b), c) and d) and new sources falling under paragraph (3) e) shall comply with the requirements of installing CEMS upon the effectivity of these Implementing Rules and Regulations.

5. All existing sources falling under paragraph (3) e) shall comply with the requirements of installing CEMS within twenty-four (24) months from the effectivity of these Implementing Rules and Regulations. Application, installation and operation of the CEMS shall meet criteria provided in Rule X Section 5.

b. Miscellaneous Equipment.

Re-heating furnaces, smoke ovens, bake ovens, coffee heaters, varnish kettles, paint booths and similar equivalent shall be so designed that when operating, there is no free flow of objectionable gases into the atmosphere. To minimize the escape of smoke, odors, fly ash or fumes, appropriate air pollution control facilities shall be installed.

SECTION 6. Review and Revision of Emission Standards

The Bureau shall provide industries, non-government organizations (NGOs) and other stakeholders the opportunity to participate in the formulation and revision of standards, determination of the technical feasibility of the revised standards, setting the schedule of implementation of the revised standards, and other related concerns. Pursuant to Section 19 of the Act, the Department through the Bureau shall review, or as the need arises, revise and publish emissions standards to further improve the emission standards for stationary sources of air pollution. Such emission standards shall be based on mass rate of emission for all stationary sources of air pollution based on internationally-accepted standards, but not be limited to, nor be less stringent than such standards and with the standards set forth in this Rule. The standards, whichever is applicable, shall be the limit on the acceptable level of pollutants emitted from a stationary source for the protection of the public's health and welfare.

SECTION 7. Harmonization with International Standards

In the review and revision of emission standards, the Bureau shall, as appropriate, endeavor to achieve the harmonization of national emissions standards with those set by regional bodies such as the Association of South East Asian Nations (ASEAN).

SECTION 8. Self Monitoring Reports

Each existing stationary source shall submit to the Bureau Regional Office where the facility is located, a self-monitoring report of its emission rates, indicating the status of compliance with current standards. The self-monitoring report shall be submitted to the Bureau within six (6) months of the effectivity of these Implementing Rules & Regulations, and within six (6) months of each official revision of emission standards applicable to the source. The party or person responsible for the source shall assume responsibility for demonstrating proof of compliance, which the Bureau may subject to independent verification if it deems necessary.

SECTION 9. Consent Agreement

The Department, through the Pollution Adjudication Board (PAB) may reduce penalties or fines to be imposed upon stationary sources proven to exceed the emission rate requirements of its Permit to Operate or of these Implementing Rules and Regulations, provided that the person or party responsible for the source enters into a consent agreement with the Bureau, subject to confirmation by the PAB, in which the responsible party shall:

- a. Implement an Environmental Management System (EMS) within eighteen (18) months of entering into said agreement using scope and procedures specified in Philippine National Standard 1701 on establishing an EMS;

- b. Submit an Environmental Management Plan (EMP) derived from the EMS process within six (6) months of entering into a consent agreement. The EMP shall specify a timetable for attaining compliance with all environmental regulations as well as the means with which to accomplish compliance, with emphasis on pollution prevention methods and not limited to installation of pollution control devices;
- c. Post a performance bond acceptable to the PAB, not to exceed P 500,000 but not less than P 50,000 depending on the size of the facility, which shall be forfeited upon failure to submit proof of an approved EMS within eighteen (18) months, and provided that an extension of not more than twelve (12) months may be allowed by the Bureau on meritorious grounds.

The consent agreement shall incorporate requirements for environmental performance through timetables and reporting of performance, in addition to commitments and procedures adopted in the EMP. The consent agreement shall be without prejudice to possible payment/liability for damages to third parties (e.g. private persons).

SECTION 10. Compliance Timetable Beyond Eighteen (18) Months

Sources proposing timetables longer than eighteen (18) months for reaching compliance shall be required to first conduct a public consultation before the consent agreement be finalized.

SECTION 11. Proof of an Environmental Management System

Proof of an approved EMS shall be in the form of an EMS audit report prepared internally by the person or party responsible for the facility, or one prepared by a third party EMS auditor. The audit report shall be prepared by a person or company certified under an

international EMS standard such as ISO 14001 or an equivalent approved by the Bureau. This report, including a determination of the EMS's conformity to PNS 1701, shall be submitted for review and acceptance by the Bureau Regional Director within eighteen (18) months from the signing of a consent agreement.

SECTION 12. Failure to Comply with Consent Agreement

Failure of the stationary source to comply with the timetable specified in the consent agreement shall be sufficient ground for closure through a Cease and Desist Order (CDO) issued by the PAB. Further, the facility owner shall be subject to the reimposition of the original penalty (subject of the reduction) as well as additional appropriate penalties computed on a daily basis pursuant to Section 45 of the Act.

SECTION 13. Prohibited Acts

a. Fugitive Particulates

No person shall cause, let, permit, suffer or allow the emission of particulate matter from any source whatsoever, including, but not limited to, vehicular movement, transportation of materials, construction, alternation, demolition or wrecking or industry related activities such as loading, storing or "handling," without taking reasonable precautions to prevent such emission. Such reasonable precaution shall include, but not be limited to, the following:

1. Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structure, construction, operations, the grinding of rock, quarry or clearing of lands.
2. Application of asphalt, oil water, or suitable chemicals on roads, materials stockpiles, and other

surface which create airborne dust problem; and

3. Installation and use of hoods fans and fabric filters or other suitable control devices to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations.

b. Volatile Organic Compounds or Organic Solvent Emissions

No person shall store, pump, handle, process, unload or use in any process or installation, volatile compound or organic solvents without applying known existing vapor emission control devices or systems deemed necessary and approved by the Department through the Bureau.

c. Nuisance

No person shall discharge from any source whatsoever such quantities of air contaminants or other material which constitute nuisance as defined under Articles 694 to 707 of Republic Act No. 385, otherwise known as the *Civil Code of the Philippines*.

d. Open Burning

No person shall be allowed to burn any materials in any quantities which shall cause the emission of toxic and poisonous fumes. Such materials include but are not limited to plastic, polyvinyl chloride, paints, ink, wastes containing heavy metals, organic chemicals, petroleum related compound, industrial wastes, ozone depleting substances and other similar toxic and hazardous substances.

Further, no establishment, firm, company, government or private entity or organizations shall be allowed to burn or cause open burning of waste materials in their premises, area of

jurisdiction, including recognized or unrecognized dumpsites in any quality or quantity. Violators, upon determination by the Department through the Bureau, shall be penalized in accordance with the provisions of Part XIII of these Implementing Rules and Regulations.

e. General Restrictions

1. No plant or source shall operate at capacities which exceed the limits of operation or capability of a control device to maintain the air emission within the standard limitations imposed by the Act or by relevant permit conditions issued by the Department through the Bureau.
2. No person shall build, erect, construct, install, or implant any new source, or operate, modify, or rebuild an existing source, or by any other means release or take action which would result in, together with the concentrations of existing air pollutants, ambient air concentration greater than the ambient air quality standards specified in Section 12 (b) of the Act.
3. No person shall build, erect install or use any article, machine, equipment or other contrivance, the use of which will conceal an emission which would otherwise constitute a violation of any of the provisions of these Implementing Rules and Regulations.
4. No person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminant emitted, conceals or dilutes any emission of air contaminant which would otherwise violate the provisions of permit regulations of Rule XIX.

5. All pollution control devices and systems shall be properly and consistently maintained and correctly operated in order to maintain emission in compliance with the provisions and standards of Section 19 of the Act. No facilities shall be operated without the control equipment in proper operation, except with the permission of the Department through the Bureau when special circumstances arise.

RULE XXVI

SOURCES SPECIFIC AMBIENT AIR QUALITY STANDARDS

SECTION 1. National Ambient Air Quality Standards

For any industrial establishment or operation, the discharge of air pollutants that result

in airborne concentrations in excess of the National Ambient Air Quality Standards shown in Table 3 shall not be permitted. Sampling shall be done at the location of highest expected concentration. Location shall be determined using dispersion modeling. Bureau-approved techniques shall be followed in developing sampling plans. For example, the Bureau's Air Quality Monitoring Manual specifies that sampling shall be done at an elevation of at least two (2) meters above the ground level, and shall be conducted either at the property line or at a downwind distance of five (5) to twenty (20) times the stack height, whichever is more stringent. However, the Bureau may approve the adoption of a different procedure in the choice of the location of the monitoring equipment depending upon the physical surrounding and other relevant factors in the area where the sampling is to be conducted.

Table 3
National Ambient Air Quality Standards for Source Specific Air Pollutants
from Industrial Sources/Operations

Pollutants	Concentration ^a		Averaging	Method of Analysis/Measurement ^c
	µg/NCM	Ppm	Time (min)	
Ammonia	200	.028	30	Nesslerization / Indo Phenol
Carbon Disulfide	30	0.01	30	Tischer Method
Chlorine and Chlorine cmpds expressed as Cl ₂	100	0.03	5	Methyl Orange
Formaldehyde	50	0.04	30	Chromotropic Acid method or MBTH Colorimetric method
Hydrogen Chloride	200	0.13	30	Volhard Titration with Iodine solution
Hydrogen Sulfide	100	0.07	30	Methylene Blue
Lead	20		30	AAS ^b
Nitrogen Dioxide	375 260	0.20 0.14	30 60	Griess-Saltzman
Phenol	100	0.03	30	4-Aminoantipyrine
Sulfur Dioxide	470 340	0.18 0.13	30 60	Colorimetric-Pararosaline
Suspended Particulate Matter – TSP	300	--	60	Gravimetric
PM-10	200	--	60	Gravimetric
Antimony	0.02 mg/NCM	--	30	AAS ^b
Arsenic	0.02 mg/NCM	--	30	AAS ^b
Cadmium	0.01 mg/NCM	--	30	AAS ^b
Asbestos	2 x 10 ⁶ Particulate/NCM (over 5 micrometer in size)	--	30	Light Microscopy
Sulfuric Acid	0.3 mg/NCM	--	30	Titration
Nitric Acid	0.4 mg/NCM	--	30	Titration

^a Ninety-eight percentile (98%) values of 30-min. sampling measured at 25°C and one atmosphere pressure

^b Atomic Absorption Spectrophotometry.

^c Other equivalent methods approved by the Department through the Bureau may be used.

SECTION 2. Review of Ambient Air Quality Standards

The Bureau shall provide industries, non-government organizations (NGOs) and other stakeholders the opportunity to participate in the formulation and revision of standards, determination of the technical feasibility of the revised standards, setting the schedule of implementation of the revised standards, and other related concerns. The Bureau shall, on an annual basis, in coordination with other concerned agencies, review the list of Hazardous Air Pollutants and the National Ambient Air Quality Standards for Source Specific Air Pollutants under Section 12 of the Act and recommend to the Secretary of the Department the revision thereof when necessary to protect public health and safety, and general welfare.

SECTION 3. Publication of Revised Standards

Upon approval by the Secretary of the Department, the revised Ambient Air Quality Standards shall be published in a newspaper of general circulation and may be posted on a public internet website.

RULE XXVII
AIR QUALITY CONTROL TECHNIQUES

SECTION 1. Air Quality Control Techniques

Simultaneous with the issuance of the Ambient Air Quality Guideline Values, the Bureau, through the National Research and Development Program contained in the Act, and upon consultation with the appropriate advisory committees, government agencies and LGUs, shall issue, and from time to time, revise information on air pollution control techniques. Such information shall include:

- a. Best available technology and alternative methods of prevention, management and control of air pollution;
- b. Best available technology economically achievable which refers to the

technological basis/standards for emission limits applicable to existing, direct industrial emitters of non-conventional and toxic pollutants; and

- c. Alternative fuels, processes and operating methods which will result in the elimination or significant reduction of emissions.

Such information may also include data relating to the cost of installation and operation, energy requirement, emissions reduction benefits, and environmental impact or the emission control technology.

SECTION 2. Air Quality Control Techniques Database

The Bureau may establish an Air Quality Control Techniques Database.

RULE XXVIII
NON-BURN TECHNOLOGIES

SECTION 1. Incineration Prohibited

Pursuant to Section 20 of the Act, incineration, hereby defined as the burning of municipal, bio-medical and hazardous wastes, which process emits toxic and poisonous fumes is prohibited.

SECTION 2. Non-Burn Technologies

With due concern on the effects of climate change, the Bureau shall promote the use of state-of-the-art, environmentally-sound and safe thermal and non-burn technologies for the handling, treatment, thermal destruction, utilization, and disposal of sorted, un-recycled, un-composted, biomedical and hazardous wastes.

Non-burn technologies are technologies used for the destruction, decomposition or conversion of wastes other than through the use of combustion and which comply with at least one of the following conditions:

- a. The environment within the destruction chamber is free of Oxygen; or
 - b. Fire is not used within the destruction chamber; or
 - c. The source of heat is not fire; or
 - d. A heat-conducting material or medium, whether of a solid, liquid, gaseous, sol or gel form, is used to destroy the waste.
- c. Compliance with all other relevant requirements of these Implementing Rules and Regulations. In cases where the requirements of this Rule are more restrictive than those of the other requirements of the Implementing Rules and Regulations, the more restrictive requirements shall apply.

Non-burn technologies may be used provided that the following conditions are strictly complied with:

- a. Applicable emission standards are not exceeded;
- b. Installation and approved use of CEMS measuring PM, NO₂, CO, Chlorine and temperature;

SECTION 3. Emission Standards for Treatment Facilities Using Non-Burn Technologies

Emissions from treatment facilities using non burn technologies shall be deemed toxic and poisonous when they result from the processing of chlorinated compounds, or when they exceed the following emission standards set forth in Tables 4 and 5.

Table 4
Daily and Half Hourly Average Limits – Treatment Facilities
Using Non-burn Technologies

Item	Daily Average Values	Half Hourly Average Values
Particulates (total dust)	10 mg/NCM	30 mg/NCM
Gaseous and vaporous organic substances, expressed as total organic carbon	10 mg/NCM	20 mg/NCM
Hydrogen chloride (HCl)	10 mg/NCM	60 mg/NCM
Hydrogen fluoride (HF)	1 mg/NCM	4 mg/NCM
Sulfur dioxide (SO ₂)	50 mg/NCM	200 mg/NCM
Nitrogen monoxide (NO) and Nitrogen dioxide (NO ₂), expressed as nitrogen dioxide for incineration plants with a capacity exceeding 3 tonnes per hour	200 mg/NCM	400 mg/NCM
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as nitrogen dioxide for incineration plants with a capacity of 3 tonnes per hour or less	300 mg/NCM	--
Ammonia	10 mg/NCM	20 mg/NCM

Table 5
Limits for Metals, Dioxins and Furans – Treatment Facilities Using Non-burn Technologies

Item	Average Values ^a
Cadmium and its compounds, expressed as cadmium (Cd)	total 0.05mg/NCM
Thallium and its compounds, expressed as thallium (Tl)	
Mercury and its Compounds, expressed as mercury (Hg)	0.05 mg/NCM
Antimony and its compounds, expressed as antimony (Sb)	total 0.5 mg/NCM
Arsenic and its compounds, expressed as arsenic (As)	
Lead and its compounds, expressed as lead (Pb)	
Chromium and its compounds, expressed as chromium (Cr)	
Cobalt and its compounds, expressed as cobalt (Co)	
Copper and its compounds, expressed as copper (Cu)	
Manganese and its compounds, expressed as manganese (Mn)	
Nickel and its compounds, expressed as nickel (Ni)	
Vanadium and its compounds, expressed as vanadium (V)	
Tin and its compounds, expressed as tin (Sn)	
Dioxins and Furans	0.1 nanogram/NCM

^a These average values cover gaseous and the vapor forms of the relevant heavy metal emission as well as their compounds. Provided, that the emission of dioxins and furans into the air shall be reduced by the most progressive techniques. The average values shall be measured over a sample period of a minimum of four (4) hours and a maximum of eight (8) hours, except that all averages of dioxins and furans shall be measured over a sample period of a minimum of six (6) hours and maximum of eight (8) hours.

SECTION 4. Non-applicability of the Prohibition

The prohibition shall not apply to traditional small-scale method of community/ neighborhood sanitation “*siga*”, traditional, agricultural, cultural, health, and food preparation and crematoria.

SECTION 5. Phase-out of Incinerators Dealing with Biomedical Wastes

Existing incinerators dealing with a biomedical wastes shall be phased out on or before 17 July 2003 provided that in the interim, such units shall be limited to the burning of pathological and infectious wastes, and subject to close monitoring by the Bureau. After the said grace period, facilities that process or treat biomedical wastes shall utilize state-of the art, environmentally-sound and safe non-burn technologies.

SECTION 6. Monitoring

There shall be public participation in the monitoring of thermal treatment facilities.

PART VIII POLLUTION FROM OTHER SOURCES

RULE XXIX POLLUTION FROM OTHER SOURCES – GENERAL

SECTION 1. Ban on Smoking

The Local Government Units (LGUs) shall, within six (6) months from the effectivity of these Implementing Rules and Regulations, implement or enforce a ban on smoking inside a public building or an enclosed public place including public vehicles and other means of transport or in any enclosed area outside of one’s private residence, private place of work

or any duly designated smoking area which shall be enclosed.

SECTION 2. Regulation of Other Sources

The DOTC shall regulate and implement emission standards on mobile sources other than those referred to under Section 21 of the Act. For this purpose, the Department through the Bureau, shall formulate and establish the necessary standard for these other mobile sources. The DOTC shall collect fines and penalties provided for under Section 46 of the Act from those found to be in violation of the applicable emissions standards for other mobile sources.

**PART IX
POLLUTION FROM MOTOR VEHICLES**

**RULE XXX
MOTOR VEHICLE COVERAGE**

SECTION 1. Scope

These provisions, in the interest of public safety and conservation of the environment, are applicable with respect to:

- a. Manufacture, local assembly or importation into the country of new motor vehicle as classified under PNS 1891 shall be covered by a Certificate of Conformity (COC) to be issued pursuant to the following sections of this Rule, provided, however, that those motor vehicle types already covered by the COC at the time of the effectivity of these rules shall not be subject to these provisions unless the Department finds justifiable reason to suspend, cancel or revoke such a certificate;
- b. Enforcement of permissible emission levels of motor vehicles to be manufactured, marketed and/or operated in the country;

- c. Implementation of the National Motor Vehicle Inspection and Maintenance Program including accreditation and authorization of private emission testing centers and certification of inspectors and mechanics, and;
- d. Roadside inspection of motor vehicles.

**RULE XXXI
EMISSION CONTROL FOR
NEW MOTOR VEHICLES**

SECTION 1. Certificate of Conformity

A COC shall be issued by the Department through the Bureau to a motor vehicle manufacturer, assembler, or importer certifying that a motor vehicle type complies with the numerical emission standards in this Rule, using the relevant ECE test procedures or their equivalent as approved by the Department. No new motor vehicle shall be allowed initial registration unless a valid COC issued by the Department through the Bureau is granted. New motor vehicles shall refer to the following:

- a. Motor vehicles designed and manufactured in the Philippines using brand new engines and spare parts;
- b. Motor vehicles assembled in the Philippines using original and brand new parts and components imported into the country completely knocked down (CKD);
- c. New motor vehicles completely built up (CBU) imported into the country.

The emission test for type approval shall be carried out by the DOTC/LTO under the policy, regulation and guidelines supervision of the Department. The facility where the tests will be conducted shall be chosen by the Department utilizing the motor vehicle type approval system testing center of the DOTC/LTO. It shall also have visitorial powers over the LTO Motor Vehicle Inspection Station and

Vehicle Type Approval System Testing Center where these tests are carried out.

While the DOTC/LTO is developing inspection capability of the motor vehicle type approval system test, the previous emission test results of pre-production engine vehicle type duly authenticated by the Philippine Embassy/Consulate of the country of origin or manufacture of subject motor vehicle shall be valid and sufficient.

SECTION 2. Transitory Emission Limits

As a condition for the issuance of a COC, exhaust emission limits for new motor vehicle types, to be introduced into the market up to 31 December 2002, shall not exceed the following:

For cars and light duty motor vehicles, the limits for emission of gaseous pollutants as a function of given reference mass shall be as provided hereunder:

Table 6
Exhaust Emission Limits of Gaseous Pollutants for Cars and Light Duty Motor Vehicles (Reference No. ECE Reg. 15-04)

Reference Mass (kg)	CO g/test		HC + NO _x g/test ^x	
Type I Test	Type Approval	Conformity of Production	Type Approval	Conformity of Production
750	58	70	19.0	23.8
751 – 850	58	70	19.0	23.8
851 – 1020	58	70	19.0	23.8
1021 – 1250	67	80	20.5	25.6
1251 – 1470	76	91	22.0	27.5
1471 – 1700	84	101	23.5	29.4
1701 – 1930	93	112	25.0	31.3
1931 – 2150	101	121	26.5	33.1
2150	110	132	28.0	35.0
All Motor Vehicles Type II Test	Maximum Concentration of CO at end of last urban cycle = 3.5%			
All Motor Vehicles Type III Test	No Crankcase Emissions Permitted			

For medium and heavy duty motor vehicles with compression-ignition engine, the limit for the emission of gaseous pollutants and smoke shall be as provided in Table 7 and Table 8.

Table 7
Exhaust Limits of Gaseous Pollutants for Medium and Heavy Duty Motor Vehicles Equipped with Compression-Ignition Engines (Reference No. ECE Reg. 49-01)

CO (g/kWh)	HC (g/kWh)	NO _x (g/kWh)
11.2	2.4	14.4

Table 8
Smoke Emission Limits Under Steady State Conditions for Heavy Duty Motor Vehicles Equipped with Compression-Ignition Engines (Reference No. ECE Reg. 24-03)

Nominal Flow (liters/second)	Absorption Coefficient (m ⁻¹)
42	2.26
100	1.495
200	1.065

Opacity under free acceleration should not exceed the approved level by more than 0.5 m⁻¹.
 Fuel evaporative emissions for spark ignition engines shall not exceed 2.0 grams per test.
 For motorcycles, CO emissions at idle shall not exceed 6% for all types.

SECTION 3. Test Procedures to Determine Exhaust Emissions Under Transitory Standards

The test procedures for the determination of gaseous exhaust emissions under the transitory standards shall be as follows:

For cars and light duty motor vehicles	ECE Regulation 15-04 "Uniform provision concerning the approval of motor vehicle equipped with positive-ignition engine or with compression-ignition engine with regard to emission of gaseous pollutant by the engine"
For medium and heavy duty motor vehicles with compression-ignition engines	ECE Regulation 49-01 "Uniform provision concerning the approval of compression ignition (C.I.) engines and motor vehicles with C.I. engines with regards to the emission of pollutant by the engine"
For the determination of CO emission	Test procedure for the determination of CO emission shall be at idling speed.

SECTION 4. Emission Standards Effective Year 2003

As a condition for issuance of a COC, exhaust emission limits for motor vehicle types to be introduced into the market beginning 01 January 2003 shall refer to the provisions of Sec. 21 of the Act, which is equivalent to Euro 1, as follows:

Table 9
Emission Limits for Passenger Car/Light Duty Vehicle Type Approval (Directive 91/441/EEC)

CO (g/km)		HC + NOx (g/km)		PM ¹ (g/km)	
Type Approval	Conformity of Production	Type Approval	Conformity of Production	Type Approval	Conformity of Production
2.72	3.16	0.97	1.13	0.14	0.18

¹ For compression-ignition engines only.

Table 10
Emission Limits for Passenger/Light Commercial Vehicles as a Function
of the Given Reference Mass Type Approval

(Directive 93/59/EEC)	CO (g/km)		HC+NOX (g/km)		PM ¹ (g/km)	
Class of Vehicle	Type Approval	Conformity of Production	Type Approval	Conformity of Production	Type Approval	Conformity of Production
Class 1 (<1250 Kg)	2.72	3.16	0.97	1.13	0.14	0.18
Class 2 (1251< >1700)	5.17	6.0	1.40	1.6	0.19	0.22
Class 3 (>1700 Kg)	6.9	8.0	1.7	2.0	0.25	0.29

¹For Compression ignition vehicles only.

Table 11
Emission Limits for Heavy Duty Vehicle Type Approval
(Directive 91/542/EEC)

CO (g/kWh)		HC (g/kWh)		NOx (g/kWh)		PM ^{1,2} (g/kWh)	
Type Approval	Conformity of Production	Type Approval	Conformity of Production	Type Approval	Conformity of Production	Type Approval	Conformity of Production
4.5	4.9	1.10	1.23	8.0	9.0	0.36	0.4

¹For Compression ignition vehicles only.

²For engines of 85 kW or less, the limit value for particulate emissions is increased by multiplying the quoted limit by a coefficient of 1.7.

Table 12
Smoke Emission Limits Under Steady State Conditions (Reference No. ECE Reg. 24-03)

Nominal Flow (liters/second)	Light Absorption Coefficient ¹ (m ⁻¹)
42	2.26
100	1.495
200	1.065

¹For Compression ignition vehicles only.

Opacity under free acceleration should not exceed the approved level by more than 0.5 m⁻¹.

Table 13
Emission Limits for Motorcycle Type Approval with 4-stroke Engines
ECE Regulation 40.01

Reference Weight R(1) (kg)	CO (g/km)		HC (g/km)	
	Type Approval	Conformity of Production	Type Approval	Conformity of Production
<100	17.5	21	4.2	8
100-300	(17.5+17.5(R-00))/200	21+21(R-100))/200	4.2+1.8(R-100)	(6+2.4(R-100))/200
>300	35	42	8	9.4

Notes: 1) Reference weight (R) = Motorcycle weight + 75 kg.

Table 14
Emission Limits for Motorcycle Type Approval with 2-stroke Engines
ECE Regulation 40.01

Reference Weight R (1) (kg)	CO (g/km)		HC (g/km)	
	Type Approval	Conformity of Production	Type Approval	Conformity of Production
<100	12.8	16	8	10.4
100-300	$(12.8+19.2(R-100))/200$	$16+24(R-100)/200$	$8+4(R-100)$	$(10.4+6.4(R-100))/200$
>300	32	40	12	18.8

Notes: 1) Reference weight (R) = Motorcycle weight + 75 kg.

Table 15
Emission Limits for Mopeds Type Approval
ECE Regulation 47

Vehicle Type	2-Wheeled		3-Wheeled	
Pollutant	CO g/km	HC g/km	CO g/km	HC g/km
Licensing	8.0	5.0	15.0	10.0
Production	9.6	6.5	18.0	13.0

(Mopeds are vehicles of less than 400 kg equipped with an engine having a cylinder capacity of less than 50 cubic centimeters.)

For mopeds, CO emissions at idle shall not exceed 6% for all types.

Fuel evaporative emission for spark-ignition engines shall not exceed 2.0 grams hydrocarbons per test. Likewise, it shall not allow any emission of gases from crankcase ventilation system into the atmosphere.

Durability of pollution control equipment for spark-ignition and compression-engines shall conform to the deterioration factor prescribed in the test procedure.

The standards set forth in the above paragraphs of this section refer to the exhaust emitted over a driving schedule or engine speed, evaporative emission, crankcase ventilation emission and durability of pollution control equipment as set forth in the test procedures indicated in the succeeding section.

SECTION 5. Test Procedures to Determine Exhaust Emissions and Other Standards Effective in Year 2003

The test procedures for the determination of emissions and other standards effective in 2003 shall be as follows:

For exhaust emissions, fuel evaporative emission, emission of crankcase gases and durability of pollution control equipment for cars and light duty motor vehicles	ECE Regulation 83-01/02, series of amendment approval B and C: "Uniform provision concerning the approval of vehicles with regards to the emission of gaseous pollutants by the engine according to engine fuel standards" Approval B – Limitation of emission of gaseous pollutant by the engine, evaporative emission, crankcase emission and durability of motor vehicle fueled with unleaded petrol. Approval C – Limitation of emission of gaseous and particulate pollutants, crankcase emission and durability of pollution control devices of motor vehicles fueled with diesel fuel.
For Medium and Heavy Duty Motor Vehicles with compression-ignition engines	ECE Regulation 49-01/02, series of amendment (49/02) "Uniform provision concerning the approval of compression-ignition (C.I) engines and motor vehicles equipped with C.I. engine with regards to the emission of pollutants by the engine"
For the determination of CO emission	The test procedure for the determination of CO emission shall be at idling speed as provided in the Emission Test Procedure for Vehicles Equipped with Spark-Ignition Engines and the Free Acceleration Test Procedure for Vehicles Equipped with Compression-Ignition Engines

Other equivalent test procedures as approved by the Department may be utilized.

SECTION 6. General Requirements

Every motor vehicle manufacturer, assembler or importer shall provide all new motor vehicles with a service manual or written instructions for the proper use and maintenance of the motor vehicle, including all relevant service information or specifications to ensure proper functioning of the emission control system and compliance with emission standards.

All newly-manufactured or imported gasoline-fuelled motor vehicles, including motorcycles and mopeds, to be introduced into the market or imported into the Philippines shall be designed to operate on unleaded gasoline upon the effectivity of these Implementing Rules and Regulations.

SECTION 7. Application for Certificate of Conformity

The application for a COC shall be submitted to the Bureau by the motor vehicle manufacturer, assembler, importer or their duly authorized representatives. It shall be accompanied by the following particulars in triplicate copies:

- (a) Complete and detailed descriptions of motor vehicle and the engine;
- (b) Description of the emission control system installed in the motor vehicle;
- (c) Details of the fuel feed system;
- (d) Vehicle Type Approval System test result by DOTC/LTO (while the DOTC/LTO is developing inspection capability of the motor vehicle type approval system test, the previous emission test results of pre-production engine vehicle type duly authenticated by the Philippine Embassy/Consulate of the country of origin or manufacture of subject motor vehicle shall be valid and sufficient); and
- (e) Other particulars which may be required by the Department.

SECTION 8. Filing Fees for Application for COC

A fee to be determined by the Department through the Bureau shall be paid upon the filing of the COC application. Filing fees for

applications that have been denied shall not be refundable, nor applicable to subsequent applications.

SECTION 9. Approval of Application

Upon a determination that the vehicle type meets the general requirements of this Rule and upon payment of the corresponding application fees, the Bureau shall issue a COC within a reasonable time.

SECTION 10. COC as Requisite for Registration

New motor vehicles shall be registered with the LTO of the DOTC only upon presentation of a copy of a valid COC issued by the Bureau.

For purposes of registration, the COC shall cover only:

- (a) new vehicle types described in the COC, or
- (b) new vehicle types which conform in all material respects to the design specifications applicable to the particular vehicle type as described in the application for COC and which are produced in accordance with the particulars of a valid COC.

SECTION 11. Validity of COC

For purposes of vehicle registration, the COC shall be valid for six (6) years from the date of issue unless sooner revoked or suspended. In case of suspension, the 6-year validity period shall not be extended by the period of suspension.

Modifications of the brake system, steering, air conditioning, suspension and interior and exterior trimmings shall not be construed as a change in vehicle type and there will be no need to apply for a new COC.

SECTION 12. Consent to Inspection as Condition of COC.

To ensure that new motor vehicles manufactured, assembled, or imported conform in all material respects to the design specifications described in the COC, it shall be a condition of the COC that the manufacturer, assembler or importer shall consent to all the inspections by the Department through the Bureau of the vehicle engine, emission control system, among others, of the new motor vehicles covered by the COC.

SECTION 13. Ground for Revocation of COC.

Failure to comply with any of the requirements of this Rule shall justify the revocation or suspension of the COC.

SECTION 14. Emission Control Labeling

The manufacturer, assembler or importer of any motor vehicle or motor vehicle engine, subject to the applicable emission standards prescribed by the Department, shall affix a permanent legible label, and the vehicle identification number (VIN) plate of the type and in a manner described below.

The label, of durable material, shall be affixed by the manufacturer, assembler or importer in such a manner that it cannot be removed without defacing such label. It shall be affixed in a readily visible position in the engine compartment or any conspicuous area under the hood, or under the seat in case of a motorcycle.

The label shall contain the following information lettered in the English language in block letters and numerals with a legible print size, and of a color that contrasts with the background of the label:

- (a) The label heading: Vehicle Emission Control Information;
- (b) Full corporate name and trademark;
- (c) Engine type displacement in metric units;

- (d) International emission regulation code and/or this Act; and
- (e) Engine tune-up specification and adjustment as recommended by the manufacturer including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g. idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable) as well as other parameters deemed necessary by the manufacturer.

SECTION 15. Submission of Vehicle Identification Number.

The manufacturer, assembler or importer of any motor vehicle covered by a COC under these Implementing Rules and Regulations shall submit to the Bureau, not later than sixty (60) days after its manufacture or entry into the country, the vehicle engine number, chassis number, engine type, vehicle type and color.

Likewise, a sticker with the Department logo, COC number and date of issue and a brief statement that the vehicle complies with the provisions of the Act and its Implementing Rules and Regulations shall be conspicuously displayed on the front windshield of the motor vehicle.

RULE XXXII

EMISSION CONTROL FOR IN-USE VEHICLES

SECTION 1. Emission Standards for In-Use Vehicles

All in-use motor vehicles, and vehicles with updated/enhanced engine whose chassis are preregistered with DOTC/LTO will only be allowed renewal of registration upon proof of compliance of the emission standard described below.

The DOTC/LTO shall conduct the vehicle test utilizing the Motor Vehicle Inspection Station (MVIS) or its duly authorized and accredited inspection centers consistent with the R.A. 7394 otherwise known as the *Consumer Act of the Philippines* within sixty (60) days prior to date of registration.

Emission test procedures as given in Annex B and Annex C for registered or in-use motor vehicles equipped with spark-ignition or compression-ignition engines, respectively, should be strictly followed.

For vehicles with spark-ignition engines except motorcycles, the following emission standards shall apply:

Table 16
Emission Standards for Vehicles with Spark-Ignition Engines (Gasoline) Except Motorcycles

Vehicle Category	CO (% by volume)	HC (ppm as hexane)
Registered prior to January 1, 1997 At Idle 4.5 800	4.5	800
Registered on or after January 1, 1997 but before January 1, 2003 At Idle	3.5	600
Registered on or after January 1, 2003 At Low Idle At High Idle (rpm > 2,500)	0.5 0.3 (π= 1+/- 0.03)*	100

* or in accordance with manufacturer’s specification

For vehicles with compression-ignition engines, the following emission standards shall apply:

Table 17
Emission Standards for Vehicles with
Compression-Ignition Engines (light
absorption coefficient, m-1)*

	Naturally Aspirated	Turbo Charged	1,000 m increase in elevation
Registered for the first time prior to December 31, 2002	2.5	3.5	4.5
Registered for the first time on or after January 1, 2003	1.2	2.2	3.2

* Using the free acceleration test.

For motorcycles registered for the first time on or before December 31, 2002, CO emissions at idle shall not exceed 6.0%. For motorcycles registered for the first time after December 31, 2002 CO emissions at idle shall not exceed 4.5%.

SECTION 2. Emission Standards for Rebuilt Vehicles and Imported Second Hand Vehicles

No rebuilt or second hand-CBU imported into the country or pre-registered vehicles retrofitted with second hand engines shall be allowed registration or renewal of registration without valid Certificate of Compliance to Emission Standard (CCES) issued by the DOTC.

As a condition for the issuance of a CCES, exhaust emission standards of vehicles enumerated previously shall not exceed the standards described below.

As a requirement for the issuance of a CCES by DOTC for imported second hand vehicles, a Certificate of Emission Compliance duly authenticated by the Philippine Embassy/Consulate from the country of origin shall be valid and sufficient. The DOTC may however seek verification through actual testing in the MVIS.

In the case of locally rebuilt vehicles, a CCES issued by the DOTC on the basis of an inspection by the DOTC Vehicle Type Approval System, if available, or initially by LTO MVIS, is required.

The DTI through the Bureau of Import Services (BIS) shall formulate regulations and guidelines that will ensure rebuilt and imported second hand motor vehicles and engines will satisfy the emission standards for rebuilt and imported second hand motor vehicles as provided in these Implementing Rules and Regulations.

Table 18
Emission Standards for Rebuilt Vehicles and
Imported Second Hand Vehicles*

	CO ^a	HC ^a	Smoke ^b [turbocharged]
Registered for the first time prior to December 31, 2002 At Idle	3.5%	500 ppm	2.5[3.5] ^{m-1}
Registered for the first time on or after January 1, 2003 At Idle	0.5%	100 ppm	2.5[3.5] ^{m-1}

- a – For spark-ignition (gasoline-fueled) motor vehicles
- b – For compression-ignition (diesel-fueled) motor vehicles; figure in brackets relate to turbocharged vehicles.

* If the in-use emission standard of the country of origin is more stringent than these maximum limits, it will supersede them.

SECTION 3. Test Procedures for Measurement of Exhaust Emission

The Department shall prescribe the type of smoke opacity meter to be used in the emission testing of vehicles with diesel engines.

The test procedures for measurement of exhaust emissions for in-use motor vehicles

with spark-ignition engines and compression-ignition engines are described in Annexes B and C.

SECTION 4. Control of Emissions from In-use Vehicles

Pursuant to Section 21 (d) of the Act, the DTI, DOTC/LTO, and the Department shall develop and implement the National Motor Vehicle Inspection and Maintenance Program that will ensure the reduction of emissions from motor vehicles and promote the efficient and safe operation of motor vehicles. The inspection and maintenance program shall require all vehicles, as a requisite for renewal of registration, to undergo mandatory inspection to determine compliance with the in-use emission standards. The DOTC through LTO and/or DOTC designated enforcement units shall also establish a roadside inspection system to ensure that vehicles comply with the in-use emission standards.

The National Motor Vehicle Inspection and Maintenance Program is described in detail in Rule XXXIV and the Roadside Inspection System is described in Rule XXXV.

SECTION 5. Use of tamper-resistant odometers and fuel management systems

Pursuant to Section 21 of the Act, the DTI shall prescribe regulations requiring the disclosure of odometer readings and the use of tamper-resistant odometers for all motor vehicles including tamper-resistant fuel management systems for the effective implementation of the inspection and maintenance program.

SECTION 6. Useful Life of For-Hire Vehicles

Pursuant to Section 22 of the Act, the DTI shall promulgate the necessary regulations prescribing the useful life of vehicles and engines including devices in order to ensure that such vehicles will conform to the emission they were certified to meet. These regulations shall include provisions for ensuring the durability of emission devices.

For considerations of public health and welfare, the Department, DTI, DOTC/LTO, NEDA and DOF may develop and implement a program to ensure for-hire vehicles to continue to meet emission standards hereto described.

RULE XXXIII

REVIEW AND REVISION OF STANDARDS

SECTION 1. Review and Revision of Standards

To further improve the emission standards, the Department through the Bureau, in coordination with the DOTC/LTO, shall review the standards every two (2) years or as the need arises. Where necessary to achieve substantial improvement in air quality for the health, safety and welfare of the general public, the Department through the Bureau shall revise the exhaust emission standards for new and in-use motor vehicles. The revised standards must be published in a newspaper of general circulation or be filed in triplicate copies with the University of the Philippines (UP) Law Center pursuant to Presidential Memorandum Circular No. 11 dated 09 October 1992.

SECTION 2. Participation of Stakeholders

The Department shall provide the motoring public, automotive industry, non-government organizations (NGOs) and other stakeholders the opportunity to participate in the formulation and revision of standards, determination of the technical feasibility of the revised standards, setting the schedule of implementation of the revised standards, and other related concerns.

SECTION 3. Harmonization with International Standards

In the review and revision of emission standards, the Department shall endeavor to achieve the harmonization of national emission standards with internationally-accepted standards.

The Department, in coordination with the DOTC and DTI, may adopt or formulate the functional equivalence of the emission limits and test procedures. “Functional equivalence” means exhaust emission limits and test procedures whose numerical values are almost the same or identical with other types of emission limits and test procedures.

The Department, in coordination with DOTC and DTI, and in consultation with the motor vehicle manufacturers and other stakeholders, shall study the feasibility of adopting EURO II or III standards or other appropriate standards in the Philippines to further reduce emissions from motor vehicles.

RULE XXXIV

NATIONAL MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM

SECTION 1. National Motor Vehicle Inspection and Maintenance Program.

All private in-use motor vehicles and vehicles with updated/enhanced engine whose chassis are pre-registered with the Land Transportation Office (LTO) will only be allowed renewal of annual registration when, upon inspection by the LTO or other authorized private Motor Vehicle Inspection Station (MVIS), such vehicles meet the in-use emission standards set forth in Section 1 of Rule XXXII hereof. The LTO or other authorized MVIS shall conduct the vehicle tests for emissions. Public Utility Vehicles submitted to DOTC/LTO for renewal of registration shall only be allowed upon presentation of a valid Vehicle Inspection Report issued on the basis of the inspection following the standard described hereto from the MVIS or its authorized testing center. The Vehicle Inspection Report shall be valid for a maximum of six (6) months.

Emission tests may be conducted within sixty (60) days prior to the renewal of registration. The results of such test shall be presented within sixty (60) days from the date of the

test and may be presented to the LTO motor vehicle registration offices as a prerequisite to renewal of registration.

SECTION 2. Phased Implementation

The DOTC/LTO shall ensure that the Motor Vehicle Inspection System shall be fully operational in Metro Manila by January 2003. Nationwide implementation shall follow in twelve (12) to eighteen (18) months thereafter.

The vehicle inspection will be initially conducted in the LTO-operated MVIS or LTO Motor Vehicle Registration Centers. Priority shall be given to the immediate testing of diesel-powered vehicles.

SECTION 3. DOTC Authorization and DTI Accreditation of Private Emission Testing Centers

Emission testing of vehicles as a consequence of roadside inspection, for voluntary inspection after vehicle maintenance, or for rebuilt and imported second hand vehicles and engines, may be done in a private emission testing center. Private emission testing centers shall be commissioned by the Government through accreditation by DTI and authorization by DOTC. The DTI and DOTC shall accredit and authorize emission testing centers in accordance with the procedural guidelines thereon.

In order to accommodate all vehicles for emission testing, the DOTC may authorize private emission testing centers previously accredited with the DTI. Such testing centers shall be authorized to conduct emission tests on vehicles apprehended for non-compliance with the in-use emission standards. The DOTC shall issue the procedural guidelines on the authorization process. Pursuant to its standard-setting functions, the Department is responsible for regulating the specifications of the emission testing equipment to be used by private emission testing centers. The DTI shall ensure that these specifications are met

by the accredited private emission testing centers.

In seeking authorization from DOTC, qualified persons may file an application with the DOTC through LTO or its designated agency, to be authorized as an emission testing center. The applicant must comply with the requirements of area, trained personnel, adequate equipment and facilities, and submit the documentary requirements as may be required by the DOTC in subsequent regulations. The facilities shall be inspected prior to the issuance of the authorization to determine compliance with the authorization requirements.

To obtain accreditation from the DTI, an application form shall be submitted by the applicant to the DTI Provincial Office located in the province where the applicant operates or resides. The applicant shall comply with the accreditation requirements and submit its organizational manual to the DTI. The facilities of the applicant shall then be inspected. Upon a favorable recommendation of the DTI Evaluation Panel/Committee, the Director of DTI Provincial Office shall approve the application and issue a certification to the applicant.

The accredited testing center shall make available to DTI or its appointed assessors all documents and shall allow the latter to inspect its facilities.

The accredited emission testing center must secure the authorization of the DOTC to conduct emission tests on vehicles apprehended for non-compliance with the in-use standards.

To facilitate the process of accreditation and authorization, the DOTC and DTI shall enter into an inter-agency agreement to develop and implement a uniform procedure for accreditation and authorization of emission testing centers. The DOTC and DTI shall study, among others, (1) the creation of a “one-stop shop” where an applicant may complete the

process of accreditation and authorization, (2) the imposition of one fee, (3) the use of a single application form for both accreditation and authorization, and (4) the issuance of a single certificate of accreditation and authorization signed by both DOTC and DTI representatives.

SECTION 4. Certification of Institutions and Instructors; Licensing of Service Centers and Technicians

The DTI shall also develop and implement standards and procedures for the certification of training institutions, instructors, and facilities and for the licensing of qualified service centers and their technicians as prerequisite for performing the testing, servicing, repair and the required adjustment to the vehicle emission system. Vehicles that fail the emission test may be sent to accredited repair shops for repair of motor vehicle engines, exhaust system and pollution control devices.

These facilities shall be equipped with standard automotive repair tools, standard spare parts and pollution test equipment conforming to applicable ECE, ISO or SAE standards. It is also required that these repair shops or service stations shall have highly skilled mechanics and/or technicians who have on-the-job training certificates from TESDA, local assemblers and manufacturers of motor vehicles.

RULE XXXV
ROADSIDE INSPECTION OF
MOTOR VEHICLES

SECTION 1. Roadside Inspection

Vehicles found emitting excessive smoke while operating in any public highway shall be subjected to an emission test by properly-equipped DOTC through LTO and/or DOTC-designated enforcement unit(s) and/or its deputized agents. The procedure for the apprehension of non-compliant vehicles and the deputation of agents to perform roadside

inspection are set forth in Section 4 of this Rule.

SECTION 2. Agency Responsible for Enforcement

Pursuant to Section 46 of the Act, the DOTC, through LTO or DOTC-designated enforcement unit(s) shall establish a roadside inspection system to ensure that vehicles comply with the in-use emission standards set forth in these Implementing Rules and Regulations.

The DOTC shall establish and chair an oversight committee for the purpose of monitoring smoke belching violations. Representatives from concerned government agencies, relevant sector organizations and civil society shall compose the membership of the oversight committee headed by the LTO.

SECTION 3. Deputation

The DOTC through LTO or DOTC- designated enforcement unit(s) may deputize qualified government employees, LGUs, government agencies and private entities to conduct roadside inspection and to apprehend vehicles which do not comply with the in-use standards set forth in these Implementing Rules and Regulations.

The deputized agents shall undergo a mandatory training on emission standards and regulations. For this purpose, the Department, together with the DOTC through LTO or DOTC-designated enforcement unit(s), DTI, DOST, the Philippine National Police (PNP) and other concerned agencies and private entities shall design a training program. The DOTC through LTO or its designated enforcement unit(s), together with the Department shall oversee the training program.

This program shall include training in the correct use, maintenance and calibration of smoke testing equipment. No individual shall be deputized without satisfactorily completing the training.

SECTION 4. Apprehension and Impounding of Vehicles Exceeding Emission Limits

Pursuant to Section 46 of the Act, the procedure for apprehension and impounding of motor vehicles which emit pollutants beyond the allowable limits shall be as follows:

- a) A vehicle suspected of violation of emission standards through visual signs shall be flagged down by the apprehending officer.
- b) The apprehending officer shall conduct an emission test of the vehicle using portable emission testing equipment and using test procedures given in Annex B and Annex C, to determine whether the vehicle complies with the emission standards. Should the results show an exceedance of the emission limits, the computerized print-out, or other test result generated by the portable emission testing equipment shall serve as prima facie evidence of violation of the emission standards.
- c) Should the test result show that there is an exceedance of the standards, a ticket will be issued to the driver and a warrant of constructive or actual distraint to any owner of the motor vehicle as provided for in Republic Act 4136 shall commence unless the vehicle has been previously found violating the standards three (3) or more times within the last 365-day period. In the latter case, the motor vehicle registration shall be suspended for a period of one (1) year.
- d) Upon payment of the fine at the DOTC through LTO or DOTC-designated enforcement unit(s) or deputized agency or private entity, the vehicle plate(s) will be surrendered to the apprehending officer and the driver will be issued a temporary pass allowing him to take possession of the vehicle for the purpose of undertaking the needed repairs within

a period not later than seven (7) days from the date the vehicle is temporarily released.

- e) Motor vehicles released for purposes of repairs shall not be operated or used in public roads except for the purpose of transporting the same to the service center for repairs and to the authorized emission testing center for emission testing.
- f) When the repairs are made, the vehicle must undergo an emission test at a DOTC/LTO testing center or its authorized and accredited emission testing center to ascertain if it already meets the emission standards.
- g) Once the vehicle meets the standards, the DOTC/LTO testing center or its authorized and accredited emission testing center shall issue a Certificate of Emission Compliance to the driver of the vehicle. The CEC will have no validity period, its sole purpose is to secure the release of the impounded vehicle or the vehicle license plates, whichever is applicable and which were confiscated as a consequence of that specific violation.
- h) Upon presentation of the Certificate of Emission Compliance, the driver shall recover his vehicle or his vehicle plates, whichever is applicable, from the DOTC through LTO and/or DOTC- designated enforcement unit(s) which has custody over the vehicle or vehicle plates.

Further refinement of the apprehension procedure stated in the Act shall be developed and/or approved by the DOTC. All apprehensions shall be made strictly adopting the above procedure.

Failure of enforcers to observe said procedure shall merit review of the apprehension by the adjudication service and/or waiver of fines and penalties.

SECTION 5. Appellate Procedure

In the event the driver of the apprehended vehicle contests the fine imposed and/or the violation of emission standards, he may appeal the same with the DOTC-designated Traffic Adjudication Service where he will be given the opportunity to be heard.

SECTION 6. Self-Regulation

The DOTC shall encourage self-regulation among transport stakeholders. The DOTC shall encourage private sector initiated projects which integrate preventive maintenance, driver training, sealing of injections pumps, pre-registration testing, and modified apprehension procedures to reduce smoke belching.

SECTION 7. Data Collection and Management

The DOTC/LTO shall improve its system of managing and collecting data from the Motor Vehicle Inspection Stations and from roadside inspection / apprehensions for violation of emission standards. The ongoing computerization of LTO vehicle registration shall be linked to the MVIS and roadside inspection data base to be established.

SECTION 8. Certification of Emission Test Equipment.

To ensure proper and effective enforcement of the vehicle emission standard, the Department, through the Bureau, shall certify the conformity to standards of emission test equipment before it can be used for mandatory emission tests.

PART X FUELS, ADDITIVES, SUBSTANCES AND POLLUTANTS

RULE XXXVI STANDARDS FOR FUELS AND ADDITIVES

SECTION 1. Mechanism for Setting Fuel Specifications

Pursuant to Section 26 of the Act, the Department of Energy (DOE), co-chaired by the Department, in consultation with the Bureau of Product Standards (BPS) of the DTI, the DOST, the representatives of the fuel and automotive industries, academe and the consumers shall, within six (6) months from the effectivity of these Implementing Rules and Regulations, set the specifications for all types of fuel and fuel-related products, to improve fuel composition for increased efficiency and reduced emissions: *Provided, however,* That the specifications for all types of fuel and fuel-related products set-forth pursuant to this section shall be adopted by the BPS as Philippine National Standards (PNS).

SECTION 2. Specification of Allowable Additive Content

The DOE shall specify the allowable content of additives in all types of fuels and fuel-related products. Such standards shall be based primarily on threshold levels of health and research studies.

On the basis of such specifications, the DOE shall limit the content or begin the phase-out of additives in all types of fuels and fuel-related products as it may deem necessary. Other agencies involved in the performance of this function shall be required to coordinate with the DOE and transfer all documents and information necessary for the implementation of this provision.

SECTION 3. Fuel Specifications

The fuel formulations shall meet, among others, the following specifications set in Table 19 on or before the deadline set forth in the Act:

**Table 19
Fuel Specifications**

Fuel	Property	Limit	Effectivity
Unleaded Gasoline	Aromatics	45% max	Jan. 1, 2000
		35% max	Jan. 1, 2000
	Benzene	4% max 2% max	Jan. 1, 2000 Jan. 1, 2003
	Anti-Knock Index	87.5 min	Jan. 1, 2001
	Reid Vapor Pressure	9 psi max	Jan. 1, 2001
Automotive Diesel Fuel	Sulfur	0.20% max 0.05% max	Jan. 1, 2001 Jan. 1, 2004
	Cetane No./Index	48 min	Jan. 1, 2001
Industrial Diesel Fuel	Sulfur	0.30% max	Jan. 1, 2001

The fuels characterized above shall be commercially available. Likewise, the same shall be the reference fuels for emission and testing procedures to be established in accordance with the provisions of the Act.

SECTION 4. Review and Revision of Fuel Specifications

Every two (2) years thereafter or as the need arises and subject to public consultations, the specifications of unleaded gasoline and of automotive and industrial diesel fuels shall be reviewed and revised for further improvement in formulation and in accordance with the provisions of the Act.

SECTION 5. Monitoring Compliance through Fuel Sampling

Compliance with the fuel specifications set in the Act shall be monitored through fuel sampling. Guidelines and procedures for the conduct of fuel sampling shall be developed by the DOE within six (6) months from the

effectivity of these Implementing Rules and Regulations. Such guidelines and procedures shall, among others, consider the following:

- (a) Fuel samples collected must be truly representative of the fuel sampled.
- (b) The chosen sampling procedure must be suitable for sampling fuel under definite storage, transportation, and container conditions.
- (c) Samples must be obtained in such a manner and from such locations in the tank or other container that the sample will be truly representative of the gasoline.
- (d) It must be ensured that the samples represent the general character and average condition of the fuel.
- (e) Care should be taken in collecting and storing samples in containers that will protect them from changes in content such as loss of volatile fractions by evaporation or leaching into the container.

Monitoring results shall be made available to the public through an annual report to be published by the DOE.

RULE XXXVII

REGULATION OF FUELS AND ADDITIVES

SECTION 1. Agencies Responsible for Regulating Fuels and Additives

The DOE, in coordination with the Department and the BPS, shall regulate the use of any fuel or fuel additive.

SECTION 2. Registration of Fuels and Additives

No manufacturer, processor or trader of any fuel or additive may import, sell, offer for sale, or introduce into commerce such fuel or

additive unless the same has been registered with the DOE.

Prior to registration, the manufacturer, processor or trader shall provide the DOE with the following relevant information:

- (a) Product identity and composition to determine the potential health effects of such fuels and additives;
- (b) Description of the analytical technique that can be used to detect and measure the additive in any fuel;
- (c) Recommended range of concentration; and
- (d) Purpose in the use of the fuel and additive.

The DOE shall issue a separate regulation or circular detailing registration procedures, including but not limited to report formats and submission deadlines, within (6) months from the adoption and publication of these Implementing Rules and Regulations.

SECTION 3. Information Database

The DOE shall develop an information database of registered fuels and additives and other related data which shall be accessible to the public provided that information which are in the nature of trade secrets shall be subject to the non-disclosure and confidentiality agreement in Section 4 of this Rule.

SECTION 4. Non-disclosure and Confidentiality Agreement

Information on fuels and fuel additives registered with the Department of Energy which are considered trade secrets shall be covered by a non-disclosure and confidentiality agreement between the company and the Department of Energy for a period of fifteen (15) years.

RULE XXXVIII PROHIBITED ACTS

SECTION 1. Misfuelling

In order to prevent the disabling of any emission control device by lead contamination, no person shall introduce or cause or allow the introduction of leaded gasoline into any motor vehicle equipped with a gasoline tank filler inlet and labeled “unleaded gasoline only”. This prohibition shall also apply to any person who knows or should know that such vehicle is designed solely for the use of unleaded gasoline.

SECTION 2. Manufacture, Import, and Sale of Leaded Gasoline and of Engines and/or Components, Requiring Leaded Gasoline

Effective December 23, 2000 no person shall manufacture, import, sell, offer for sale, introduce into commerce, convey or otherwise dispose of, in any manner leaded gasoline and engines and components requiring the use of leaded gasoline.

SECTION 3. Manufacture, Import and Sale of Fuels Not According to Legally Prescribed Specifications

The manufacture, importation and sale of fuels which do not meet the specifications prescribed in these Rules and Regulations or which may be prescribed by the DOE in the future is prohibited, except where the fuel is intended for export to a country which allows fuel specifications lower than are prescribed in the Philippines.

RULE XXXIX OZONE-DEPLETING SUBSTANCES

SECTION 1. Enforcement of Philippine Ozone Depleting Substances Phase Out Schedule

Consistent with the terms and conditions of the Montreal Protocol on Substances that Deplete the Ozone Layer and other international agreements and protocols

to which the Philippines is a signatory, the Department through the Bureau shall enforce the Philippine Ozone Depleting Substances (ODS) Phase Out Schedule as published in the June 27, 2000 editions of the *Manila Times*, *BusinessWorld*, *Philippine Star*, *Manila Bulletin*, *People’s Balita*, and *Abante*.

SECTION 2. Revision of the List of Ozone Depleting Substances

When necessary, the Bureau shall revise the list of substances which are known to cause harmful effects on the stratospheric ozone layer which was initially published pursuant to Section 30 of the Act.

RULE XL GREENHOUSE GASES

SECTION 1. National Plan for Reduction of Greenhouse Gas Emissions

The Department through the Bureau, together with concerned agencies and local government units, shall, within one (1) year from the effectivity of these Implementing Rules and Regulations, prepare and implement a national plan consistent with the United Nations Framework Convention on Climate Change and other international agreements, conventions and protocols on the reduction of greenhouse gas emissions.

RULE XLI PERSISTENT ORGANIC POLLUTANTS

SECTION 1. National Action Plan

The Department, through the Bureau, together with concerned agencies and local government units, shall, within one (1) year from the effectivity of these Implementing Rules and Regulations establish an inventory list of all sources of Persistent Organic Pollutants (POPs) in the country.

SECTION 2. National Programs on Reduction and Elimination of POPs

Pursuant to Section 32 of the Act, the Bureau shall, within one (1) year after the establishment of the inventory list referred to in the preceding section, design and implement a national government program on the reduction and elimination of POPs such as dioxins and furans.

RULE XLII

RADIOACTIVE EMISSIONS

SECTION 1. Regulation on Atomic and/or Nuclear Energy Use

The Philippine Nuclear Research Institute (PNRI), in coordination with the Bureau and other concerned government agencies, shall regulate all projects which will involve the use of atomic and/or nuclear energy, and will entail release and emission of radioactive substances into the environment, incident to the establishment or possession of nuclear energy facilities and radioactive materials, handling, transport, production, storage, and use of radioactive materials.

RULE XLIII

HAZARDOUS AIR POLLUTANTS

SECTION 1. Designation and Management of Hazardous Air Pollutants

The Department through the Bureau shall issue and maintain a list of hazardous air pollutants and required control measures. The list and control measures shall be source-specific by industry and shall be designed to protect Filipinos from unnecessary risk to health or welfare. Compounds shall be considered for inclusion on the list as reasonable data or information become available.

PART XI

INSTITUTIONAL MECHANISMS

RULE XLIV

IMPLEMENTING AGENCIES

SECTION 1. The Department

The Department is the primary government agency responsible for the implementation and enforcement of the Act. The Department shall have the following authority, among others:

- (a) To promulgate rules and regulations as may be necessary to implement the intent and provisions of the Act;
- (b) To closely supervise all or parts of the air quality action plans until such time that the local government concerned can assume the function to enforce the standards set by the Department;
- (c) To revise, from time to time, the designation of airshed utilizing eco-profiling techniques and undertaking scientific studies;
- (d) To designate areas where specific pollutants have already exceeded ambient standards as non-attainment areas and to revise the designation of such areas after consultation with local government authorities, non-government organizations (NGOs), people's organization (POs) and concerned sectors;
- (e) To administer the Air Quality Management Fund;
- (f) To establish a National Research and Development Program for the prevention and control of air pollution, in coordination with the Department of Science and Technology (DOST), other agencies, the private sector, the academe, NGOs and POs;
- (g) To institute administrative proceedings pursuant to Section 40 of the Act;
- (h) To impose fines, through the Pollution Adjudication Board, for violations of standards for stationary sources;

- (i) To exercise such other authority vested by the Act and as provided for in these Implementing Rules and Regulations.

The Secretary may delegate such authority and other powers and function to the Director.

SECTION 2. The Bureau

The Environmental Management Bureau shall be a line bureau primarily responsible for the implementation and enforcement of the Act pursuant to Section 34 thereof. It shall be comprised of a Central Office and the necessary regional, provincial and such other offices as may be established in pertinent administrative orders issued by the Secretary. The Bureau shall establish and operationalize its regional offices within two (2) years from the effectivity of these Implementing Rules and Regulations. For this purpose, the Bureau shall reorganize and increase the number of its personnel to effectively implement the Act and the Implementing Rules and Regulations. The proposed line bureau staffing pattern shall be submitted to the Department of Budget and Management for approval.

The Bureau shall have the following powers and functions, among others:

- (a) To prepare annual National Quality Status Report pursuant to Section 6 of the Act;
- (b) To design and develop, in cooperation with the National Statistical Coordination Board (NCSB), an information network for data storage, retrieval and exchange;
- (c) To serve as the central depository of all data and information related to air quality;
- (d) To issue and, from time to time, revise information on air pollution control techniques upon consultation with the appropriate committees, government agencies and LGUs;

- (e) To, in coordination with other concerned agencies, review and/or revise and publish annually a list of hazardous air pollutants with corresponding ambient guideline values and/or standard necessary to protect public health and safety, and general welfare;
- (f) To design, impose on and collect regular emission fees from industrial dischargers as part of the emissions permitting system based on environmental techniques;
- (g) To issue permit as it may determine necessary for the prevention and abatement of air pollution;
- (h) To require program and project proponents to put up financial guarantee mechanisms to finance the needs for emergency response, clean-up or rehabilitation of areas that may be damaged during the program or project's actual implementation;
- (i) To review, or as the need therefore arises, revise and publish emission standards to further improve the emission standards for stationary sources of air pollution as well as emission standards for motor vehicles;
- (j) To have the right of entry or access to any premises including documents and relevant materials; to inspect any pollution or waste source, control device, monitoring equipment or method required; and to test any emission;
- (k) To require any person who owns or operates any emission source or who is subject to any requirement of the Act to (i) establish and maintain relevant records; (ii) make relevant reports; (iii) install, use and maintain monitoring equipment or methods; (iv) sample emission, in accordance with the methods, locations, intervals, and manner prescribed by the Department; and (v) keep records;

- (l) To exercise such other powers and functions as provided by law, the Act and these Implementing Rules and Regulations.

SECTION 3. Other Implementing Agencies

The other agencies primarily responsible for the implementation of the Act are the Department of Transportation and Communications, the Department of Energy, and the Department of Trade and Industry.

The DOTC shall have the authority to, among others:

- (a) Implement the emission standards for motor vehicles pursuant to and as provided in the Act;
- (b) Participate in the formulation of an Action Plan for the control and management of air pollution from motor vehicles;
- (c) Contribute towards the establishment of procedures for inspection of motor vehicles, assist in the formulation and implementation of the National Motor Vehicle Inspection and Maintenance Program;
- (d) Authorize private emission testing centers (duly accredited by DTI);

Establish a roadside inspection system;
- (e) Contribute towards design of training program for law enforcement officials and deputized agents on vehicle emission testing.

The DTI shall have the authority to, among others:

- (a) Participate in the formulation of an Action Plan for the control and management of air pollution from motor vehicles;

- (b) Contribute towards the establishment of procedures for inspection of motor vehicles, assist in the formulation and implementation of the National Motor Vehicle Inspection and Maintenance Program;

- (c) Accredite private emission testing centers (duly authorized by the DOTC);
- (d) Develop and implement standards and procedures for the certification of training institutions, instructors and facilities and licensing of qualified private service centers and their technicians;
- (e) Prescribe regulations requiring the disclosure of odometer readings and use of tamper-resistant odometers, including tamper resistant fuel management systems.

The DOE shall have the authority to, among others:

- (a) In coordination with other relevant agencies, set the specifications for all types of fuel and fuel-related products;
- (b) Specify allowable content of additives in all types of fuel and fuel-related products;
- (c) In coordination with the Department and BPS, regulate the use of any fuel or fuel additive.

RULE XLV

ROLE OF LOCAL GOVERNMENT UNITS

Subject to Section 36 of the Act and pursuant to the *Local Government Code* (R.A. 7160) and other pertinent laws, the Local Government Units (LGUs) shall have the following roles within their respective territorial jurisdiction:

- (a) To share the responsibility in the management and maintenance of air quality within their respective territorial jurisdiction;

- (b) To implement air quality standards set by the Governing Board, consistent with Sections 7, 8 and 9 of the Act;
- (c) To establish an Environment and Natural Resources Office (ENRO) in every province, city, or municipality which shall be headed by the environment and natural resources officer appointed by the chief executive of every province, city or municipality in accordance with the provisions of Section 484 of R.A. 7160 and to exercise powers and duties set forth in Section 37 of the Act;
- (d) To prepare and develop, with the assistance from the Department, an action plan consistent with the Integrated Air Quality Framework to attain and maintain the ambient of air quality standards within their respective airsheds as provided in Section 9 of the Act;
- (e) To prepare and implement a program and other measures including relocation, whenever necessary, to protect the health and welfare of residents in the area;
- (f) To develop and submit to the Department through the Bureau a procedure for carrying out the action plan for their jurisdiction, provided that the Department through the Bureau shall maintain its authority to independently inspect the enforcement procedure adopted;
- (g) To perform such other powers and functions as may be provided by applicable laws, rules and regulations.

The Department shall provide the LGUs with technical assistance, training and a continuing capability-building program to prepare them to undertake full administration of the air quality management and regulations within their territorial jurisdiction.

RULE XLVI

LINKAGE MECHANISM

SECTION 1. Participation of Other Organizations

The Department shall consult, participate, cooperate and enter into agreement with other government agencies, or with affected non-governmental (NGOs) or people's organizations (POs), or private enterprises in the furtherance of the objectives of the Act and these Implementing Rules and Regulations.

SECTION 2. Linkage with Coordinative Multisectoral Body

Pursuant to Section 35 of the Act, the Bureau shall endeavor to institutionalize consultation with a multisectoral commission tasked to coordinate the plans and efforts of government agencies and non-government organizations in addressing air pollution in an organized and systematic manner.

The Bureau shall study the creation of a multisectoral commission headed by the Secretary of the Department and composed of representatives from the following sectors: (1) government agencies involved in the task of air pollution control and management, (2) civil society, (3) business, (4) and other concerned sectors. The commission shall serve as an oversight body to ensure the systematic and effective management of air quality.

RULE XLVII

RECORD-KEEPING, INSPECTION, MONITORING AND ENTRY

SECTION 1. Required Relevant Reports and Records

The Department through the Bureau or its duly accredited entity shall, after proper consultation and notice, require any person who owns or operates any emissions source

or who is subject to any requirement of this Act to: (a) establish and maintain relevant records; (b) make relevant reports; (c) install, use and maintain monitoring equipment or methods; (d) sample emission, in accordance with the methods, locations, intervals and manner prescribed by the Bureau; (e) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical; and (f) provide such other information as the Bureau may reasonably require.

SECTION 2. Right of Entry, Inspection and Testing

Pursuant to the Act, the Bureau, through its authorized representatives, shall have the right of:

- (a) entry of access to any premises including documents and relevant materials as referred to in the herein preceding paragraph;
- (b) inspect any pollution or waste source, control device, monitoring equipment or method required; and
- (c) test any emission.

SECTION 3. Records Available to the Public

Any record, report or information obtained under this Rule shall be made available to the public, except upon a satisfactory showing to the Bureau by the entity concerned that the record, report or information, or parts thereof, if made public, would divulge secret methods or processes entitled to protection as intellectual property. Such record, report or information shall likewise be incorporated in the Bureau's industrial rating system.

RULE XLVIII

**PUBLIC EDUCATION AND
INFORMATION CAMPAIGN**

SECTION 1. Public Education and Information Campaign

A continuing air quality information and education campaign shall be promoted by the Department, the Department of Education, Culture and Sports (DECS), the Department of the Interior and Local Government (DILG), the Department of Agriculture (DA) and the Philippine Information Agency (PIA). Consistent with Section 7 of the Act, such campaign shall encourage the participation of other government agencies and the private sector including NGOs, POs, the academe, environmental groups and other private entities in the formulation and implementation of a multisectoral information campaign

SECTION 2. Awareness Campaign for Mobile Sources

The enforcement and implementation of emission standards requires the active cooperation of the importers, local assemblers, owners/operators and users of all motor vehicles. To ensure the cooperation of these groups, there is a need for an intensified and sustained awareness raising campaign. Awareness raising will be focused on the transport sector and will concentrate in communicating: (i) the harmful impact of gas emission on general public and workers in the transport sector, (ii) the technological options available to the transport sector to prevent smoke belching; and (iii) the commitment of the government to fully enforce emission standards through strengthening of apprehension activities.

The advertising industry, the broadcasting industry and the print media shall participate and cooperate in the formulation and implementation of public awareness raising campaigns in connection with the emission standards without any profit to claim in connection with their involvement.

PART XII
ACTIONS

RULE XLIX
ADMINISTRATION AND ENFORCEMENT

SECTION 1. Administration and Enforcement

These Implementing Rules and Regulations shall be administered by the Department and/or its authorized representatives or through other government agencies designated or deputized by the Department, or by this act, executive orders or memorandum circulars, and others.

SECTION 2. Rules and Regulations of other Government Agencies

The rules and regulations issued by other government agencies and instrumentalities for the prevention and/or abatement of pollution not consistent with this Act shall supplement the rules and regulations issued by the Department through the Bureau.

SECTION 3. Authentication with Official Seal

All decisions, orders and appropriate legal documents hereinafter promulgated shall be issued and authenticated with the official seal of the Department or other government agencies designated by the Act.

SECTION 4. Jurisdiction

The Department through the Bureau shall have exclusive and original jurisdiction to control and abate air pollution from stationary sources within the territorial jurisdiction of the Philippines.

The abatement of public nuisance as defined under the *Civil Code of the Philippines* and special laws shall not affect or stay the proceedings before the Department or the DOTC as the case may be, provided however, that the Department or the DOTC as the case may be, may at its discretion, take appropriate

steps in the interest of justice and public welfare.

RULE L
ADMINISTRATIVE ACTIONS AND
PROCEDURES IN AIR POLLUTION CASES
INVOLVING STATIONARY SOURCES

SECTION 1. Administrative Action

Without prejudice to the right of any affected person to file an administrative action, the Department shall, on its own instance or upon verified complaint by any person, institute administrative proceedings against any person who violates:

- (a) Standards of limitation provided under the Act; or
- (b) Any order, rule or regulation issued by the Department with respect to such standard or limitation.

SECTION 2. The Pollution Adjudication Board

The Pollution Adjudication Board (PAB) shall have sole and exclusive jurisdiction over all cases of air pollution, as defined in these Implementing Rules and Regulations, and all other matters related thereto, including the imposition of administrative sanctions, except as may be provided by law.

The PAB shall adopt and promulgate the rules of practice and procedure in air pollution cases from stationary sources under the Act. Unless otherwise revised or amended, the existing rules of the PAB, PAB Resolution No. 1-C, Series of 1997, shall apply.

SECTION 3. Closure or Suspension of Development, Construction or Operations of a Stationary Source

In addition to the fines prescribed under the Act and these Implementing Rules and Regulations, the PAB shall order the closure or suspension of development, construction

or operation of the stationary sources until such time that proper environmental safeguards are put in place: *Provided*, That an establishment found liable for a third offense shall suffer permanent closure immediately.

The Order of Closure or suspension is without prejudice to the immediate issuance of an *ex parte* order by the PAB for such closure, suspension or development or construction, or cessation of operations during the pendency of the pollution case before the PAB. Said *ex parte* order shall be based upon prima facie evidence that there is imminent threat to life, public health, safety or general welfare, or to plant or animal life, or whenever there is an exceedance of the emission standards set by the Department and/or the Board or the appropriate LGU.

SECTION 4. Fine Rating System

The PAB shall prepare a fine rating system to adjust the maximum fine prescribed under Section 45 of the Act based on the violator’s ability to pay, degree of willfulness, degree of negligence, history of non-compliance and degree of recalcitrance subject to conditions set forth in the Act. In case of negligence, the first-time offender’s ability to pay may likewise be considered by the PAB. In the absence of any extenuating or aggravating circumstances, the amount of fine for negligence shall be equivalent to one-half of the fine for willful violation.

RULE LI

**ACTIONS, PLEADINGS AND HEARING
PROCEDURES FOR
MOTOR VEHICLES BEFORE THE LTO**

SECTION 1. Nature and Procedure

Subject to the basic requirements of due process, the proceedings herein provided shall be summary in nature. The technical rules of evidence obtaining in courts of law shall not bind the Traffic Adjudication Service of the LTO. The Rules of Court shall not apply

in proceedings before the Board except in a supplementary character and only whenever applicable.

SECTION 2. Commencement of Action

Actions for any violation of any of the motor vehicle pollution control laws and/or these Implementing Rules and Regulations may be commenced by any person by filing a written complaint, or by the DOTC on its own initiative, or by the filing of a charge by any deputized agent of the DOTC before the hearing officer.

SECTION 3. Caption and Title

In all cases cognizable by the Traffic Adjudication Service, the full names of all parties, as far as they are known, shall be stated in the caption of the original pleadings, motion, resolution, order or decision and in all summons, notices and processes to be served upon them.

SECTION 4. Forms and Contents of Complaints and Charge Sheet

The complaint or charge sheet shall be in writing and drawn in clear and concise language, either in Filipino or in English. It shall recite the ultimate facts constituting the cause(s) of action and/or the violations of the motor vehicle pollution control laws and/or these Implementing Rules and Regulations, as well as all information pertinent thereto. It may specify the relief and such further remedies as may be deemed just and equitable, except that the charge sheet shall already include a notice requiring the Respondent to appear and answer the charge of the date, time and place indicated therein which shall not be less than one (1) day nor more than three (3) days from receipt hereof. In the case of a private complaint, the hearing officer shall set the case for hearing and require the Respondent to appear and answer the complaint on the date, time and place indicated in the notice of hearing which

shall not be later than five (5) days from receipt thereof.

SECTION 5. Filing and Service of Complaint and Charge Sheet

The complaint or charge sheet shall be filed in two (2) copies before the Hearing Officer whose office covers the territorial jurisdiction where the Respondent was apprehended. The charge sheet shall be filed immediately, but not later than twenty-four (24) hours from knowledge of the violation. Service of the copy upon the driver of Respondent, shall be deemed service to Respondent.

SECTION 6. Hearing on Apprehended Motor Vehicles

- (a) As soon as the parties enter their appearances and manifest their readiness to proceed with the hearing of the case, the complainant shall be allowed to present evidence in support of the charge with the testimony of each witness taken under oath. Thereafter, the Respondent shall be allowed to present this evidence.
- (b) If the case is commenced by the Secretary or its deputized agent, the hearing shall proceed directly with the presentation of results of the smoke meter or CO/ HC tests as the case may be, and other evidence, after which the Respondent shall present his evidence.

In case of doubt, the Hearing Officer shall admit all the evidence presented, subject to the objections interposed, if there be any.

SECTION 7. Order/Decision

If the Respondent admits the charge, the Hearing Officer shall on that same day, issue an order imposing the appropriate fines and directing the grounding of the apprehended motor vehicle.

If the litigation of the case continues, the Hearing Officer shall decide the same within

three (3) days from its submission. Said decision shall become final and executory if no appeal is taken therefrom to the Secretary within fifteen (15) days from notice thereof.

Only upon the presentation of the CEC and the official receipt certifying full payment of fines shall the grounded motor vehicle be released upon a written order duly issued by the Hearing Officer.

The Hearing Officer shall then issue another order allowing the said motor vehicle to resume operation.

RULE LII CITIZEN SUIT

SECTION 1. Purposes

The purposes of this section are to:

- (a) promote the participation of the citizens in the enforcement of the Act; and
- (b) serve as a prod to government officials to take the necessary and appropriate action to abate and/or control pollution.

SECTION 2. Scope

The legal actions contemplated under this section are for civil and criminal remedies, the administrative action having been extensively treated in the preceding Rules.

SECTION 3. Party Defendants

The legal actions shall be against:

- (a) Any private natural or juridical person, including government owned and controlled corporations, who violates or fails to comply with the provisions of the Act;
- (b) Any Government agency which may issue any order or rules inconsistent with the Act. For this purpose, unless the inconsistency is so blatant as to manifest

evident bad faith, the action available under this heading shall only be civil in nature, such as for declaratory relief and/or injunction. The government official who was made a respondent in said civil action shall be sued in his official capacity and shall not be liable for damages.

- (c) Any public officer who willfully or grossly neglects to perform the duties provided for under the Act, or who abuses his authority or in any manner improperly performs his duties under the Act and its Implementing Rules and Regulations.

SECTION 4. Notice

The government official as well as the person in violation shall be given notice of thirty (30) calendar days to undertake the necessary measures to abate the pollution. This shall be a condition precedent to the filing of a civil or criminal case in court against the polluting establishment and against the government official concerned.

SECTION 5. Damages

Damages arising from illness, physical injury or damage to property as a result of air pollution may be included in the action filed against the government official concerned and the polluting establishment. In addition, failure to take action within the prescribed 30-day period may also be ground for the initiation of an administrative or criminal action against the government official concerned before the Office of the Ombudsman.

SECTION 6. Filing Fees

In coordination with the Supreme Court, the citizen suit under this Rule, including actual and moral damages alleged to have resulted from the air pollution, shall be exempt from filing fees and other court fees. The Supreme Court may also waive the payment of the nominal filing fee for actions not capable of pecuniary estimation (e.g., declaratory relief,

prohibitory and mandatory injunction, etc). The fees shall however be recorded to enable the Court to collect the appropriate amount recovered by the plaintiff in the event a monetary judgment is rendered in favor of the plaintiff in the citizen suit.

SECTION 7. Bond

In coordination with the Supreme Court, where there is a *prima facie* showing by the plaintiff that the defendant establishment’s emission is beyond the standards allowed by the law and these Implementing Rules and Regulations, or where there is a showing that the government official concerned has grossly neglected to perform his duty or has abused his authority, the Court shall exempt the plaintiff from the posting of a bond for the issuance of a restraining order or preliminary injunction.

SECTION 8. Malicious Actions

The Court shall, within thirty (30) days from receipt of the complaint, make a preliminary determination whether the case is malicious and/or baseless. The availability of technical data secured through the monitoring conducted by the Department through the Bureau, if any, or the presence of a photograph showing a visibly opaque emission shall be sufficient evidence to prove that the case is neither malicious nor baseless.

RULE LIII

SUITS AND STRATEGIC LEGAL ACTIONS

SECTION 1. Duty of the Investigating Prosecutor

Where a suit is brought against a person who filed an action under the preceding Rule, or against any person, institution or government agency that implements the Act or these Implementing Rules and Regulations, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty

(30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal resources of the person complaining or enforcing the provisions of the Act or these Implementing Rules and Regulations.

SECTION 2. Action of the Court

Upon determination made under the preceding section, if evidence warrants the same, the court shall dismiss the case and award attorney’s fees and double damages.

SECTION 3. Scope

This Rule shall apply and benefit persons who filed an action under the preceding Rule or Section 41 of the Act and any person, institution or government agency that implements the Act or these Implementing Rules and Regulations. Further, it shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing the Act or these Implementing Rules and Regulations.

PART XIII

FINES AND PENALTIES

RULE LIV

FINES AND PENALTIES FOR VIOLATION OF STANDARDS FOR STATIONARY SOURCES

SECTION 1. Fines to Be Imposed

For actual exceedance of any pollution or air quality standards under the Act or these Implementing Rules and Regulations, the PAB shall impose a fine of not more than One Hundred Thousand Pesos (P 100,000.00) for every day of violation against the owner or operator of a stationary source until such time that the standards have been complied with.

The fines herein prescribed shall be increased by at least ten percent (10%) every three

(3) years to compensate for inflation and to maintain the deterrent function of the fines.

SECTION 2. Gross Violation Defined

Gross violations of the Act or these Implementing Rules and Regulations shall mean:

- (a) Three (3) or more specific offenses within a period of one (1) year;
- (b) Three (3) or more specific offenses within three (3) consecutive years;
- (c) Blatant disregard of the orders of the PAB, such as but not limited to the breaking of seals, padlocks and other similar devices, or operating despite the existence of an order for closure, discontinuance or cessation of operation;
- (d) Irreparable or grave damage to the environment as a consequence of any violation or omission of the provisions of the Act or these Implementing Rules and Regulations.

SECTION 3. Penalties for Gross Violations

In case of gross violations of the Act or these Implementing Rules and Regulations, the PAB shall recommend to the proper government agencies the filing of appropriate criminal charges against the violators. The PAB shall assist the public prosecutor in the litigation of the case.

Offenders shall be punished with imprisonment of not less than six (6) years but not more than ten (10) years at the discretion of the court. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or officials directly in charge of the operations shall suffer the penalty herein provided.

SECTION 4. Lien Upon Personal and Immovable Property

Fines and penalties imposed pursuant to the Act or these Implementing Rules and Regulations shall be liens upon personal and immovable properties of the violator. Such lien shall, in case of insolvency of the respondent violator, enjoy preference subsequent to laborer's wages under Article 2241 and 2242 of Republic Act No. 386, otherwise known as the *New Civil Code of the Philippines*.

RULE LV

FINES AND PENALTIES FOR VIOLATION OF STANDARDS FOR MOTOR VEHICLES

SECTION 1. Fines and Penalties for Violation of Vehicle Emission Standards

The driver and operator of the apprehended vehicle found to have exceeded the emission standards shall suffer the following penalties.

- (a) First offense – a fine in the amount of one thousand pesos (P 1,000.00);
- (b) Second offense – a fine in the amount of three thousand pesos (P 3,000.00); and
- (c) Third offense – a fine in the amount of five thousand pesos (P 5,000.00) and the offender must undergo a seminar on pollution control and management conducted by the DOTC/LTO.

In case the third offense was committed within a year from the commission of the first offense, an additional penalty of suspension of the Motor Vehicle Registration (MVR) for a period of one (1) year shall be imposed.

SECTION 2. Fines for Violation of the Provisions of Section 21(d) of the Act

Any violation of the provisions of Section 21 paragraph (d) with regard to national inspection and maintenance program, including technicians and facility compliance shall be penalized with a fine of not less than thirty thousand pesos (P 30,000.00) or

cancellation of license of both the technician and the center, or both, as determined by the DOTC.

RULE LVI

FINES AND PENALTIES FOR VIOLATIONS OF OTHER PROVISIONS OF THE CLEAN AIR ACT

SECTION 1. Fines and Penalties for Violations of Other Provisions in the Act

For violations of all other provisions provided in the Act and these Implementing Rules and Regulations, fine of not less than Ten Thousand Pesos (P 10,000.00) but not more than One Hundred Thousand Pesos (P 100,000.00) or six (6) years imprisonment or both shall be imposed.

If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or officials directly in charge of the operations shall suffer the penalty herein provided.

SECTION 2. Burning of Municipal Waste

Any person who burns municipal waste in violation of Sections 1 and 3 of Rule XXV shall be punished with two (2) years and one (1) day to four (4) years imprisonment.

SECTION 3. Burning of Hazardous Substances and Wastes

Any person who burns hazardous substances and wastes in violation of Section 1 of Rule XXV shall be punished with four (4) years and one (1) day to six (6) years imprisonment.

SECTION 4. Burning of Bio-Medical Waste.

Any person who burns bio-medical waste in violation of Section 4 of Rule XXV shall be punished with four (4) years and one (1) to six (6) years imprisonment.

SECTION 5. Smoking in Public Places

Any person who smokes inside a public building or an enclosed public place, including public utility vehicles or other means of public transport or in any enclosed area outside of his private residence, private place of work or any duly designated smoking area shall be punished with six (6) months and one (1) day to one (1) year imprisonment or a fine of ten thousand pesos (P 10,000.00).

SECTION 6. Manufacture, Importation, Sale, Offer for Sale, Introduction into Commerce, Conveyance or other Disposition of Leaded Gasoline.

Any person who manufactures, imports, sells, offers for sale, introduces into commerce, conveys or otherwise disposes of, in any manner leaded gasoline shall be punished with three (3) years and one (1) day to five (5) years imprisonment and liable for the appropriate fine as provided in Section 1.

SECTION 7. Manufacture, Importation, Sale, Offer for Sale, Introduction into Commerce, Conveyance or other Disposition of Engines and/or Engine Components Requiring Leaded Gasoline.

Any person who manufactures, imports, sells, offers for sale, introduces into commerce, conveys or otherwise disposes of, in any manner engines and/or engine components which require the use of leaded gasoline shall be punished with three (3) years and one (1) day to five (5) years imprisonment and liable for the appropriate fine as provided in Section 1.

SECTION 8. Manufacture, Importation, Sale, Offer for Sale, Dispensation, Transportation or Introduction into Commerce of Unleaded Gasoline Fuel which do not Meet the Fuel Specifications.

Any person who manufactures, sells, offers for sale, dispenses, transports or introduces into commerce unleaded premium gasoline fuel in violation of Section 3 of Rule XXXI or which do not meet the fuel specifications as

revised by the DOE shall be punished with three (3) years and one (1) day to five (5) years imprisonment and liable for the appropriate fine as provided in Section 1.

SECTION 9. Manufacture, Importation, Sale, Offer for Sale, Dispensation, Transportation or Introduction into Commerce of Automotive Diesel Fuel which do not Meet the Fuel Specifications.

Any person who manufactures, sells, offers for sale, dispenses, transports or introduces into commerce automotive diesel fuel in violation of Section 3 of Rule XXXI or which do not meet the fuel specifications as revised by the DOE shall be punished with three (3) years and one (1) day to five (5) years imprisonment and liable for the appropriate fine as provided in Section 1.

SECTION 10. Manufacture, Importation, Sale, Offer for Sale, Dispensation, Transportation or Introduction into Commerce of Industrial Diesel Fuel which do not Meet the Fuel Specifications.

Any person who manufactures, sells, offers for sale, dispenses, transports or introduces into commerce industrial diesel fuel in violation of Section 3 of Rule XXXI or which do not meet the fuel specifications as revised by the DOE shall be punished with three (3) years and one (1) day to five (5) years imprisonment and liable for the appropriate fine as provided in Section 1.

SECTION 11. Manufacture, Processing, Trade of Fuel or Fuel Additive Without Prior Registration of the Fuel or Fuel Additive with the DOE.

Any person who manufactures, processes, or engages in the trade of any fuel or fuel additive without having the fuel or fuel additive registered with the DOE shall be punished with two (2) years and one (1) day to four (4) years of imprisonment and liable for the appropriate fine as provided in Section 1.

SECTION 12. Misfuelling.

Misfuelling refers to the act of introducing or causing or allowing the introduction of leaded gasoline into any motor vehicle equipped with a gasoline tank filler inlet and labeled “unleaded gasoline only.”

Any person who misfuels shall be punished with one (1) year and one (1) day to three (3) years imprisonment or a fine of twenty thousand pesos (P 20,000.00).

**PART XIV
FINAL PROVISIONS**

**RULE LVII
SEPARABILITY CLAUSE**

Should any provision herein be subsequently declared unconstitutional, the same shall not affect the validity or the legality of the other provisions.

**RULE LVIII
REPEALING AND AMENDING CLAUSE**

Department Administrative Order No. 2000-03 and all orders, rules and regulations inconsistent with or contrary to the provisions

of these Implementing Rules and Regulations are hereby repealed or modified accordingly.

**RULE LIX
EFFECTIVITY**

These Implementing Rules and Regulations shall take effect fifteen (15) days from the date of its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved: _____

ANTONIO H. CERILLES
Secretary

**Prepared and Recommended
for Approval by:**

**The Environmental Management Bureau
and
The Inter-Agency Technical Committee for
the IRR of the Clean Air Act of 1999**

PETER ANTHONY A. ABAYA
Director, EMB
Chairman, Inter-Agency Technical Committee

ANNEX A

AIR QUALITY INDICES

Air Quality Indices. – The following shall describe the six (6) levels of air quality for suspended particulates, sulfur dioxide, photochemical oxidants or ozone, carbon monoxide, and nitrogen dioxide anywhere in the Philippines. Levels above those indicated, with the exception of TSP, shall be considered Emergency:

(a) Particulate Matter ($\mu\text{g}/\text{m}^3$)

(1) Total Suspended Particulates – (24-Hour Average)

Good 0 – 80
 Fair 81 – 230
 Unhealthy for sensitive groups 231 – 349
 Very Unhealthy 350 – 599
 Acutely unhealthy 600 – 899
 Emergency 900 – and above

(2) PM₁₀ [24-hour]

Good 0 – 54
 Fair 55 – 154
 Unhealthy for sensitive groups 155 – 254
 Very Unhealthy 255 – 354
 Acutely unhealthy 355 – 424
 Emergency 425 – 504

(b) Sulfur Dioxide (ppm) [24-hour]

Good 0.000 – 0.034
 Fair 0.035 – 0.144
 Unhealthy for sensitive groups 0.145 – 0.224
 Very Unhealthy 0.225 – 0.304
 Acutely unhealthy 0.305 – 0.604
 Emergency 0.605 – 0.804

(c) Ozone (ppm) [8-hour]

Good 0.000 – 0.064
 Fair 0.065 – 0.084
 Unhealthy for sensitive groups 0.085 – 0.104
 Very Unhealthy 0.105 – 0.124
 Acutely unhealthy 0.125 – 0.374

Emergency (¹)

¹ When 8-hour O₃ concentrations exceed 0.374 ppm, AQI values of 301 or higher must be calculated with 1-hour O₃ concentrations.

[1-hour]²

Good –
 Fair –
 Unhealthy for sensitive groups 0.125 – 0.164
 Very Unhealthy 0.165 – 0.204
 Acutely unhealthy 0.205 – 0.404
 Emergency 0.405 – 0.504

²Areas are generally required to report the AQI based on 8-hour ozone values. However, there are a smaller number of areas where an AQI based on 1-hour ozone values would be more precautionary.

In these cases, in addition to calculating the 8-hour ozone index value, the 1-hour index value may be calculated and the maximum of the two values is reported.

(d) Carbon Monoxide (ppm) [8-hour]

Good 0.0 – 4.4
 Fair 4.5 – 9.4
 Unhealthy for sensitive groups 9.5 – 12.4
 Very Unhealthy 12.5 – 15.4
 Acutely unhealthy 15.5 – 30.4
 Emergency 30.5 – 40.4

(e) Nitrogen Dioxide (ppm) [1-hour]

Good ⁽³⁾
 Fair ⁽³⁾
 Unhealthy for sensitive groups ⁽³⁾
 Very Unhealthy ⁽³⁾
 Acutely unhealthy 0.65 – 1.24
 Emergency 1.25 – 1.64

³ NO₂ has no 1-hour term NAAQG.

Pollutant-Specific Cautionary Statements for the General Public.

(a) Particulate Matter (µg/m³)

TSP and PM₁₀ [24-hour]

Good	None
Fair	None
Unhealthy for sensitive groups	People with respiratory disease, such as asthma, should limit outdoor exertion.
Very unhealthy	Pedestrians should avoid heavy traffic areas. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. People should voluntarily restrict the use of vehicles.
Acutely unhealthy	People, should limit outdoor exertion. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. Motor vehicle use may be restricted. Industrial activities may be curtailed.
Emergency	Everyone should remain indoors, (keeping windows and doors closed unless heat stress is possible). Motor vehicle use should be prohibited except for emergency situations. Industrial activities, except that which is vital for public safety and health, should be curtailed.

(b) Sulfur Dioxide (ppm) [24-hour]

Good	None
Fair	None
Unhealthy for sensitive groups	People with respiratory disease, such as asthma, should limit outdoor exertion.
Very unhealthy	Pedestrians should avoid heavy traffic areas. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. People should voluntarily restrict the use of vehicles.
Acutely unhealthy	People, should limit outdoor exertion. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. Motor vehicle use may be restricted. Industrial activities may be curtailed.
Emergency	Everyone should remain indoors, (keeping windows and doors closed unless heat stress is possible). Motor vehicle use should be prohibited except for emergency situations. Industrial activities, except that which is vital for public safety and health, should be curtailed.

(c) Ozone (ppm)

Good	None
Fair	None
Unhealthy for sensitive groups	People with respiratory disease, such as asthma, should limit outdoor exertion.
Very unhealthy	Pedestrians should avoid heavy traffic areas. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. People should voluntarily restrict the use of vehicles.

Acutely unhealthy	People, should limit outdoor exertion. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. Motor vehicle use may be restricted. Industrial activities may be curtailed.
Emergency	Everyone should remain indoors, (keeping windows and doors closed unless heat stress is possible). Motor vehicle use should be prohibited except for emergency situations. Industrial activities, except that which is vital for public safety and health, should be curtailed.

(d) Carbon Monoxide (ppm)

Good	None
Fair	None
Unhealthy for sensitive groups	People should stay indoors and rest as much as possible. Unnecessary trips should be postponed. People should voluntarily restrict the use of vehicles and avoid sources of CO, such as heavy traffic. Smokers should refrain from smoking.
Acutely unhealthy	People with cardiovascular disease, such as angina, should avoid exertion and sources of CO, such as heavy traffic, and should stay indoors and rest as much as possible. Unnecessary trips should be postponed. Motor vehicle use may be restricted. Industrial activities may be curtailed.
Emergency	Everyone should avoid exertion and sources of CO, such as heavy traffic; and should stay indoors and rest as much as possible.

(e) Nitrogen Dioxide (ppm)

Good	None
Fair	None
Unhealthy for sensitive groups	People with respiratory disease, such as asthma, should limit outdoor exertion.
Very unhealthy	Pedestrians should avoid heavy traffic areas. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. People should voluntarily restrict the use of vehicles.
Acutely unhealthy	People should limit outdoor exertion. People with heart or respiratory disease, such as asthma, should stay indoors and rest as much as possible. Unnecessary trips should be postponed. Motor vehicle use may be restricted. Industrial activities may be curtailed.
Emergency	Everyone should remain indoors, (keeping windows and doors closed unless heat stress is possible). Motor vehicle use should be prohibited except for emergency situations. Industrial activities, except that which is vital for public safety and health, should be curtailed.

ANNEX B
Emission Test Procedure for In-Use Motor Vehicles Equipped
with Spark-Ignition Engines

1. Scope

The test procedure is for the determination of the concentration of exhaust carbon monoxide (CO) and hydrocarbon (HC) emissions from in-use motor vehicles equipped with spark ignition engines running at idle speed.

2. Test Equipment (Reference: ISO – 3930)

- a. Carbon monoxide analyzer – a NDIR (Non-dispersive Infrared) CO exhaust gas analyzer.
- b. Hydrocarbon analyzer – a NDIR HC exhaust gas analyzer, HC as hexane (C₆H₁₄).
- c. Tachometer – An easily installed and operated tachometer to measure engine speed (RPM).

3. Vehicle Preparation

- a. Set the vehicle transmission at neutral with the hand-brake engaged.
- b. Ensure that the idling speed or the engine rpm with the accelerator in the rest position, conforms with the vehicle manufacturer's recommendation.
- c. All accessories like rear window heating, air conditioning system, air fan and other equipment necessary for the vehicle operation at idle should be switched-off.
- d. Check that the temperature of the engine is at least 70°C; otherwise, run the vehicle for at least 15 minutes on a normal road before testing.

- e. Ensure that the vehicle exhaust system is reasonably leak-proof and will allow the insertion of the sampling probe by at least 30 cm. from the tailpipe outlet. If this is not possible due to tailpipe configuration, use the appropriate correction factor.

4. Measurement

- a. Immediately preceding the measurement, adjust the instrument to zero and accelerate the engine to about 2,500 rpm, using the tachometer, if available. Maintain this speed from ten (10) to fifteen (15) seconds, then release the pedal to return the engine at idle speed.
- b. While the engine idles, insert the sampling probe into the exhaust pipe as deeply as possible which shall not be less than thirty (30) cm. Wait for twenty (20) seconds and take the CO/HC reading.
- c. If the vehicle has multiple exhaust outlets the arithmetic average of the CO/HC readings in each exhaust outlet is taken as the final result.

5. Instrument Calibration, Adjustments (Reference: ISO 3929)

- a. Prepare, use and maintain the analyzer following the directions given in the instrument manufacturer's operation manual and service the instrument at such intervals as to ensure accuracy.
- b. Carry out a span and zero calibration within a period of four (4) hours

before the instrument is moved or transferred to a new location. The calibration shall be performed well away from the exhaust of motor vehicles whose engines are running. If the instrument is not self-compensated for non-standard conditions of altitude and ambient temperature or not equipped with a manually controlled system of compensation, the scale calibration shall be performed using calibration gas.

- c. If the sample handling system is not integral with the analyzer, make certain that the effectiveness of the gas sampling system are leak-proof. Check that filters are clean, that filter holders are fitted with their gaskets and that these are all in good condition.
- d. Ensure that the sample handling line and probe are free from contaminants.

ANNEX C

FREE ACCELERATION TEST FOR IN-USE COMPRESSION-IGNITION MOTOR VEHICLES

1. Scope

The test is a smoke opacity measurement for in-use motor vehicles equipped with compression-ignition (diesel) engines, using the free acceleration from low idle speed method.

2. Motor Vehicle Test Condition

- a. The test shall be carried out on a stationary vehicle and the engine shall be first brought to normal operating conditions during a road run or dynamic test. In particular, cooling water and oil should be at normal temperature.
- b. The combustion chamber should not have been cooled or fouled due to a prolonged period of idling preceding the test.
- c. The exhaust system shall not have any orifice or leaks wherein the gases emitted by the engine might be diluted.

3. Test Equipment

The light-absorption coefficient of the exhaust gases shall be measured with an opacimeter satisfying the conditions laid down in ECE Regulation No. 24, Revision 2E/ECE/TRANS 505. Rev Add 23 Rev 2, Annex 8: Characteristics of Opacimeter.

4. Test Procedures and Smoke Opacity Measurement

- a. Follow the opacimeter manufacturer's instruction for on the proper installation, operation/ use and checking the accuracy and calibration before and after each test.
- b. Set the vehicle gear-change control in the neutral position and the hand-brake effectively engaged.
- c. Start the engine and warm it up to its normal operating temperature.
- d. Accelerate the engine two to three times (2-3) prior to smoke sampling in order to remove deposits of soot

and other carbon particles in the tail pipe.

- e. With the engine idling, depress the accelerator quickly, but not violently, to obtain maximum delivery from the injection pump. Maintain this position until maximum engine speed is reached for about two (2) to four (4) seconds and the governor comes into action. As soon as this speed is reached, release the accelerator until the engine resumes its idling speed. Record the maximum reading of the smokemeter.
- f. The operation described in paragraph (4)(e) shall be repeated not less than six (6) times in order to clear the exhaust system and to allow for any necessary adjustment of the apparatus. The maximum opacity values read in each successive acceleration shall be noted until stabilized values are obtained. The values read shall be regarded as stabilized when four (4) consecutive readings are within a hand width of 0.25m^{-1} and do not form a decreasing sequence. The arithmetic mean of

the four stabilized values shall be the test result for the concerned vehicle.

- g. For motor vehicles designed with several exhaust outlets that are individually connected from paired exhaust ports, the free acceleration test shall be carried out on each outlet. In this case, the values used for calculating the correction to the absorption coefficient shall be arithmetical mean values recorded at each outlet and the test shall be valid only if the extreme values measured do not differ by more than 0.15m^{-1}

For motor vehicles designed with several exhaust outlets connected from one exhaust pipe coming from the engine's exhaust manifold collector, the free acceleration test shall be carried out only on one exhaust outlet, the other outlets effectively blocked to prevent leaks.

- h. Seal the full load screw of the injection pump/delivery system of the motor vehicle after a pass-test to prevent tampering.

MEMORANDUM CIRCULAR NO. 2002-12-001

IMPLEMENTING THE *CLEAN AIR ACT* GASOLINE SPECIFICATION FOR 2003

- (1) Pursuant to the provisions of Republic Act No. 8749, otherwise known as the *Philippine Clean Air Act (CAA) of 1999*, particularly the mandated reformulation of gasoline under Section 26 (a) thereof which requires that beginning January 1, 2003 the aromatics and benzene content in gasoline should be reduced to 35% and 2% (by volume), respectively, the Department of Energy (DOE) hereby adopts the following guidelines implementing the same:
 - (2) These guidelines shall apply to all persons, whether natural or juridical, engaged in the manufacture, importation, storage, distribution, supply, marketing and/or selling of gasoline including, without limitation, oil companies, refineries, importers, blenders, bulk marketers, suppliers and retailers.
 - (3) Beginning January 1, 2003, only gasoline fuel containing a maximum aromatics and benzene content of 35% and 2% (by volume), respectively, may be manufactured, imported, sold, supplied, offered for sale, dispensed, transported or introduced into commerce in the Philippines.
 - (4) Upon the effectivity of this Memorandum Circular, all persons engaged in the importation of gasoline and/or gasoline blending components shall submit to the DOE, as part of the reportorial requirements under Section 7 (b) of DOE Department Circular No. 98-03-004 implementing Republic Act No. 8479, a Certificate of Quality (COQ) showing aromatics and benzene content, along with all the other properties listed in the Philippine National Standard for gasoline, with the corresponding values resulting from the prescribed test methods.
 - (5) The DOE shall monitor all activities being undertaken and the quality of gasoline being sold by all persons at their refineries, bulk plants, terminals, depots, tank trucks and gasoline stations/retail outlets nationwide to ensure the effective implementation of the new gasoline specifications required under the CAA. To monitor aromatics and benzene, the DOE shall, among others, conduct the random sampling and testing of gasoline secured from these oil facilities.
 - (6) All persons covered by this Memorandum Circular are required to provide the prescribed sampling bottles (Annex) at the aforesaid facilities for use in retaining duplicate gasoline samples taken in the course of inspection made by the DOE.
 - (7) Failure to comply with the provisions of this Memorandum Circular shall subject the violator to the corresponding sanctions imposed by appropriate laws, DOE rules and regulations and the CAA.
- This Memorandum Circular shall take effect upon publication in any newspaper of general circulation.
- Fort Bonifacio, Taguig City, Metro Manila, 13 December 2002.

VICENTE S. PÉREZ, JR.

Secretary

Annex **Prescribed Sampling Bottle/Container**

DESCRIPTION	SPECIFICATION
COLOR	Amber Bottle/Tin Can
VOLUME	0.5 liters (min.)
COVER	Air-Tight
ORIFICE OPENING (dia)	1.0 (min.)

DEPARTMENT CIRCULAR NO. DC 2009-12-0014

IMPLEMENTING THE PHILIPPINE NATIONAL STANDARD SPECIFICATIONS FOR UNLEADED MOTOR GASOLINE (PNS/DOE QS 001:2009)

WHEREAS, Republic Act (R.A.) No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”, provides for the deregulation of the downstream oil industry to foster a truly competitive market which can better achieve the social policy objectives of fair prices, adequate and continuous supply of environmentally-clean and high quality petroleum products e.g. gasoline, diesel, LPG and bunker;

WHEREAS, Section 26 of R.A. No. 8749, otherwise known as the “Philippine Clean Air Act of 1999”, provides that the DOE, together with the Department of Environment and Natural Resources (DENR), Bureau of Product Standards (BPS) and the Department of Science and Technology (DOST) and other stakeholders, shall set specifications for all types of fuel and fuel-related products and improve fuel composition and also the allowable content of additives in all types of fuels and fuel-related products. For this purpose, the Technical Committee on Petroleum Products and Additives (TCPPA) was established to develop the standards, which will be submitted to the BPS for promulgation into a Philippine National Standard (PNS);

WHEREAS, pursuant to the mandated removal of lead in gasoline under the *Clean Air Act*, PNS/DOE QS 001:2005 was promulgated for Unleaded Motor Gasoline, providing for various octane boosters as lead substitute such as ethanol, among other oxygenates, at 10% maximum to promote the DOE’s ethanol program. PNS/DOE QS 008:2006 specifically for E-gasoline was subsequently issued to pave the way for the commercial introduction of gasoline with 10% ethanol blend (E-10), initially for the 93 octane gasoline;

WHEREAS, R.A. No. 9367, or the “The Biofuels Law of 2006”, mandated the use of biofuel-blended gasoline and diesel and to implement the initial mandate for E-gasoline, DOE Circular No. 2009-02-0002 was issued requiring, among others, a minimum of 5% bioethanol in the annual total volume of gasoline fuel actually sold and distributed by an oil company pursuant to specifications prescribed in the PNS for conventional gasoline and E-10. Subsequently, to guide both the oil companies and the motorists, PNS/DOE QS 008:2009 was issued, allowing 10% ethanol blends for higher gasoline grades;

WHEREAS, to address the concern on the compatibility of E-10 gasolines on in-use vehicles, particularly on the engine and fuel system, and to primarily establish a distinction between conventional gasoline (without ethanol) and Ethanol-blended gasoline or E-Gasoline, PNS/DOE QS 001:2009 was promulgated by the BPS;

WHEREAS, Department Circulars were issued to implement each and every PNS, along with other applicable rules and guidelines for its effective implementation.

NOW, THEREFORE, the following guidelines are hereby adopted to effectively implement PNS/DOE QS 001:2009:

- (1) Starting November 16, 2009, only conventional gasoline complying with PNS/DOE QS 001:2009 shall be sold, offered for sale, dispensed, or introduced into commerce in the Philippines.
- (2) Any person engaged in the importation of unleaded motor gasoline and/or gasoline

blending components shall submit to the DOE not later than twenty (20) days after the unloading of the import shipment, and as part of the reportorial requirements under Section 7 (b) of DOE Department Circular No. 98-03-004 implementing R. A. No. 8479, a Certificate of Quality (COQ) showing all the properties listed in PNS/DOE QS 001:2009 with the corresponding values resulting from the prescribed test methods.

(3) All oil company dealers/operators of gasoline stations shall comply with the following labeling requirements:

(a) All pumps dispensing regular gasoline shall contain the advisory "NOT RECOMMENDED FOR VEHICLES WITH FOUR (4) OR MORE WHEELS".

(b) All gasoline dispensing pumps with the prescribed octane sticker as provided under Department Circular No. 2001-09-003 shall indicate in the sticker the word "MINIMUM" below the octane number.

(4) Oil companies or any entity shall register with the DOE any new fuel additive introduced in their fuel products, as well as any organo-metallic compound used or added in their gasoline.

(5) Oil companies shall conduct regular monitoring of all activities being undertaken at their refineries, bulk plants, terminals, depots, tank trucks and gasoline stations/retail outlets to ensure that the quality of all gasoline being sold meets the requisite gasoline specifications. The DOE shall, among others, conduct random quality and quantity sampling and testing of gasoline obtained from these oil facilities.

(6) Any person who fails to comply with the provisions of this Department Circular shall be subject to appropriate sanctions imposed under applicable laws, rules and regulations.

(7) Department Circular No. 2006-04-0005 is hereby repealed.

This Department Circular shall take effect immediately upon publication in any newspaper of general circulation.

Fort Bonifacio, Taguig City, Metro Manila,
December 28, 2009.

(sgd)

ANGELO T. REYES
Secretary

Chapter VIII

REPUBLIC ACT NO. 9514
December 19, 2008
Repealed PD 1185

AN ACT ESTABLISHING A COMPREHENSIVE FIRE CODE OF THE PHILIPPINES, REPEALING PRESIDENTIAL DECREE NO. 1185 AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. This Act shall be known as the ***“Fire Code of the Philippines of 2008”***.

SECTION 2. It is the policy of the State to ensure public safety and promote economic development through the prevention and suppression of all kinds of destructive fires and promote the professionalization of the fire service as a profession. Towards this end, the State shall enforce all laws, rules and regulations to ensure adherence to standard fire prevention and safety measures, and promote accountability for fire safety in the fire protection service and prevention service.

SECTION 3. *Definition of Terms.* - As used in this Fire Code, the following words and phrases shall mean and be construed as indicated:

Abatement - Any act that would remove or neutralize a fire hazard.

Administrator - Any person who acts as agent of the owner and manages the use of a building for him.

Blasting Agent - Any material or mixture consisting of a fuel and oxidizer used to set off explosives.

Cellulose Nitrate Or Nitro Cellulose - A highly combustible and explosive compound produced by the reaction of nitric acid with a cellulose material.

Cellulose Nitrate Plastic (Pyroxylin) - Any plastic substance, materials or compound having cellulose nitrate (nitro cellulose) as base.

Combustible, Flammable or Inflammable - Descriptive of materials that are easily set on fire.

Combustible Fiber - Any readily ignitable and free burning fiber such as cotton, oakum, rags, waste cloth, waste paper, kapok, hay, straw, Spanish moss, excelsior and other similar materials commonly used in commerce.

Combustible Liquid - Any liquid having a flash point at or above 37.8_C (100_F).

Corrosive Liquid - Any liquid which causes fire when in contact with organic matter or with certain chemicals.

Curtain Board - A vertical panel of non-combustible or fire resistive materials attached to and extending below the bottom chord of

the roof trusses, to divide the underside of the roof into separate compartments so that heat and smoke will be directed upwards to a roof vent.

Cryogenic - Descriptive of any material which by its nature or as a result of its reaction with other elements produces a rapid drop in temperature of the immediate surroundings.

Damper - A normally open device installed inside an air duct system which automatically closes to restrict the passage of smoke or fire.

Distillation - The process of first raising the temperature in separate the more volatile from the less volatile parts and then cooling and condensing the resulting vapor so as to produce a nearly purified substance.

Duct System - A continuous passageway for the transmission of air.

Dust - A finely powdered substance which, when mixed with air in the proper proportion and ignited will cause an explosion.

Electrical Arc - An extremely hot luminous bridge formed by passage of an electric current across a space between two conductors or terminals due to the incandescence of the conducting vapor.

Ember - A hot piece or lump that remains after a material has partially burned, and is still oxidizing without the manifestation of flames.

Finishes - Materials used as final coating of a surface for ornamental or protective purposes.

Fire - The active principle of burning, characterized by the heat and light of combustion.

Fire Trap - A building unsafe in case of fire because it will burn easily or because it lacks adequate exits or fire escapes.

Fire Alarm - Any visual or audible signal produced by a device or system to warn the occupants of the building or fire fighting elements of the presence or danger of fire to enable them to undertake immediate action to save life and property and to suppress the fire.

Fire Door - A fire resistive door prescribed for openings in fire separation walls or partitions.

Fire Hazard - Any condition or act which increases or may cause an increase in the probability of the occurrence of fire, or which may obstruct, delay, hinder or interfere with fire fighting operations and the safeguarding of life and property.

Fire Lane - The portion of a roadway or publicway that should be kept opened and unobstructed at all times for the expedient operation of fire fighting units.

Fire Protective And Fire Safety Device - Any device intended for the protection of buildings or persons to include but not limited to built-in protection system such as sprinklers and other automatic extinguishing system, detectors for heat, smoke and combustion products and other warning system components, personal protective equipment such as fire blankets, helmets, fire suits, gloves and other garments that may be put on or worn by persons to protect themselves during fire.

Fire Safety Constructions - Refers to design and installation of walls, barriers, doors, windows, vents, means of egress, etc. integral to and incorporated into a building or structure in order to minimize danger to life from fire, smoke, fumes or panic before the building is evacuated. These features are also designed to achieve, among others, safe and rapid evacuation of people through means of egress sealed from smoke or fire, the confinement of fire or smoke in the room or floor of origin and delay their spread to other parts of the building by means of smoke sealed and fire resistant doors, walls and floors. It shall also

mean to include the treatment of buildings components or contents with flame retardant chemicals.

Flash Point - The minimum temperature at which any material gives off vapor in sufficient concentration to form an ignitable mixture with air.

Forcing -A process where a piece of metal is heated prior to changing its shape or dimensions.

Fulminate - A kind of stable explosive compound which explodes by percussion.

Hazardous Operation/Process - Any act of manufacturing, fabrication, conversion, etc., that uses or produces materials which are likely to cause fires or explosions.

Horizontal Exit - Passageway from one building to another or through or around a wall in approximately the same floor level.

Hose Box - A box or cabinet where fire hoses, valves and other equipment are stored and arranged for fire fighting.

Hose Reel - A cylindrical device turning on an axis around which a fire hose is wound and connected.

Hypergolic Fuel - A rocket or liquid propellant which consist of combinations of fuels and oxidizers which ignite spontaneously on contact with each other.

Industrial Baking And Drying - The industrial process of subjecting materials to heat for the purpose of removing solvents or moisture from the same, and/or to fuse certain chemical salts to form a uniform glazing the surface of materials being treated.

Jumper - A piece of metal or an electrical conductor used to bypass a safety device in an electrical system.

Occupancy - The purpose for which a building or portion thereof is used or intended to be used.

Occupant - Any person actually occupying and using a building or portions thereof by virtue of a lease contract with the owner or administrator or by permission or sufferance of the latter.

Organic Peroxide - A strong oxidizing organic compound which releases oxygen readily. It causes fire when in contact with combustible materials especially under conditions of high temperature.

Overloading - The use of one or more electrical appliances or devices which draw or consume electrical current beyond the designed capacity of the existing electrical system.

Owner - The person who holds the legal right of possession or title to a building or real property.

Oxidizing Material - A material that readily yields oxygen in quantities sufficient to stimulate or support combustion.

Pressurized Or Forced Draft Burning Equipment - Type of burner where the fuel is subjected to pressure prior to discharge into the combustion chamber and/or which includes fans or other provisions for the introduction of air at above normal atmosphere pressure into the same combustion chamber.

Public Assembly Building - Any building or structure where fifty (50) or more people congregate, gather, or assemble for any purpose.

Public Way - Any street, alley or other strip of land unobstructed from the ground to the sky, deeded, dedicated or otherwise permanently appropriated for public use.

Pyrophoric - Descriptive of any substance that ignites spontaneously when exposed to air.

Refining - A process where impurities and/or deleterious materials are removed from a mixture in order to produce a pure element of compound. It shall also refer to partial distillation and electrolysis.

Self-Closing Doors - Automatic closing doors that are designed to confine smoke and heat and delay the spread of fire.

Smelting - Melting or fusing of metallic ores or compounds so as to separate impurities from pure metals.

Sprinkler System - An integrated network of hydraulically designed piping installed in a building, structure or area with outlets arranged in a systematic pattern which automatically discharges water when activated by heat or combustion products from a fire.

Standpipe System - A system of vertical pipes in a building to which fire hoses can be attached on each floor, including a system by which water is made available to the outlets as needed.

Vestibule - A passage hall or antechamber between the outer doors and the interior parts of a house or building.

Vertical Shaft - An enclosed vertical space of passage that extends from floor to floor, as well as from the base to the top of the building.

SECTION 4. *Applicability of The Code.* - The provisions of the Fire Code shall apply to all persons and all private and public buildings, facilities or structures erected or constructed before and after its effectivity.

SECTION 5. *Responsibility for the Enforcement of this Code.* - This Code shall be administered and enforced by the Bureau of Fire Protection (BFP), under the direct supervision and control of the Chief of the Bureau of Fire Protection, through the

hierarchy of organization as provided for in Chapter VI of Republic Act No. 6975. with the approval of the Secretary of the Department of the Interior and Local Government (DILG), the BFP, is hereby authorized to:

- a. Issue implementing rules and regulations, and prescribe standards, schedules of fees/fire service charges and administrative penalties therefore as provided in the pertinent provisions of this Code;
- b. Reorganize the BFP as may be necessary and appropriate;
- c. Support and assist fire volunteers, practitioners and fire volunteer organizations in the country who shall undergo mandatory fire suppression, inspection, rescue, emergency medical services and related emergency response trainings and competency evaluations to be conducted by the BFP. In the case of the Fire practitioners, they shall undergo mandatory continuous professional education and competency evaluation of their expertise, knowledge and skills in the area of fire science, engineering and technology to be conducted by the BFP;

The BFP may enter into external party agreements for the conduct of training, education and evaluation of fire volunteers, practitioners and fire volunteer organizations, which shall be under the full control and supervision of the BFP: *Provided, however,* That during firefighting operations, fire volunteer organizations shall be under the direct operational control of the fire ground commanders of the BFP;

- d. Enter into long term agreement, either through public biddings or negotiations in accordance with the provisions of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act of 2003, for the acquisition

of fire prevention, fire protection and fire fighting investigation, rescue, paramedics, hazardous material handling equipment, supplies, materials and related technical services necessary for the fire services;

- e. Enter into Memoranda of Agreement with other departments, bureaus, agencies, offices and corporations of the government, as well as private institutions, in order to define areas of cooperation and coordination and delineate responsibility on fire prevention education, fire safety, fire prevention, fire suppression and other matters of common concern;
- f. Call on the police, other law enforcement agencies, and local government assistance to render necessary assistance in the enforcement of this Code;
- g. Designate a fire safety inspector through his/her duly authorized representative, who shall conduct an inspection of every building or structure within his area of responsibility at least once a year and every time the owner, administrator or occupant shall renew his/her business permit or permit to operate;

No occupancy permit, business or permit to operate shall be issued without securing a Fire Safety Inspection Certification (FSIC) from the Chief, BFP, or his/her duly authorized representative;

- h. Inspect at reasonable time, any building, structure, installation or premises for dangerous or hazardous conditions or materials as set forth in this Code, provided that in case of single family dwelling, an inspection must be upon the consent of the occupant or upon lawful order from the proper court. The Chief, BFP or his/her duly authorized representative shall order the owner/occupant to remove hazardous materials

and/or stop hazardous operation/process in accordance with the standards set by this Code or its implementing rules or regulations or other pertinent laws;

- i. Where conditions exist and are deemed hazardous to life and property, to order the owner/occupant of any building or structure to summarily abate such hazardous conditions;
- j. Require the building owner/occupant to submit plans and specifications, and other pertinent documents of said building to ensure compliance with applicable codes and standards; and
- k. Issue a written notice to the owner and/or contractor to stop work on portion of any work due to absence, or in violation of approved plans and specifications, permit and/or clearance or certification as approved by the Chief, BFP or his/her duly authorized representative. The notice shall state the nature of the violation and no work shall be continued on that portion until the violation has been corrected.

SECTION 6. *Technical Staff.* - The Chief, BFP shall constitute a technical staff of highly qualified persons who are knowledgeable on fire prevention, fire safety, and fire suppression. They may be drawn not only from the organic members of the BFP and other government offices and agencies, but also from other sources. In the latter case, they will either be appointed into the service or hired as consultants in accordance with law. The technical staff shall study, review and evaluate latest developments and standards on fire technology; prepare plans/programs on fire safety, prevention and suppression and evaluate implementation thereof; develop programs on the professionalization of the fire service; coordinate with appropriate government and private institutions for the offering of college courses on fire technology and fire protection engineering; propose

amendments to the Fire Code; advise the Chief, BFP on any matter brought to his attention; and perform such other functions as directed by higher authorities.

SECTION 7. *Inspections, Safety Measures, Fire Safety, Constructions, and Protective and/or Warning Systems.* - As may be defined and provided in the Rules and Regulations, owners, administrators or occupants of buildings, structures and their premises or facilities and other responsible persons shall be required to comply with the following, as may be appropriate:

a. Inspection Requirement - A fire safety inspection shall be conducted by the Chief, BFP or his duly authorized representative as prerequisite to the grants of permits and/or licenses by local governments and other government agencies concerned, for the:

- (1) Use or occupancy of buildings, structures, facilities or their premises including the installation or fire protection and fire safety equipment, and electrical system in any building structure or facility; and
- (2) Storage, handling and/or use of explosives or of combustible, flammable, toxic and other hazardous materials;

b. Safety Measures for Hazardous Materials - Fire safety measures shall be required for the manufacture, storage, handling and/or use of hazardous materials involving:

- (1) cellulose nitrate plastic of any kind;
- (2) combustible fibers;
- (3) cellular materials such as foam, rubber, sponge rubber and plastic foam;

- (4) flammable and combustible liquids or gases of any classification;
- (5) flammable paints, varnishes, stains and organic coatings;
- (6) high-piled or widely spread combustible stock;
- (7) metallic magnesium in any form;
- (8) corrosive liquids, oxidizing materials, organic peroxide, nitromethane, ammonium nitrate, or any amount of highly toxic, pyrophoric, hypergolic, or cryogenic materials or poisonous gases as well as material compounds which when exposed to heat or flame become a fire conductor, or generate excessive smoke or toxic gases;
- (9) blasting agents, explosives and special industrial explosive materials, blasting caps, black powder, liquid nitro-glycerine, dynamite, nitro cellulose, fulminates of any kind, and plastic explosives containing ammonium salt or chlorate;
- (10) fireworks materials of any kind or form;
- (11) matches in commercial quantities;
- (12) hot ashes, live coals and embers;
- (13) mineral, vegetable or animal oils and other derivatives/by products;
- (14) combustible waste materials for recycling or resale;
- (15) explosive dusts and vapors; and
- (16) agriculture, forest, marine or mineral products which may undergo spontaneous combustion;
- (17) any other substance with potential to cause harm to persons, property or the environment because of

one or more of the following:
a) The chemical properties of the substance; b) The physical properties of the substance; c) The biological properties of the substance. Without limiting the definition of hazardous material, all dangerous goods, combustible liquids and chemicals are hazardous materials.

c. Safety Measures for Hazardous Operation / Processes—Fire Safety measures shall be required for the following hazardous operation/processes:

- (1) welding or soldering;
- (2) industrial baking and drying;
- (3) waste disposal;
- (4) pressurized/forced-draft burning equipment;
- (5) smelting and forging;
- (6) motion picture projection using electrical arc lamps;
- (7) refining, distillation and solvent extraction; and
- (8) such other operations or processes as may hereafter be prescribed in the Rules and Regulations.

d. Provision on Fire Safety Construction, Protective and Warning System - Owners, occupants or administrator or buildings, structures and their premises or facilities, except such other buildings or structures as may be exempted in the rules and regulations to be promulgated under Section 5 hereof, shall incorporate and provide therein fire safety construction, protective and warning system, and shall develop and implement fire safety programs, to wit:

- (1) Fire protection features such as sprinkler systems, hose boxes, hose reels or standpipe systems and other fire fighting equipment;
- (2) Fire Alarm systems;

- (3) Fire walls to separate adjoining buildings, or warehouses and storage areas from other occupancies in the same building;
- (4) Provisions for confining the fire at its source such as fire resistive floors and walls extending up to the next floor slab or roof, curtain boards and other fire containing or stopping components;
- (5) Termination of all exits in an area affording safe passage to a public way or safe dispersal area;
- (6) Stairway, vertical shafts, horizontal exits and other means of egress sealed from smoke and heat;
- (7) A fire exit plan for each floor of the building showing the routes from each other room to appropriate exits, displayed prominently on the door of such room;
- (8) Self-closing fire resistive doors leading to corridors;
- (9) Fire dampers in centralized airconditioning ducts;
- (10) Roof vents for use by fire fighters; and
- (11) Properly marked and lighted exits with provision for emergency lights to adequately illuminate exit ways in case of power failure.

SECTION 8. *Prohibited Acts.* - The following are declared as prohibited act and omission.

- (a) Obstructing or blocking the exit ways or across to buildings clearly marked for fire safety purposes, such as but not limited to aisles in interior rooms, any part of stairways, hallways, corridors, vestibules, balconies or bridges leading to a stairway

or exit of any kind, or tolerating or allowing said violations;

- (b) Constructing gates, entrances and walkways to buildings components and yards which obstruct the orderly and easy passage of fire fighting vehicles and equipment;
- (c) Prevention, interference or obstruction of any operation of the Fire Service, or of duly organized and authorized fire brigades;
- (d) Obstructing designated fire lanes or access to fire hydrants;
- (e) Overcrowding or admission of persons beyond the authorized capacity in movie houses, theaters, coliseums, auditoriums or other public assembly buildings, except in other assembly areas on the ground floor with open sides or open doors sufficient to provide safe exits;
- (f) Locking fire exits during period when people are inside the building;
- (g) Prevention or obstruction of the automatic closure of fire doors or smoke partitions or dampers;
- (h) Use of fire protective or fire fighting equipment of the fire service other than for fire fighting except in other emergencies where their use are justified;
- (i) Giving false or malicious fire alarms;
- (j) Smoking in prohibited areas as may be determined by fire service, or throwing of cigars, cigarettes, burning objects in places which may start or cause fire;
- (k) Abandoning or leaving a building or structure by the occupant or owner without appropriate safety measures;
- (l) Removing, destroying, tampering or obliterating any authorized mark, seal,

sign or tag posted or required by the fire service for fire safety in any building, structure or processing equipment; and

- (m) Use of jumpers or tampering with electrical wiring or overloading the electrical system beyond its designated capacity or such other practices that would tend to undermine the fire safety features of the electrical system.

SECTION 9. *Violations, Penalties and Abatement of Fire Hazards.* - Fire hazards

shall be abated immediately. The Chief, BFP or his/her duly authorized representative, upon the report that a violation of this Code or other pertinent laws, rules and regulations is being committed, shall issue notice/order to comply to the owner, administrator, occupant or other person responsible for the condition of the building or structure, indicating among other things, the period within which compliance shall be effected, which shall be within ten (10) to fifteen (15) days after the receipt of the notice/order, depending on the reasonableness to adequately comply with the same.

If, after the lapse of the aforesaid period, the owner, administrator, occupant or other responsible person failed to comply, the Chief, BFP or his/her authorized representative shall put up a sign in front of the building or structure that it is fire hazard. Specifically, the notice shall bear the words "WARNING: THIS BUILDING/STRUCTURE IS A FIRE HAZARD", which shall remain posted until such time that the owner, administrator, occupant or other person responsible for the condition of the building, structure and their premises or facilities abate the same, but such period shall not exceed fifteen (15) days from the lapse of the initial period given in the notice/order to comply.

Finally, with the failure of the owner, administrator, occupant or other person responsible for the condition of the building, structure and their premises or facilities to

comply within the period specified above, the Chief, BFP may issue order for such abatement. If the owner, administrator or occupant of buildings, structure and their premises or facilities does not abate the same within the period fixed in said order, the building, structure, premises or facilities shall be ordered closed by the Chief, BFP or his/her duly authorized representative notwithstanding any permit clearance or certificate earlier issued by the local authorities.

Any building or structure assessed and declared by the Chief, BFP or his/her duly authorized representative as a firetrap on account of the gravity or palpability of the violation or is causing clear and present imminent fire danger to adjoining establishments and habitations shall be declared a public nuisance, as defined in the Civil Code of the Philippines in a notice to be issued to the owner, administrator, occupant or other person responsible for the condition of the building, structure and their premises or facilities. If the assessed value of the nuisance or the amount to be spent in abating the same is not more than One hundred thousand pesos (P100,000.00), the owner, administrator or occupant thereof shall abate the hazard within fifteen (15) days, or if the assessed value is more than One hundred thousand pesos (P100,000.00), within thirty (30) days from receipt of the order declaring said building or structure a public nuisance; otherwise, the Chief, BFP or his/her duly authorized representative shall forthwith cause its summary abatement. Failure to comply within five (5) days from the receipt of the notice shall cause the Chief, BFP or his/her duly authorized representative to put up a sign in front of the building or structure, at or near the entrance of such premises, notifying the public that such building or structure is a "FIRE TRAP", which shall remain until the owner, administrator, occupant or other person responsible for the condition of the building, structure and their premises or facilities abate the same within the specified period.

Summary abatement as used herein shall mean all corrective measures undertaken to abate hazards which shall include, but not limited to remodeling, repairing, strengthening, reconstructing, removal and demolition, either partial or total, of the building or structure. The expenses incurred by the government for such summary abatement shall be borne by the owner, administrator or occupant. These expenses shall constitute a prior lien upon such property.

SECTION 10. *Enforcement of The Lien.* - If the owner, administrator or occupant fails to reimburse the government of the expenses incurred in the summary abatement within ninety (90) days from the completion of such abatement, the building or structure shall be sold at public auction in accordance with existing laws and rules. No property subject of lien under Section 9 hereof, may be sold at a price lower than the abatement expenses incurred by the government. The property shall be forfeited in favor of the government if the highest bid is not at least equal to the abatement expenses.

SECTION 11. *Penalties.* -

1. Against the private individual:
 - a) Administrative fine - Any person who violates any provision of the Fire Code or any of the rules and regulations promulgated under this Act shall be penalized by an administrative fine of not exceeding Fifty thousand pesos (P50,000.00) or in the proper case, by stoppage of operations or by closure of such buildings, structures and their premises or facilities which do not comply with the requirements or by both such administrative fine and closure/stoppage of operation to be imposed by the Chief, BFP. *Provided, That the payment of the fine, stoppage of operations and/or closure of such buildings, structures,*

and their premises or facilities shall not absolve the violator from correcting the deficiency or abating the fire hazard. The decision of the Chief, BFP, under this subsection, may be appealed to the Secretary of the Interior and Local Government. Unless ordered by the Secretary of the Interior and Local Government the appeal shall not stay the execution of the order of the Chief, BFP. The decision of the Secretary of the Interior and Local Government shall be final and executory.

- (b) Punitive - In case of willful failure to correct the deficiency or abate the fire hazard as provided in the preceding subsection, the violator shall, upon conviction, be punished by imprisonment of not less than six (6) months nor more than six (6) years, or by a fine of not more than One hundred thousand (P100,000.00) pesos or both such fine and imprisonment; *Provided, however*, that in case of a corporation, firm, partnership or association, the fine and/or imprisonment shall be imposed upon its officials responsible for such violation, and in case the guilty party is an alien, in addition to the penalties herein prescribed, he shall immediately be deported; *Provided, finally*, that were the violation is attended by injury, loss of life and/or damage to property, the violator shall be proceeded against under the applicable provisions of the Revised Penal Code.

Any person who, without authority, maliciously removes the sign that a building or structure is a fire hazard/firetrap placed by the authorized person in this Code shall be liable for imprisonment for thirty (30) days or a fine not exceeding One hundred

thousand pesos (P100,000.00) or both in the discretion of the court.

Any person, who disobeys the lawful order of the fire ground commander during a firefighting operation shall be penalized with imprisonment of one (1) day to thirty (30) days and a fine of five thousand pesos (P5,000.00).

2. Against the public officer/employee

- a) Administrative - The following acts or omissions shall render the public officer/employee in charge of the enforcement of this Code, its implementing rules and regulation and other pertinent laws, administratively liable, and shall be punished by reprimand, suspension or removal in the discretion of the disciplining authority, depending on the gravity of the offense and without prejudice to the provisions of other applicable laws:

- (1) Unjustified failure of the public officer/employee to conduct inspection of buildings or structures at least once a year;
- (2) Deliberate failure to put up a sign in front of the building or structure within his/her area of responsibility found to be violating this Code, its implementing rules and regulations and other pertinent laws, that the same is a "FIRE HAZARD" or a "FIRE TRAP";
- (3) Endorsing to the Chief, BFP or his/her duly authorized representative for the certification, or submitting a report that the building or structure complies with the standards set by this Code,

its implementing rules or regulations or other pertinent laws when the same is contrary to fact;

- (4) Issuance or renewal of occupancy or business permit without the fire safety inspection certificate issued by the Chief, BFP or his/her duly authorized representative;
 - (5) Failure to cancel the occupancy or business permit after the owner, administrator, occupant or other person responsible for the condition of the building, structure and other premises failed to comply with the notice/order for compliance with the standards set by this Code, its implementing rules and regulations and other pertinent laws, within the specified period;
 - (6) Failure to abate a public nuisance within fifteen (15) days after the owner, administrator, occupant or other responsible person failed to abate the same within the period contained in the notice to abate;
 - (7) Abusing his/her authority in the performance of his/her duty through acts of corruption and other unethical practices; or
 - (8) Other willful impropriety or gross negligence in the performance of his/her duty as provided in this Act or its implementing rules and regulations.
- b) Punitive- In the case of willful violation involving the abovementioned acts or omissions enumerated under Section 11 subparagraph 2(A) the public officer/employee shall,

upon conviction, be punished by imprisonment of not less than six (6) months nor more than six (6) years or by a fine of not more than One hundred thousand (P100,000.00) or both such fine and imprisonment: *Provided*, That where the violation is attended by injury, loss of life and/or property, the violator shall be proceeded against under the applicable provisions of the Revised Penal Code.

SECTION 12. *Appropriation and Sources of Income.* -

- (a) To support the manpower, infrastructure and equipment needs of the fire service of the BFP, such amount as may be necessary to attain the objectives of the Fire Code shall be appropriated and included in the annual appropriation of the BFP.
- (b) To partially provide for the funding of the fire service the following taxes and fees which shall accrue to the General Fund of the National Government, are hereby imposed:
 - (1) Fees to be charged for the issuance of certificates, permits and licenses as provided for in Section 7 (a) hereof;
 - (2) One-tenth of one *per centum* (0.1%) of the verified estimated value of buildings or structures to be erected, from the owner thereof, but not to exceed fifty thousand pesos (P50,000.00), one half to be paid prior to the issuance of the building permit, and the balance, after final inspection and prior to the issuance of the use and occupancy permit;
 - (3) One-hundredth of one *per centum* (0.10%) of the assessed value of buildings or structures annually payable upon payment of the real

estate tax, except on structures used as single family dwellings;

- (4) *Two per centum* (2%) of all premiums, excluding re-insurance premiums for the sale of fire, earthquake and explosion hazard insurance collected by companies, persons or agents licensed to sell such insurances in the Philippines;
- (5) *Two per centum* (2%) of gross sales of companies, persons or agents selling fire fighting equipment, appliances or devices, including hazard detection and warning systems; and
- (6) *Two per centum* (2%) of the service fees received from fire, earthquake, and explosion hazard reinsurance surveys and post loss service of insurance adjustment companies doing business in the Philippines directly through agents.

SECTION 13. *Collection of Taxes, Fees and Fines.* - All taxes, fees and fines provided in this Code, shall be collected by the BFP. *Provided, That* twenty percent (20%) of such collection shall be set aside and retained for use by the city or municipal government concerned, which shall appropriate the same exclusive for the use of the operation and maintenance of its local fire station, including the construction and repair of fire station: *Provided, further, That* the remaining eighty (80%) shall be remitted to the National Treasury under a trust fund assigned for the modernization of the BFP.

"Sec. 13-A. Assessment of Fire Code Taxes, Fees and Fines. - The assessment of fire code taxes, fees and fines is vested upon the BFP. The BFP shall, subject to the approval of the DILG, prescribe the procedural rules for such purpose.

Sec. 13-B. Collection and Assessment of Local Taxes, Fees and Fines. - The collection and assessment of taxes, fees and fines as prescribed in the Local Government Code, except those contained in this Code, shall be function of the concerned local government units.

Sec. 13-C. Use of Income Generated from the Enforcement of the Fire Code. - The Chief, BFP is authorized, subject to the approval of the Secretary of the Interior and Local Government, to use the income generated under the Fire Code for procurement of fire protection and fire fighting investigation, rescue, paramedics, supplies and materials, and related technical services necessary for the fire service and the improvement of facilities of the Bureau of Fire Protection and abatement of fire hazards.

The BFP shall determine the optimal number of equipment, including, but not limited to, fire trucks and fire hydrants, required by every local government unit for the proper delivery of fire protection services in its jurisdiction.

In the procurement of fire fighting and investigation supplies and materials, the Bureau of Product Standards of the Department of Trade and Industry shall evaluate, determine and certify if the supply to procured conforms to the product standards fixed by the BFP. For this purpose, the BFP shall submit to the Bureau of Product Standards a detailed set of product standards that must be complied with in the procurement of fire fighting and investigation supplies and materials within six (6) months from the effectivity of this Act.

Sec. 13-D. Monitoring the Implementation of the Fire Code and the Amount of the Fees Collected.
- The Chief, BFP shall, within six (6)

months from the effectivity of this Code, submit to the Secretary of the Interior and Local Government for his/her approval, a management tool or mechanism that would ensure effective monitoring of the enforcement of the Fire Code to include the amount of Fire Code fees collected.

SECTION 14. Within sixty (60) days from the effectivity of this Act, the Secretary of the Interior and Local Government shall issue the rules and regulations for its effective implementation.

SECTION 15. Presidential Decree No 1185 is hereby repealed. All laws, presidential decrees, letters of instructions, executive orders, rules and regulations insofar as they are inconsistent with this Act, are hereby repealed or amended as the case may be.

SECTION 16. In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.

SECTION 17. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved

(Sgd.) PROSPERO C. NOGRALES
Speaker of the House of Representative

(Sgd.) MANNY VILLAR
President of the Senate

(Sgd.)MARILYN B. BARUA-YAP
Secretary General
House of Representative

(Sgd.) EMMA LIRIO-REYES
Secretary of the Senate

This Act which is a consolidation of Senate Bill No. 2553 and House Bill No. 4115 was finally passed by the Senate and the House of Representative on October 6, 2008 and October 8, 2008, respectively.

Approved: **DEC 19, 2008**
(Sgd.)GLORIA MACAPAGAL-ARROYO
President of the Philippines

Chapter IX

PRESIDENTIAL DECREE NO. 87

AMENDING PRESIDENTIAL DECREE NO. 8 ISSUED ON OCTOBER 2, 1972, AND PROMULGATING AN AMENDED ACT TO PROMOTE THE DISCOVERY AND PRODUCTION OF INDIGENOUS PETROLEUM AND APPROPRIATE FUNDS THEREFOR.

WHEREAS, Presidential Decree No. 8 dated October 2, 1972 was issued to promote the discovery and development of the country's indigenous petroleum resources and adopting therefore as part of the law of the land the provisions of Senate Bill No. 531 (*An Act to Promote the Discovery, Production of Indigenous Petroleum and Appropriate Funds Therefor*);

WHEREAS, it was found necessary for the national interest to amend Senate Bill No. 531 among others things to provide more meaningful incentives to prospective service contractors.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, do hereby amend Presidential Decree No. 8 as follows:

**“AN ACT
TO PROMOTE THE DISCOVERY AND
PRODUCTION OF INDIGENOUS PETROLEUM,
AND APPROPRIATING FUNDS THEREFOR”**

SECTION 1. *Short Title.* – This Act shall be known and may be cited as “The Oil Exploration and Development Act of 1972.”

SECTION 2. *Declaration of Policy.* – It is hereby declared to be the policy of the State to hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign, under the arrangements embodied in this Act which are calculated to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government for use in furtherance of national economic development, and to assure just returns to participating private enterprises, particularly those that will provide the necessary services, financing and technology and fully assume all exploration risks.

SECTION 3. *Definition of Terms.* – As used in this Act, the following shall have the following respective meanings:

- (a) “Petroleum” shall include any mineral oil hydrocarbon gas, bitumen, asphalt, mineral gas and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits.

- (b) “Crude oil” or “crude” means oil in its natural state before the same has been refined or otherwise treated. It does not include oil produced through destructive distillation of coal, bituminous shales or other stratified deposits, either in its national state or after the extraction of water, and sand or other foreign substances therefrom.
 - (c) “Natural gas” means gas obtained from boreholes and wells and consisting primarily of hydrocarbons.
 - (d) “Petroleum operations” means searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and all other operations incidental thereto. It includes the transportation, storage, handling and sale (whether for export or for domestic consumption) of petroleum so obtained but does not include any: (1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined.
 - (e) “Petroleum in commercial quantity” means petroleum in such quantities which will permit its being economically developed as determined by the contractor after taking into consideration the location of the reserves, the depths and number of wells required to be drilled and the transport and terminal facilities needed to exploit the reserves which have been discovered.
 - (f) “Posted price” refers to the FOB price established by the Contractor in consultation with the Petroleum Board for each grade, gravity and quality of crude oil offered for sale to buyers generally for export at the particular point of export, which price shall be based upon geographical location, and the fair market export values for crude oil of comparable grade, gravity and quality.
 - (g) “Market Price” shall mean the price which would be realized for petroleum produced under a contract as hereinafter defined if sold in a transaction between independent persons dealing at arm’s length in a free market.
 - (h) “Barrel” means 42 U.S. gallons or 9702 cubic inches at temperature of 60° Fahrenheit.
- Any reference in this Act to the value of any crude oil at the posted price or market price shall be construed as a reference to the amount obtained by multiplying the number of barrels of that crude oil by the posted price or market price per barrel applicable to that crude oil.
- (i) “Crude oil exported” shall include not only crude oil exported as such but also indigenous crude oil refined in the Philippines for export.
 - (j) “Government” means the Government of the Republic of the Philippines.
 - (k) “Contractor” means the contractor in a service contract whether acting alone or in consortium with others.
 - (l) “Contract” refers to a service contract.
 - (m) “Filipino participation incentive” means the allowance which may be given the Contractor with Filipino participation as provided in Section 28 hereof.
 - (n) “Philippine corporation” means a corporation organized under Philippine laws at least sixty per cent of the capital of which is owned and held by citizens of the Philippines.
 - (o) “Affiliate” means (a) a company in which a contractor holds directly or indirectly at least fifty per cent of its outstanding shares entitled to vote; (b) a company which holds directly or indirectly at

least fifty per cent of the contractor's outstanding shares entitled to vote; or (c) a company in which at least fifty per cent of its share outstanding and entitled to vote are owned by a company which owns directly or indirectly at least fifty per cent of the shares outstanding and entitled to vote of the contractor.

- (p) "Gross income" means the gross proceeds from the sale of crude, natural gas or casinghead petroleum spirit produced under the contract and sold during the taxable year at posted or market price, as the case may be, and such other income which are incidental to and arising from any one or more of the petroleum operations of the contractor.
- (q) "Taxable net income" means the gross income less the deductions allowed in this Act.
- (r) "Taxable year" means the calendar or fiscal year of the contractor.
- (s) "Casinghead petroleum spirit" means any liquid hydrocarbon obtained from natural gas by separation or by any chemical or physical process.
- (t) "Petroleum Board" refers to the Petroleum Board created in Section seventeen of this Act.
- (u) "Operating Expenses" means the total expenditures for petroleum operations made by the Contractor both within and without the Philippines as provided in a service contract.

SECTION 4. *Government May Undertake Petroleum Exploration and Production.* – Subject to the existing private rights, the Government may directly explore for and produce indigenous petroleum. It may also indirectly undertake the same under service contracts as hereinafter provided. These contracts may cover free areas, national

reserve areas and/or petroleum reservations, as provided for in the *Petroleum Act of 1949*, whether on-shore or off-shore. In every case, however, the contractor must be technically competent and financially capable as determined by the Board to undertake the operations required in the contract.

SECTION 5. *Execution of Contract Authorized in this Act.* – Every contract herein authorized shall, subject to the approval of the President, be executed by the Petroleum Board created in this Act, after due public notice pre-qualification and public bidding or concluded through negotiations. In case bids are requested or if requested no bid is submitted or the bids submitted are rejected by the Petroleum Board for being disadvantageous to the Government, the contract may be concluded through negotiation.

In opening contract areas and in selecting the best offer for petroleum operations, any of the following alternative procedures may be resorted to by the Petroleum Board, subject to prior approval of the President:

- (a) The Petroleum Board may select an area or areas and offer it for bid, specifying the minimum requirements and conditions; or
- (b) Petroleum Board may open for bidding a large area wherein bidders may select integral areas not larger than the maximum provided in this Act. Only the best offer shall be accepted and the selection thereon shall be made by a weighted system of evaluating the different aspects of each bid; or
- (c) An area may be selected by an interested party who shall negotiate with the Petroleum Board for a contract under the terms and conditions provided in this Act.

SECTION 6. *Nature of Service Contract.* – In a service contract, service and technology

are furnished by the service contractor for which it shall be entitled to the stipulated service fee while financing is provided by the Government to which all petroleum produced shall belong.

SECTION 7. *Special Stipulation in Service Contract.* – Where the Government is unable to finance petroleum exploration operations or in order to induce the contractor to exert the maximum efforts to discover and produce petroleum as soon as possible, the service contract shall stipulate that if the contractor shall furnish services, technology and financing, the proceeds of sale of the petroleum produced under the contract shall be the source of funds for payment of the service fee and the operating expenses due the contractor.

SECTION 8. *Obligation of Contractor in Service Contract.* – The arrangement pursuant to the preceding section seven shall be such that the contractor, which may be a consortium, shall undertake, manage and execute petroleum operations. The contract may authorize the contractor to take and dispose of and market either domestically or for export all petroleum produced under the contract subject to supplying the domestic requirements of the Republic of the Philippines on a pro-rata basis. The Government shall oversee the management of the operations contemplated in the contract and in this connection shall require the contractor to –

- (a) Provide all necessary services and technology;
- (b) Provide the requisite financing;
- (c) Perform the exploration work obligations and program prescribed in the agreement between the Government and the Contractor, which may be more but shall not be less than the obligations prescribed in this Act;

- (d) Once petroleum in commercial quantity is discovered, operate the field on behalf of the Government in accordance with accepted good oil field practices using modern and scientific methods to enable maximum economic production of petroleum; avoiding hazards to life, health and property; avoiding pollution of air, land and waters; and pursuant to an efficient and economic program of operation;
- (e) Assume all exploration risks such that if no petroleum in commercial quantity is discovered and produced, it will not be entitled to reimbursement;
- (f) Furnish the Petroleum Board promptly with geological and other information, data and reports which it may require;
- (g) Maintain detailed technical records and accounts of its operations;
- (h) Conform to regulations regarding, among others, safety, demarcation of agreement acreage and work areas, non-interference with the rights of other petroleum, mineral and natural resources operators;
- (i) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration and production sites and operations to inspectors authorized by the Petroleum Board;
- (j) Allow examiners of the Bureau of Internal Revenue and other representatives authorized by the Petroleum Board full access to their accounts, books and records, for tax and other fiscal purposes; and
- (k) Be subject to Philippine income tax.

On the other hand, the Petroleum Board shall –

(1) On behalf of the Government, reimburse the Contractor for all operating expenses not exceeding seventy per cent of the gross proceeds from production in any year: *Provided*, That if in any year the operating expenses exceeds seventy per cent of gross proceeds from production, then the unrecorded expenses shall be recovered from the operations of succeeding years.

(2) Pay the Contractor a service fee the net amount of which shall not exceed forty per cent of the balance of the gross income after deducting the Filipino participation incentive, if any, and all operating expenses recovered pursuant to Section 8 (1) above.

(3) Reimbursement of operating expenses and payment of the service fee shall be in such form and manner as provided for in the contract.

SECTION 9. Minimum Terms and Conditions.

– In addition to those elsewhere provided in this Act, every contract executed in pursuance hereof shall contain the following minimum terms and conditions:

(a) Every contractor shall be obliged to spend in direct prosecution of exploration work and in delineation and development following the discovery of oil in commercial quantity not less than the amounts provided for in the contract between the Government and the contractor and these amounts shall not be less than the total obtained by multiplying the number of hectares covered by the contract by the following amounts for hectare:

Period	On-shore	Of-shore
Year 1	P 3.00	P 3.00
Year 2	3.00	3.00
Year 3	3.00	6.00
Year 4	3.00	6.00
Year 5	3.00	6.00
Year 6	9.00	18.00
Year 7	9.00	18.00
Year 8	9.00	18.00
Year 9	9.00	18.00
Year 10	9.00	18.00

Provided, That if during any contract year the Contractor shall spend more than the amount of money required to be spent, the excess may be credited against the money required to be spent by the Contractor during the succeeding contract years: *Provided, further*, That in case the same Contractor holds two or more areas under different contracts of service, the total amount of work obligations for exploration required for the initial term of all contracts may be spent within any one or more of them as if they are covered by a single contract of service: *Provided, further*, That should the Contractor fail to comply with the work obligations provided for in the contract, it shall pay to the Government the amount it should have spent but did not in direct prosecution of its work obligations: *Provided, finally*, That the Contractor shall drill a minimum footage of test wells before the end of periods of time as may be specified in the contract with the Petroleum Board in order to be entitled to the extension of the exploration period for 3 years as provided for in paragraph (e) herein.

(b) In case the contractor renounces or abandons wholly or partly the area covered by his contract within two years from its effective date, it shall in respect of the abandoned area pay the Government the amount it should

have spent, but did not, for exploration work during said two years, for which payment, among other obligations, the performance guarantee posted by the contractor shall be answerable.

- (c) Every contract shall provide for the compulsory relinquishment of at least twenty-five per cent of the initial area at the end of five years from its effective date and in the event of an extension of the contract from seven to ten years, an additional relinquishment of at least twenty-five per cent of the initial area at the end of seven years from its effective date. But the portion already delineated as production area pursuant to the succeeding paragraph shall not be taken into account in ascertaining the extent of relinquishment required. Any area renounced or abandoned under Section 9 (b) above shall be credited against the portion of the area subject to the contract which is required to be surrendered hereunder.
- (d) The Contractor shall, from the discovery of petroleum in commercial quantity, delineate the production area within the period agreed upon in the contract.
- (e) The exploration period under every contract shall be seven years, extendible for three years if the contractor has not been in default in its exploration work obligations and other obligations after which the contract shall lapse unless Petroleum has been discovered by the end of the tenth year and the contractor for requests a further extension of one year to determine whether it is in commercial quantity, in which event, another extension of one year for exploration may be granted. If Petroleum in commercial quantity has been discovered, the Contractor may retain after the exploration period and during the effectivity of the Contract twelve and one-half per cent of the initial area in addition to the delineated production area: *Provided, however,* That the contractor shall pay annual rentals on such retained area which shall not be less than ten pesos per hectare or fraction thereof for on-shore areas and not less than twenty pesos as determined by the Petroleum Board per hectare or fraction thereof for off-shore areas: *Provided, further,* That such rentals can be offset against exploration expenditures actually spent on such area.
- (f) Where petroleum in commercial quantity is discovered during the exploration period in any area covered by the contract, the contract with respect to said area shall remain in force for production purposes during the balance of the ten year exploration period and for an additional period of twenty-five years, thereafter renewable for a period not exceeding fifteen years under such terms and conditions as may be agreed upon by the parties at the time of renewal.
- (g) All materials, equipment, plants and other installations erected or placed on the exploration and/or production area of a movable nature by the contractor shall remain properties of the contractor unless not removed therefrom within one year after the termination of the contract.
- (h) The contractor shall be subject to the provisions of laws of general application relating to labor, health, safety, and ecology insofar as they are not in conflict with the provisions otherwise contained in this Act.
- (i) Every contract executed in pursuance of this Act shall contain provisions regarding the discovery, production, sale and disposal of natural gas and casinghead petroleum spirit that shall be in line with the rules herein prescribed for crude oil except that:

- (1) The market price shall be the basis for tax and all other purposes;
- (2) After meeting requirements in secondary recovery operations priority shall be given to supplying prospective demand in the Philippines.

SECTION 10. *Contract areas.* – Subject to Section eighteen hereof, a contractor or its affiliate may enter into one or more contracts with the Government. Contracts for off-shore areas may cover any portion beneath the Philippine territorial waters or its continental shelf, or portion of the continental slope, terrace or areas which are or may be subject to Philippine jurisdiction: *Provided*, That for off-shore areas beyond water depths of 200 meters, the Petroleum Board may provide for more liberal terms than that provided for herein with respect to contract areas, exploration period and relinquishment.

SECTION 11. *Transfer and Assignment.* – The rights and obligations under a contract executed under this Act shall not be assigned or transferred without the prior approval of the Petroleum Board: *Provided*, That with respect to the transfer or assignment of contractual rights and obligations under this Act to an affiliate of the transferor, the approval thereof by the Petroleum Board shall be automatic, if the transferee is as qualified as the transferor to enter into such contract with the Government: *Provided, further*, That the affiliate relationships between the original transferor or a company which holds at least fifty per cent of the contractor's outstanding shares entitled to vote and each transferee shall be maintained during the existence of the contract.

SECTION 12. *Privileges of Contractor.* – The provisions of any law to the contrary notwithstanding, a contract executed under this Act may provide that the contractor shall have the following privileges:

- (a) Exemption from all taxes except income tax.
- (b) Exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials required for petroleum operations subject to the conditions that said machinery, equipment, spare parts and materials of comparable price and quality are not manufactured domestically; and directly and actually needed and will be used exclusively by the contractor in its operations or in operations for it by a subcontractor are covered by shipping documents in the name of the contractor to whom the shipment will be delivered direct by the customs authorities; and prior approval of the Petroleum Board was obtained by the contractor before the importation of such machinery, equipment, spare parts and materials which approval shall not be unreasonably withheld: *Provided, however*, That the contractor or its subcontractor may not sell, transfer or dispose of these machinery, equipment, spare parts and materials without the prior approval of the Petroleum Board and payment of taxes due the Government: *Provided, further*, That should the contractor or its subcontractor sell, transfer or dispose of these machinery equipment, spare parts or materials without the prior consent of the Petroleum Board, it shall pay twice the amount of the tax exemption granted: *Provided, finally*, That the Petroleum Board shall allow and approve the sale, transfer, or disposition of the said items without tax if made (1) to another contractor; (2) for reasons of technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the contract;
- (c) Exemption upon approval by the Petroleum Board from laws, regulations and/or ordinances restricting the (1)

construction, installation, and operation of power plant for the exclusive use of the contractor if no local enterprise can supply within a reasonable period and at reasonable cost the power needed by the contractor in its petroleum operations, (2) exportation of machinery and equipment which were imported solely for its petroleum operation when no longer needed therefor;

- (d) Exemption from publication requirements under Republic Act Numbered Five thousand four hundred fifty-five; and the provisions of Republic Act Numbered Sixty-one hundred and seventy-three with respect to the exploration, production, exportation or sale or disposition of crude oil discovered and produced in the Philippines;
- (e) Exportation of petroleum subject to the prior filing *pro-rata* of domestic needs as elsewhere provided in this Act;
- (f) Entry, upon the sole approval of the Petroleum Board which shall not be unreasonably withheld, of alien technical and specialized personnel (including the immediate members of their families), who may exercise their professions solely for the operations of the contractor as prescribed in its contract with the Government under this Act: *Provided*, That if the employment or connection of any such alien with contractor ceases, the applicable laws and regulations on immigration shall apply to him and his immediate family: *Provided, further*, That Filipinos shall be given preference to positions for which they have adequate training: And *Provided, finally*, That the contractor shall adopt and implement a training program for Filipinos along technical or specialized lines, which program shall be reported to the Petroleum Board;

(g) Rights and obligations in any contract concluded pursuant to this Act shall be deemed as essential considerations for the conclusion thereof and shall not be unilaterally changed or impaired; and

- (h) The privileges and benefits granted to a contractor under the provisions of this Act together with any applicable obligations shall likewise be made available to concessionaires under the *Petroleum Act of 1949* and their authorized contractors and/or service operators, whether local or foreign, if they so elect.

SECTION 13. *Repatriation of Capital and Retention of Profits Abroad.* – The contractor shall be entitled to (1) repatriate over a reasonable period the capital investment actually brought into the country in foreign exchange or other assets and registered with the Central Bank; (2) retain abroad all foreign exchange representing proceeds arising from exports accruing to the contractor over and above (a) the foreign exchange to be converted into pesos in an amount sufficient to cover, or equivalent to, the local costs for administration and operations of the exported crude and (b) Revenues due the Government on such crude: *Provided, however*, That the Government and the contractor shall stipulate in the contract the currency in which the Government revenues arising under (b) above are to be paid; (3) convert into foreign exchange and remit abroad at prevailing rates no less favorable to Contractor than those available to Contractor than those available to any other purchaser of foreign currencies, any excess balances of their peso earnings from petroleum production and sale over and above the current working balances they require, and (4) convert foreign exchange into Philippine currency for all purposes in connection with its petroleum operations at prevailing rates no less favorable to contractor than those available to any other purchaser of such currency.

SECTION 14. *Full Disclosure of Interest in Contractor.* – Interest held in the contractor by domestic mining and petroleum companies and/or the latter’s stockholders may be allowed to any extent after full disclosure thereof to, and approved by the Petroleum Board.

SECTION 15. *Arbitration.* The Petroleum Board may stipulate in a contract executed under this Act that disputes in the implementation thereof between the Government and the contractor may be settled in accordance with generally accepted international arbitration practice.

SECTION 16. *Performance Guarantee.* – In order to guarantee compliance with the obligations of the contractor in contracts executed under this Act, the contractor shall post a bond or other guarantee of sufficient amount in favor of the Government and with surety or sureties satisfactory to the Petroleum Board, conditioned upon the faithful performance by the contractor of any or all of the obligations under and pursuant to said contracts.

IMPLEMENTING AGENCY

SECTION 17. There is hereby created a Petroleum Board composed of the Secretary of Agriculture and Natural Resources, as Chairman, and the Secretary of Finance, the Secretary of Justice, the Chairman of the Board of Investments, the Governor of the Central Bank, the Secretary of Trade and Tourism and the Director of Mines as members. The Director of Mines shall be its Executive Officer. The Board shall be attached to the National Economic Development Authority.

SECTION 18. *Functions of Petroleum Board.* – In accordance with the provisions and objectives of this Act, the Petroleum Board shall:

- (a) Define and give public notice when applicable of the areas available for service contract;
- (b) Enter into contracts herein authorized with such terms and conditions as may be appropriate under the circumstances including the grant of special allowance: *Provided, however,* That no depletion allowance shall be granted: *Provided, further,* That except as provided in Sections twenty-six and twenty-seven hereof, no contract in favor of one contractor and its affiliates shall cover less than fifty thousand nor more than seven hundred and fifty thousand hectares for on-sphere areas, or less than eighty thousand nor more than one million five hundred thousand hectares for off-shore areas: *Provided, finally,* That in no case shall the annual net revenue or share of the Government, including all taxes paid by or on behalf of the contractor, be less than sixty per cent of the difference between the gross income and the sum of operating expenses and Filipino participation incentive;
- (c) Provide for the manner and form of the income tax payment, the reimbursement of operating expenses, the payment of service fee, and payment of Filipino participation incentive allowance, if any, in the service contract;
- (d) Make specific proposals to Congress for the grant of subsidy to contractors and petroleum companies at least sixty per cent of the capital of which is owned by Philippine citizens, to be derived from the revenue or share that will accrue to the Government in pursuance of this Act;
- (e) Undertake intensive studies and researches on oil field practices, procedures, and policies;
- (f) Promulgate such rules and regulations as may be necessary and assess charges

for services rendered, to implement the intent and provisions of this Act;

- (g) Appoint, discipline and remove, and determine the compensation of, its technical staff and other personnel: *Provided*, That positions which are highly technical or primarily confidential shall not be subject to the Civil Service Laws and Rules, and of the Wage and Position Classification Office;
- (h) Within four months after the close of every fiscal year, submit to the President and Legislature an annual report on its activities, with appropriate recommendation; and
- (i) Generally, exercise all powers necessary or incidental to attain the objectives of this Act.

TAX PROVISIONS

SECTION 19. *Imposition of Tax.* – The contractor shall be liable each taxable year for Philippine income tax on income derived from its petroleum operations under its contract of service, computed as provided in Section 20, through 25.

SECTION 20. *Determination of Gross Income.* – The gross income shall consist of:

- (a) In respect of crude oil exported, the gross proceeds from the sale of crude oil at the posted price;
- (b) In respect of crude oil sold for consumption in the Philippines, the gross income shall consist of the gross proceeds from the sale thereof at market price per barrel;
- (c) In respect of natural gas and/or casinghead petroleum exported or sold for consumption in the Philippines the gross income shall consist of the total quantity sold at the prevailing market price thereof; and

- (d) Such other income which are incidental to and/or arising from any petroleum operation.

SECTION 21. *Deductions from Gross Income.* – In computing the taxable net income, there shall be allowed as deductions:

- (1) Filipino participation incentive; and
- (2) Operating expenses reimbursed pursuant to Section 8 (1) which includes amortization and depreciation as provided in Section 22.

SECTION 22. *Amortization and Depreciation.* – Intangible exploration costs may be deductible in full; all tangible exploration costs such as capital expenditures and other recoverable capital assets are to be depreciated for a period of ten years.

SECTION 23. *Deductions not Allowed.* – In ascertaining the taxable net income, no deduction from gross income shall be allowed in respect of any interest or other consideration paid or suffered in respect of the financing of its petroleum operations.

SECTION 24. *Return and Payment of Tax.* – Every party to a service contract shall render to the Petroleum Board a return for each taxable year in duplicate in such form and manner as provided by law setting forth its gross income and the deductions herein allowed. The return shall be filed by the Petroleum Board with the Commissioner of Internal Revenue or his deputies or other persons authorized by him to receive such return within the period specified in the *National Internal Revenue Code* and the rules and regulations promulgated thereunder. Every party to a service contract shall be subject to tax separately on its share of taxable income arising from such contract.

SECTION 25. *Applicability of the provisions of the National Revenue Code.* – All provisions of the National Internal Revenue Code and

rules and regulations promulgated in relation therewith which are not inconsistent with the provisions of this Act shall be applicable to the Contractor.

SPECIAL PROVISIONS

SECTION 26. *Option of Exploration Concessionaires.* – A holder of a valid and subsisting petroleum exploration concession under the *Petroleum Act of 1949* may, at his option enter into a contract of service under the rules of the *Petroleum Act of 1949*, subject to constitutional restrictions, with any local or foreign oil company under such terms and conditions as may be agreed upon by the concessionaire and the service contractor. As an alternative the concessionaire may convert his concession into a service contract as provided in this Act through negotiations, with all the rights and privileges herein authorized: *Provided*, That the contract which may be concluded after said negotiation shall contain at least the minimum terms and conditions provided in this Act and shall take into account terms and conditions more favorable to the Government contained in contracts involving exploration pursuant to this Act: *Provided, further*, That the exploration period shall commence to run from the effective date of the original concession, except when the concession has been effective for a period of seven years or more, in which case the contractor shall be required to commence exploratory drilling operations within a period of not exceeding eighteen months from the date of effectivity of the service contract. If the contractor is not in default in the drilling operations as hereunder required, an extension of the exploration period may be granted as provided in Section nine, paragraph (e) of this Act.

SECTION 27. *Alternative Option of Exploration Concessionaire.* – The concessionaire referred to in the preceding section may form a consortium with another company

or companies and jointly enter into a service contract with the Government under this Act, with the right to assign to the consortium, subject to the approval of the Petroleum Board, the area covered by his concession which shall thereupon be governed by the provisions of this Act: *Provided*, That the voluntary relinquishment of the concession and its assignment, as well as all technical data on the area resulting from studies conducted by the concessionaire subsisting improvement introduced by him thereon, shall be evaluated and given a fair value which may constitute his contribution, wholly or in part, to the consortium: *Provided, however*, That the exploration period under the new contract shall commence to run from the date of the effectivity of the contract if it covers areas in addition to the assigned areas; otherwise the provisions of the preceding section shall apply: *Provided, further*, That duly published applications, for exploration concessions or bids therefor already awarded by the Secretary of Agriculture and Natural Resources under the provisions of the *Petroleum Act of 1949* shall be recognized and the corresponding deeds of concessions issued accordingly: *Provided, finally*, That exploration concessions on which the holder thereof failed to perform the three consecutive years the exploration work required under the provisions of the *Petroleum Act of 1949*, as amended by Republic Act Numbered Five Thousand Eighty-Six shall be considered automatically cancelled.

SECTION 28. *Filipino Participation Incentive.* – The contractor under a service contract in which Philippine citizens or corporations have a minimum participating interest of fifteen per cent in the contract area may be subject to reasonable conditions imposed by the Petroleum Board be granted by a government subsidy, commensurate with the scope of Filipino participation, i.e., a Filipino participation incentive, not exceeding seven and one-half per cent, which shall be computed by deducting the said allowance from the posted or market price, whichever,

is the higher, of crude oil exports produced in the contract area, and from the market price of crude oil produced in the contract area, sold or disposed of for consumption in the Philippines.

SECTION 29. *Publicity.* – Negotiation with the Government for the conclusion of a contract under this Act and every contract concluded hereunder shall be given publicity consistent with the best interest of the Government.

SECTION 30. *Provisions of Petroleum Act Applicable.* – The provisions of the *Petroleum Act of 1949*, as amended, shall not be applicable to the service contract provided in this Act, except the following Articles:

- (a) Article 16, referring to public easements on lands covered by concessions;
- (b) Article 17, providing that petroleum operations are subject to existing mining rights, permits, leases and concessions in respect of substances other than petroleum and to existing petroleum rights;
- (c) Article 18, referring to the right of the Government to establish reservations or grant mining rights on petroleum concessions;
- (d) Article 20, granting exploration and exploitation concessionaires the right to enter private lands covered by their concessions;
- (e) Article 21, referring to easement and the exercise of the right of eminent domain over private lands for the purpose of carrying out any work essential to petroleum operations;
- (f) Article 22, providing for easements over public land for the purpose of carrying out any work essential to petroleum operations; and

- (g) Article 23, which grants concessionaires the right to utilize for any of the work to which the concession relates, timber, water, and clay from any public lands within their concessions.

SECTION 31. *Preference to Local Labor.* – The Contractor shall give priority in employment to qualified personnel in the municipality or municipalities or province where the exploration or production operations are located.

SECTION 32. *Foreign Assistance.* – Nothing in this Act or of any other law shall preclude the Government of the Republic of the Philippines, through the Petroleum Board or any other proper office or agency, from negotiating or entering into any agreement with any foreign country or government for assistance in terms of equipment, technical know-how and financing for the exploration and production of indigenous crude oil and its by-products.

SECTION 33. *Funds.* – To carry out the purpose of this Act, there is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, the sum of five hundred thousand pesos for the fiscal year nineteen hundred seventy-three. Hereafter, the necessary appropriations shall be included in subsequent *General Appropriations Act*.

SECTION 34. *Repealing Clause.* – All laws, executive orders and regulations inconsistent with the provisions of this Act are hereby repealed, provided that no existing rights shall be prejudiced thereby.

SECTION 35. *Effectivity Date.* – This Act shall take effect upon its approval.”

Done in the City of Manila, this thirty first day of December, in the year of Our Lord, nineteen hundred and seventy-two.

EXECUTIVE ORDER NO. 66

DESIGNATING THE DEPARTMENT OF ENERGY AS THE LEAD AGENCY IN DEVELOPING THE PHILIPPINE NATURAL GAS INDUSTRY

WHEREAS, the Malampaya Gas-to-Power Project, the largest and most important investment of its kind in the Philippine history, represents the beginning of the Natural Gas Industry in the Philippines;

WHEREAS, the development of the Natural Gas Industry shall provide a much awaited boost to the economy by opening up vast opportunities both for the government and the private sector;

WHEREAS, Section 2 of R.A. 7638 otherwise known as the “Department of Energy Act of 1992,” declares, among others, that it is the policy of the State to ensure a continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country’s energy requirements through the integrated and intensive exploration, production, management and development of the country’s indigenous energy resources, without sacrificing ecological concerns;

WHEREAS, Sections 4, 5(a) and 5(b) of R.A. 7638 provide that the Department of Energy (DOE) is mandated to formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan, and to provide a mechanism for the integration, rationalization and coordination of the various energy programs of the Government with a preferential bias for environment-friendly, indigenous and low-cost sources of energy;

WHEREAS, Section 5 (c) of R.A. 7638 mandates the DOE to establish and administer programs

for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or non-conventional;

WHEREAS, Section 5 (e) of R.A. 7638 authorizes the DOE to regulate private sector activities relative to energy projects provided it shall provide for an environment conducive to free and active private sector participation and investment in all energy activities;

WHEREAS, natural gas has been recognized as an environment-friendly, indigenous and low-cost source of energy among the indigenous energy resources;

WHEREAS, the critical nature of developing the Natural Gas Industry necessitates the involvement and support of various government agencies to ensure a unified and coordinated effort towards establishing a successful and robust Natural Gas Industry;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. The Department of Energy is hereby designated as the lead government agency in ensuring a unified and coordinated effort towards establishing a successful and robust Natural Gas Industry;

SECTION 2. Pursuant to its mandate, the Department of Energy shall recommend and/or issue appropriate policy statements, industry rules and guidelines and other issuances in order to facilitate and encourage

private sector activities, investments and participation in the natural gas industry;

SECTION 3. The Department of Energy may call upon any department, agency or instrumentality of the Government for assistance to ensure the development of the Natural Gas Industry and shall have the authority to retain the services of technical consultants of proven and internationally recognized expertise in natural gas technology as may be deemed necessary, subject to the existing rules and regulations on consultancy contracts;

SECTION 4. All other government agencies shall assist and cooperate with the Department of Energy as may be necessary to develop and implement the programs for the natural gas industry.

SECTION 5. Funds. – The funding requirements to carry out the tasks under this order shall be chargeable against the savings from the appropriations of the Department for the first year of implementation of this Order. Funds for succeeding years shall be chargeable against the regular appropriations of the Department;

SECTION 6. Effectivity. – This Order shall take effect immediately.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Republic of the Philippines, to be affixed.

Done in the city of Manila this 18th day of January, in the year of Our Lord, two thousand and one.

DEPARTMENT CIRCULAR NO. 95-06-006

POLICY GUIDELINES ON THE OVERALL DEVELOPMENT AND UTILIZATION OF NATURAL GAS IN THE PHILIPPINES

WHEREAS, Section 2 of R.A. 7638, otherwise known as the “Department of Energy Act of 1992,” declares, among others, the policy of the State to ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country’s energy requirements through the integrated and intensive exploration, production, management, and development of the country’s indigenous energy resources, without sacrificing ecological concerns;

WHEREAS, Sections 4, 5 (a) and 5 (b) of R.A. 7638 provide that the Department of Energy (Department) is mandated to formulate policies for the planning and implementation of a comprehensive program

for the efficient supply and economical use of energy consistent with the approved national economic plan, and to provide a mechanism for the integration, rationalization and coordination of the various energy programs of the Government with a preferential bias for environment-friendly, indigenous, and low-cost sources of energy;

WHEREAS, among the indigenous energy resources which include fossil fuels such as petroleum, natural gas and gas liquids, geothermal resources, and other less conventional existing and potential forms of indigenous resources, natural gas been recognized as environment-friendly, indigenous, and low-cost source of energy;

WHEREAS, Section 5 (e) of R.A. 7638 authorizes the Department to regulate private sector activities relative to energy projects provided it shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

NOW, THEREFORE, the Department hereby declares the following policy guidelines on natural gas development and utilization:

SECTION 1. The government shall promote the role of natural gas into the energy supply mix of the country by creating the conditions for a Philippine Gas Industry that economically serves a broader variety of users, including efficient gas-fired power plants, industrial, commercial and residential customers.

SECTION 2. The Malampaya/Camago gas field shall serve as the foundation for the Philippine Gas Industry by planning and developing it to primarily supply efficient gas-fired power plants starting year 2001.

SECTION 3. The Philippine Gas Industry shall be consistent with the government's overall policy of encouraging private sector participation and reducing the direct involvement of government in the ownership of assets and facilities. The role of government will be confined to that of policy direction and regulation, unless government

involvement is demonstrated to provide substantial reduction in the cost of natural gas and economic benefit to the people.

SECTION 4. Government regulation of the development and operation of the Philippine Gas Industry facilities shall be structured to facilitate the safe operation and growth of the industry while ensuring equitable non-discriminatory access to all industry participants.

SECTION 5. The facilities of the Philippine Gas Industry shall be constructed and operated in compliance with all existing Philippine environmental regulations and with international safety standards.

SECTION 6. The development of the Philippine Gas Industry shall primarily promote the policy of utilizing indigenous energy resources to stabilize energy prices.

SECTION 7. This Department Circular shall take effect immediately a day after its complete publication in a national newspaper of general circulation.

Merritt Road, Fort Bonifacio, Metro Manila,
June 15, 1995.

FRANCISCO L. VIRAY
Secretary

DEPARTMENT CIRCULAR NO. 2002-08-005

INTERIM RULES AND REGULATIONS GOVERNING THE TRANSMISSION, DISTRIBUTION AND SUPPLY OF NATURAL GAS

Pursuant to Section 5 (a), (c) and (e) of Republic Act (RA) No. 7638, otherwise known as the “Department of Energy Act of 1992”, creating the Department of Energy (DOE); Executive Order (EO) No. 66 designating the DOE as the lead agency in developing the Philippine Natural Gas Industry; RA No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”; Sec. 3 of Executive Order No. 172 creating the Energy Regulatory Board (ERB), as amended by RA No. 9136; Section 20 of RA No. 8479, otherwise known as the “Downstream Oil Industry Deregulation Act of 1998”; Section 18f of Presidential Decree (PD) No. 87, otherwise known as “The Oil Exploration and Development Act of 1972”, as amended; Commonwealth Act 146, otherwise known as “The Public Service Law”; RA No. 387, otherwise known as “The Petroleum Act of 1949”; and in accordance with Book IV, Chapter 2, Section 7 of the *Revised Administrative Code of 1987*, and Department Circular No. 95-06-006, entitled “Policy Guidelines on the Overall Development and Utilization of Natural Gas in the Philippines” dated June 15, 1995, the DOE, in consultation with appropriate government agencies, hereby issues, adopts and promulgates the following rules and regulations.

PART I **GENERAL PROVISIONS**

The succeeding rules and regulations comprise the general provisions to be followed in respect of the Transmission, Distribution and Supply of Natural Gas.

RULE 1 **TITLE AND SCOPE**

SECTION 1. Title

This Circular shall be known and cited as the “Interim Rules and Regulations Governing the Transmission, Distribution and Supply of Natural Gas.” It shall be hereinafter referred to as the Circular.

SECTION 2. Scope

This Circular applies to:

- (a) The transmission and distribution of Natural Gas, whether indigenous or imported, for own use, by virtue of a Franchise or as a Pipeline Concession;
- (b) The Supply of Natural Gas, whether indigenous or imported, to Customers; and
- (c) The responsibilities of the DOE and its relation with other government agencies, and the role and responsibilities of such private participants in the Natural Gas industry such as Gas Transmission Utilities, Gas Distribution Utilities, operators of Transmission and/or Distribution-related Facilities, Suppliers, Customers or any Person that may be granted a Permit by the DOE to engage in the Transmission, Distribution or Supply of Natural Gas.

RULE 2 **DECLARATION OF POLICY**

Pursuant to the general provisions of RA 7638, it is hereby declared the policy of the State to:

- (a) Promote Natural Gas as an environment-friendly and economically efficient source

of energy for the country by creating conditions for the establishment of a Natural Gas industry that will enable the country to achieve greater energy self-sufficiency and at the same time serve the interests of the broad variety of industry participants including Customers, Gas Distribution Utilities, Gas Transmission Utilities, operators of Transmission and/or Distribution related Facilities and Suppliers.

- (b) Facilitate the participation of the private sector in the Natural Gas industry. The State will primarily confine itself to policy direction and regulation, but may engage in strategic activities that will catalyze the development of the Natural Gas industry and enhance economic benefit to the people.
- (c) Promote competition by liberalizing entry into the industry and by adopting pro-competition and fair trade measures with due regard to the financial viability of industry participants.
- (d) Ensure compliance with international safety standards and with Philippine environmental and other laws and regulations.

RULE 3

RESPONSIBILITIES OF THE DOE

Consistent with RA 7638, the DOE shall continue to exercise its powers and functions as the policy-making body for the energy sector. In addition, the DOE shall have the overall responsibility of supervising and regulating the development and operation of the Natural Gas industry, through:

- (a) The granting of Permits for the construction, expansion, operation and maintenance and modification of Pipelines and Transmission- and Distribution-related Facilities and for the Supply of Natural Gas to Customers, and

- (b) All other measures allowed under existing laws.

RULE 4

MEASUREMENT OF NATURAL GAS

SECTION 1. Measurement of Natural Gas

Unless otherwise approved by the DOE and for the purpose of this Circular, the volume and energy value of Natural Gas will be measured according to the relevant standards as developed and maintained by the Organization for Standardization (ISO) and in particular:

- (a) The volume of Natural Gas will be measured in cubic meters under standard conditions specified in Section 2 below and all reporting will be in units of standard cubic meter (SCM);
- (b) The energy value of Natural Gas will be measured in Joules and all reporting will be in joules (J) with a quantity prefix, such as megajoules (MJ), terajoules (TJ), petajoules (PJ), etc., as appropriate.

SECTION 2. Standard Conditions

Standard conditions for the purpose of this Circular shall mean the conditions of Natural Gas at a temperature of 15.5 degrees Celsius (°C) (288.15° Kelvin) and an absolute pressure of 0.101325 megapascals (Mpa) or 1013.25 millibars.

SECTION 3. Application to the Gas Price

The approved price for any sale of Natural Gas should be tied to the volume and energy value determined on the basis of the standard conditions described in Section 2 above. In particular,

- (a) pricing for domestic and commercial sales may be on volume basis unless otherwise agreed to by the contracting parties and

- (b) pricing for industrial and power Customers shall be based on the energy value of Natural Gas.

RULE 5

DEFINITION OF TERMS

As used in this Circular, the following terms shall mean as follows:

- (a) **“Affiliate”** refers to any Person which, alone or together with any other Person, directly or indirectly, through one or more intermediaries, controls, or is controlled by another Person. As used herein, “control” shall mean the power to direct or cause the direction of the management policies of a Person by contract, agency or otherwise;
- (b) **“Anti-Competitive Conduct”** refers to: price fixing, output fixing and any concerted practices, agreements by Persons or association of Persons or any conduct by a dominant Person that restricts, prevents or distorts competition;
- (c) **“Bar”** refers to a unit of pressure that is equal to one million dynes per square centimeter;
- (d) **“Customers”** refers to Persons who purchase Natural Gas for resale or final use;
- (e) **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to RA 7638 with additional functions provided for in RA 9136 and E.O. 66;
- (f) **“Department of Environment and Natural Resources”** or **“DENR”** refers to the government agency created pursuant to EO No. 192;
- (g) **“Deregulation”** refers to the removal of price controls;
- (h) **“Distribution”** refers to the transport of Natural Gas through Low-pressure Pipelines excluding transport of Natural Gas for own use;
- (i) **“Energy Regulatory Commission”** or **“ERC”** refers to the regulatory agency created by RA 9136;
- (j) **“Franchise”** refers to the right, privilege and authority issued by Congress in favor of any Person to engage in the Transmission or Distribution of Natural Gas;
- (k) **“Gas Distribution System”** refers generally to Pipeline and related facilities belonging to a Gas Distribution Utility extending between the delivery points from the Transmission System to the point of connection to the premises of the Customer;
- (l) **“Gas Distribution Utility”** refers to a Person that has been issued a Franchise and authorized by the DOE to engage primarily in the Distribution of Natural Gas to Customers in a specific geographic area;
- (m) **“Gas Infrastructure Project”** is a project which the Secretary of Energy may determine to be necessary to achieve the government’s objectives for the development of the Natural Gas industry. Such projects shall remain subject to the permitting procedure in Rule 12 of this Circular;
- (n) **“Gas Sales and Purchase Contract”** or **“GSPC”** refers to a contract for the delivery and sale of indigenous or imported Natural Gas by and between a seller and a buyer;
- (o) **“Gas Transmission System”** refers generally to the Pipeline and related facilities used to transport Natural Gas from the interconnection with gathering

facilities or other Gas Transmission Systems to the interconnections with Gas Distribution Systems, or Customers;

(p) **“Gas Transmission Utility”** refers to a Person that has been issued a Franchise and authorized by the DOE to engage primarily in the Transmission of Natural Gas to Gas Distribution Utilities and/or Customers;

(q) **“High-pressure Pipeline”** refers to a Pipeline that operates at internal pressures higher than 40 Bars;

(r) **“Indicative Transport Tariff”** refers to the nominal charge for the cost of transporting Natural Gas via Pipeline either as a component of the price in a Gas Sale and Purchase Contract or as the Tariff charged for providing Transmission or Distribution services to a third party;

(s) **“Liquefied Natural Gas”** or **“LNG”** refers to Natural Gas which has been liquefied by compression and cooling to an extremely low temperature;

(t) **“Low Pressure Pipeline”** refers to a Pipeline that operates at internal pressures of 40 Bars or less;

(u) **“Market”** refers to a product and geographic area within the Philippines where gas and ancillary products/services are produced or traded;

(v) **“Natural Gas”** refers to gas obtained from boreholes and wells consisting primarily of hydrocarbons, which at atmospheric conditions of temperature and pressure, are in a gaseous phase and which have been identified under either a Service Contract or Gas Sales and Purchase Contract as being primarily Methane with smaller quantities of heavier fractions also being entrained;

(w) **“Own-use Permit”** refers to an authorization granted by the DOE for

a dedicated point-to-point Pipeline or Storage Facility that is constructed and operated exclusively to transport or store gas for the final use of the Permit holder;

(x) **“Permit”** refers to an authorization issued by the DOE for the construction, operation and maintenance, expansion and modification of a Pipeline for the Transmission or Distribution of Natural Gas and for the construction, operation and maintenance, expansion and modification of a Transmission or Distribution-related Facility.

(y) **“Person”** refers to a natural or juridical person, as the case may be;

(z) **“Petroleum Operations”** as defined in PD 87, refers to searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and all other operations incidental thereto. It includes the transportation, storage, handling and sale (whether for export or for domestic consumption) of petroleum so obtained but does not include any: (1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined;

(aa) **“Pipeline”** refers to pipes and other interconnected facilities operated as an integrated system (including pumping stations, metering stations, valve stations, SCADA systems, storage tanks, pig launching and receiving stations) for transporting Natural Gas from receipt points below the point of interconnection with field and platform-mounted processing plants to delivery points for either Natural Gas processing within the country or export, but does not include pipes and facilities for:

1) returning Natural Gas to a reservoir for pressure maintenance;

- 2) transporting Natural Gas that is to be flared or vented; or
 - 3) gathering Natural Gas for transportation to initial processing facilities within a Service Contract area;
- (bb) **“Pipeline Concession”** refers to the right, privilege and authority issued under the Petroleum Act of 1949 (RA 387);
- (cc) **“Pipeline Network”** refers to Pipelines that are physically interconnected regardless of whether they are under common ownership or operation;
- (dd) **“Pricing”** refers to the manner of setting the charges for the energy value, transmission, distribution and retail supply of Natural Gas;
- (ee) **“Service Contract”** refers to the contract entered into between the Government and a service contractor pursuant to PD 87, as amended;
- (ff) **“Storage Facility”** refers to any facility designed or adopted for the storage of Natural Gas in bulk (whether in liquid state or not) not being a pipe or other conduit for the transport of gas;
- (gg) **“Supplier”** refers to any Person authorized by the DOE to sell, broker or market gas transported through Pipelines to Customers or Persons who intend to resell Natural Gas to other Customers;
- (hh) **“Tariff”** refers to the charge for the Transmission, Distribution and supply of Natural Gas, including Indicative Transport Tariff, together with the terms and conditions of contracts for transmission service and gas delivery procedures;
- (ii) **“Third Party Access”** refers to the system of allowing any qualified Person access to the Gas Transmission Systems and Gas Distribution Systems under the conditions prescribed in Annex 2;
- (jj) **“Transmission”** refers to the transport of Natural Gas through High-pressure Pipelines excluding transport of Natural Gas for own use;
- (kk) **“Transmission and/or Distribution-related Facilities”** refers to any facility for processing, storing, regassification, interconnection, measurement or metering that is necessary for the Transmission and Distribution of Natural Gas and operated independently of Pipelines;
- (ll) **“Unbundled Prices”** refers to the pricing of products and/or services that separates the Tariff according to distinct products and/or service elements insofar as they can be reasonably separated from each other;
- (mm) **“Unbundled Service”** refers to the requirement to provide only those elements that are required by the Customer insofar as they can be reasonably separated from other elements of the products and/or services offered by service providers.

PART II

STRUCTURE AND OPERATION OF THE NATURAL GAS INDUSTRY

For the purposes of this Circular, the downstream Natural Gas industry shall be divided into three (3) sectors, namely: Transmission, Distribution and Supply of Natural Gas.

RULE 6

TRANSMISSION SECTOR

The Transmission of Natural Gas by Gas Transmission Utilities is subject to the permitting authority of the DOE. The DOE may determine additional functional and

physical standards that shall distinguish Transmission from Distribution.

RULE 7
DISTRIBUTION SECTOR

SECTION 1. Guiding Principle

The Distribution of Natural Gas by Gas Distribution Utilities to Customers is subject to the permitting authority of the DOE and the rate-making powers of the ERC.

SECTION 2. Pipeline Networks

Interconnected systems of Pipelines may be utilized for Distribution and will be authorized for as long as they are authorized as a condition of a Pipeline Permit.

SECTION 3. Universal Service Obligations of Gas Distribution Utilities

Gas Distribution Utilities shall have the obligation to develop and maintain an efficient system to supply Natural Gas at the reasonable request of Customers within a specific geographic area including:

- (a) The installation of pipes where the connection to the Customer is within twenty-five (25) meters of the Distribution Pipeline; or
- (b) Increasing the capacity of existing Distribution Pipelines.

Provided, however, That in circumstances where the Gas Distribution Utilities can demonstrate to the satisfaction of the DOE that it is not economical or financially feasible to make such a connection, this provision will not apply. The DOE shall make a determination that it is not economical or financially feasible to make a connection when:

- (i) there is no sufficient market demand for Natural Gas to justify the installation of a Pipeline;

- (ii) the Customer cannot contribute to the cost of installation; or
- (iii) the Gas Distribution Utility cannot recover the cost of installation and the incremental variable costs of operation through a surcharge to the approved Price Schedule for the Customer.

RULE 8
TRANSMISSION AND/OR DISTRIBUTION-RELATED FACILITIES

SECTION 1. Guiding Principle

Transmission and/or Distribution-related Facilities that are operated independently of the Pipeline and are used to serve Customers are subject only to the permitting authority of the DOE. Such facilities include, but are not limited to the following:

- (a) Natural Gas processing plants,
- (b) Facilities for interconnecting Pipelines,
- (c) Pipeline metering stations,
- (d) LNG terminals and regassification facilities,
- (e) Storage Facilities and
- (f) CNG refilling stations.

SECTION 2. Authorization to Operate Transmission and/or Distribution-related Facilities

Any Person that has demonstrated its technical and financial capability to operate Transmission and/or Distribution-related Facilities shall be authorized by the DOE to undertake such function. No applicant that is an Affiliate of a service contractor, a Gas Transmission Utility, Gas Distribution Utility or Natural Gas Supplier may be authorized to operate Transmission and/or Distribution-related Facilities independently of Pipelines until it demonstrates to the satisfaction of the DOE that it has sufficient procedures to operate independently.

RULE 9
SUPPLY SECTOR

SECTION 1. Guiding Principle

For the purpose of this Circular, the Supply of Natural Gas to Customers is subject to the permitting authority of the DOE for a specific geographic area and the rate-making powers of the ERC.

SECTION 2. Authorization to Supply Natural Gas to Customers

Any Person that has demonstrated its technical and financial ability to supply Natural Gas to Customers shall be authorized by the DOE to undertake such function. No applicant that is an Affiliate of a service contractor, a Gas Transmission Utility or Gas Distribution Utility may be authorized to supply Natural Gas until it demonstrates to the satisfaction of the DOE that it has sufficient procedures to operate independently.

SECTION 3. Affiliated Suppliers

In order to prevent Anti-Competitive Conduct, service contractors, Gas Transmission Utilities and Gas Distribution Utilities that own or control Affiliates that are Suppliers shall conduct their business as follows:

- (a) No preference will be given to the Affiliated Supplier over other Persons through contracting for available capacity, scheduling, balancing, curtailment priority or Tariffs;
- (b) Marketing information provided to the Affiliated Supplier will be provided to any non-Affiliated Supplier that is a competitor or potential competitor;
- (c) Employees of the Affiliated Supplier shall, to the maximum extent possible, function independently in making business decisions; and

- (d) Books of accounts and records of the Affiliated Supplier shall be maintained separately.

RULE 10
**REGULATION OF TRANSMISSION,
DISTRIBUTION, AND SUPPLY OF NATURAL
GAS**

The Transmission, Distribution and supply of Natural Gas are businesses affected with public interest and the regulation of said businesses as provided in this Circular is hereby deemed necessary in the public interest.

SECTION 1. Franchising Requirement in the Transmission and Distribution of Natural Gas

The operation of Gas Transmission and Distribution Systems as provided for in this Circular is recognized to be public utility operations requiring a Franchise or similar legislative authorization.

However, this provision will not be applicable to operation of facilities for Transmission and Distribution of Natural Gas that have been granted an Own-use Permit under Rule 12, Section 6.

SECTION 2. Pipelines and Related Facilities Under Service Contracts

Any Person that is party to a Service Contract which authorizes the construction and/or operation of Pipelines and related facilities for transporting Natural Gas shall be required to obtain a Franchise to the extent that such Pipelines are operated as a public utility.

SECTION 3. Philippine Ownership Requirement

As required under Article XII, Section 11 of the Constitution of the Republic of the Philippines, no Franchise, certificate or any other form of authorization of a public utility shall be granted except to citizens of the Philippines

or to corporations or associations organized under the laws of the Philippines. The DOE shall encourage equity participation in Gas Transmission Utilities and Gas Distribution Utilities by the general public.

SECTION 4. Cross-ownership

Subject to the provisions of this Circular and Philippine laws concerning the ownership and operation of businesses affected with public interest and prohibition of monopolies and combinations in restraint of trade, there will be no limitations on parties to a Service Contract, Gas Transmission Utilities, Gas Distribution Utilities, Suppliers and Customers or their Affiliates holding any interest, directly or indirectly, in other business segments of the gas industry chain.

RULE 11

THIRD PARTY ACCESS

SECTION 1. Third Party Access Obligation

Gas Transmission Systems and Gas Distribution Systems excluding those constructed and operated for own use shall be available for non-discriminatory access by third party users which may include parties to a Service Contract, Suppliers and Customers, with due regard to the economic viability of the operation of such facilities. Such operators shall negotiate in good faith with third-party users the provision and terms of access in accordance with Annex 2.

SECTION 2. Available Capacity

Third Party Access obligations shall apply only to the available capacity of the Gas Transmission Systems and Gas Distribution Systems as determined by subtracting the volume of capacity that is:

- (a) Used by the owner or operator to serve his own customer; and/or

- (b) Allocated to third parties under transportation contracts from the design capacity of the Gas Transmission Systems and Gas Distribution Systems .

SECTION 3. Deferment of Third Party Access Obligation

As a condition imposed by a Permit, the DOE may determine that implementation of Third Party Access to Gas Transmission Systems and Gas Distribution Systems may be deferred where:

- a. It can be demonstrated that such deferment is necessary to enable the efficient planning of the infrastructure and aggregation of the initial demand necessary to justify investments in the Gas Transmission Systems and Gas Distribution Systems ; or
- b. It is in the interest of the Customers served by the Gas Transmission System and Gas Distribution System to ensure stability of supply.

In either case, the DOE shall not defer implementation of Third Party Access for a period longer than three (3) years after completion of construction in the case of Gas Transmission Systems and five (5) years after completion or construction in the case of Gas Distribution Systems. *Provided, however,* That the deferment period can be extended on reasonable grounds.

SECTION 4. Approved Access Conditions for Gas Transmission Utilities and Gas Distribution Utilities

Prior to conducting negotiations with third parties, a Gas Transmission Utility and a Gas Distribution Utility shall request the DOE to approve its access conditions. The DOE shall approve access conditions after it has determined that they are consistent with the provisions contained in Annex 2.

RULE 12
PERMITS

SECTION 1. Requirement for a Permit

No Person shall undertake the construction, operation and maintenance, expansion, extension or modification of a Gas Transmission System and Gas Distribution System or a Transmission and/or Distribution-related Facility unless a Permit has been issued by the DOE.

SECTION 2. Gas Infrastructure Projects

In order to meet the objectives of the Natural Gas industry development, the DOE may recommend the bidding out of a Gas Infrastructure Project subject to existing laws and regulations. The winning bidder shall comply with the permitting requirements and all other pertinent rules and regulations under this Circular.

SECTION 3. Pipeline Route

All Pipelines shall be constructed following a route that will provide the greatest benefit to Customers that can be identified at the time the application is submitted. Before issuing a Pipeline Permit, the DOE may require an applicant to submit the results of studies undertaken on alternative routes and options for expansion along these proposed routes for the supply or transport of Natural Gas from holders of a Service Contract, Gas Transmission or Distribution Utilities, Suppliers and Customers.

In order to minimize easement costs, whenever possible, Pipelines shall be located in road reservations. Developers of Pipelines and Transmission and/or Distribution-related Facilities shall coordinate with relevant government agencies in order to avoid conflicting projects and to ensure the integrity of such combined road and Pipeline infrastructure.

SECTION 4. Conditions of the Permit

It shall be a condition of each Permit that:

- (a) Where the DOE has determined that the demand for Natural Gas exists and that the Permit holder can earn reasonable return from its additional investment, the Permit holder may be required to provide additional capacity by:
 - (1) making an interconnection with another Pipeline; or
 - (2) increasing the capacity by installing compression in the case of a Transmission Pipeline.
- (b) The Permit holder shall comply with other conditions on which the Pipeline Permit is issued in order to achieve the Declaration of Policy under Rule 2 including:
 - (1) standards for quality, odorization, energy value and pressure; and
 - (2) testing of equipment for accuracy and safety.

SECTION 5. Petroleum Operations

Permits shall be required for Pipelines that are constructed as part of Petroleum Operations to the extent that they are located outside the Service Contract area and are used to transport and supply the Natural Gas produced under the Service Contract to the buyer or Customer except as may be provided under Section 6 herein.

SECTION 6. Own-Use Permits

The DOE may grant an Own-Use Permit for dedicated point-to-point Pipelines that are constructed and operated exclusively for the final use of the applicant. Own-use Permits for Pipelines shall be granted for a specific capacity and defined route. Own-Use Permits for Storage Facilities shall be granted for a

specific location and capacity. Where the application relates to an own-use pipeline or related facility which has a capacity in excess of the requirements of the applicant, as determined at the time of filing the application, the applicant shall be required to submit supporting documents proving its expansion assumptions or other justification for the Pipelines or other related facility's excess capacity.

Own-use facilities are exempted from the requirement of a Franchise and all other regulations as stated in this Circular except those that relate to safety and environmental standards under Rule 14. Except where they are transferred to a Franchise-holder with a Permit prior to their operation as public utilities, holders of Own-use Permits shall secure a Franchise and a permit prior to operating own-use facilities as public utilities.

SECTION 7. Fees

The DOE shall prescribe and collect fees relevant to the regulation and supervision of every Pipeline and Transmission and/or Distribution-related Facilities that have been granted a Permit.

SECTION 8. Abandonment of Pipelines and Transmission and Distribution-related Facilities

No Pipeline or Transmission and/or Distribution-related Facilities for which a Permit has been issued shall be abandoned or withdrawn from service by the grantee of the Permit without obtaining prior written authorization from the DOE.

SECTION 9. Duration of Permit

A Permit shall be valid for twenty five (25) years extendible for up to an additional twenty five (25) years or the remaining period of the Franchise or primary authorization for the Pipeline or Transmission and/or Distribution-related Facility, whichever is less.

The Permit will be revoked if the Permit holder fails to commence operation within five (5) years from the date Permit is issued unless a longer period is provided in the Franchise. This provision will not apply if the cause for non-commencement of operation is beyond the control of the Permit holder.

RULE 13

APPLICATION FOR PERMITS

SECTION 1. Application Required

Unless otherwise disqualified by law, any Person seeking a Permit to construct, operate and maintain, expand or modify a Pipeline or a Transmission and/or Distribution-related Facility and/or Supply of Natural Gas shall file an application in accordance with the procedure set forth in "Rules of Practice and Procedure Before the DOE" (Department Circular 2002-07-004).

SECTION 2. Contents of the Application

All applications shall be made in writing, verified and must contain the information described in Annex 1 to this Circular and those set forth in Department Circular 2002-07-004.

SECTION 3. Application Fee

The applicant shall pay the DOE a non-refundable fee for the processing and hearing of its application as provided in Department Circular 2002-07-004.

SECTION 4. Confidential Information

The DOE will limit the disclosure of and protect confidential or commercially sensitive information in accordance with existing laws.

SECTION 5. Decision to Issue a Permit

The DOE shall issue a Permit only after it has made the following determination that:

- (a) The construction of the Pipeline or Transmission and/or Distribution-related Facility is consistent with the policy declaration contained in Rule 2;
- (b) The applicant will have the technical capability and financial resources to comply with the conditions under which the Permit is issued; and
- (c) The manner in which the Pipeline is owned and operated will not lead to Anti-Competitive Conduct in the Transmission, Distribution or supply of Natural Gas.

RULE 14

STANDARDS FOR CONSTRUCTION, OPERATION AND SAFETY

SECTION 1. Conduct of Operations

The construction and operation of Pipelines and Transmission and/or Distribution-related Facilities (including design, manufacture, testing, maintenance, repairs, alterations and extensions) shall be in accordance with relevant standards promulgated by the International Standards Organization (ISO), as amended, or other internationally-accepted standards as the DOE may approve. Before construction is commenced, the Permit holder shall submit to the DOE the names of all testing authorities and other inspection services or contractors to be employed in quality surveillance of materials and fabrication and shall confirm that such testing authorities and inspection services meet the requirements of the ISO or such other requirements as the DOE may approve in the Permit.

SECTION 2. Impact on Public Infrastructure

The DOE shall require the applicant to submit construction plans showing the location of all Pipelines and Transmission and/or Distribution-related Facilities and their operating pressures and/or other relevant technical specifications to the governmental

agencies responsible for any bridges, roads, harbors, streams, rivers and coastal waterways that will be crossed within sixty (60) days before construction commences.

SECTION 3. Pipeline Design Standard

The design standard for Pipelines shall comply with the requirements of ISO 13623 (Petroleum and Natural Gas Industries – Pipeline Transportation System) or other internationally-accepted standards as the DOE may approve. Engineering drawings and profiles of the as-built Pipeline shall be submitted to the DOE within sixty (60) days from commissioning of the Pipeline.

SECTION 4. Pipeline Testing

Where a test is required to be carried out under this Circular or as a condition of the Pipeline Permit, it shall be conducted by the DOE, its authorized representative or any accredited agency. Where such test is conducted by an accredited agency, the result of the test shall be recorded and certified to the satisfaction of the DOE and will be carried out as follows:

- (a) Where practicable at least seven (7) days notice shall be given to the DOE of any proposed hydrostatic or flow efficiency tests; and
- (b) All test certificates for hydrostatic tests referred to in this section and all radiographs or ultrasonic testing results of pipeline welds shall at all times be readily available to a DOE inspector or its authorized representative and shall not be destroyed or otherwise disposed of except with the permission in writing from the DOE.

SECTION 5. Signs

In the interest of public safety and welfare, signs or markers, in accordance with the standards designated in Section 3 above,

shall be erected and maintained in strategic locations in accordance with the standards designated in Section 3.

Permit holders shall advise concerned local government units (LGUs) and appropriate government agencies about the existence of the Pipelines related facilities within their respective jurisdiction and shall provide such LGUs and appropriate government agencies detailed maps of their Pipeline routes.

SECTION 6. Discontinuation of Operations

If the DOE determines that a condition exists in any segment of the Pipeline or part of Transmission and/or Distribution-related Facility which may endanger life or property such as but not limited to:

- (a) Escape of gas due to pipe burst or damage from an external force;
- (b) Damage to pipe that could lead to escape of gas; or
- (c) Other similar conditions

It may direct in writing that the segment or facility be taken out of operation or that such other precautions be taken as are approved to ensure safety.

SECTION 7. Discharge of Substances from Pipelines

Where any hazardous material or substance is discharged from the Pipeline and/or Transmission and/or Distribution-related Facility, the holder of the Permit shall take such steps as are necessary to:

- (a) Safeguard human life;
- (b) Minimize the loss of the substance from the Pipeline; and
- (c) Minimize the pollution of the surrounding environment by such substance; and

shall, as soon as possible, report the escape to the DOE.

After discharge of any Natural Gas or hazardous materials or substances from a Pipeline and/or Transmission and/or Distribution-related Facility has been stopped and any necessary repairs completed, the Permit holder shall promptly submit a written preliminary report within forty eight (48) hours, with appropriate documentation, to the DOE, with a copy to the DENR, containing the following information:

- (a) the time and place of the discharge;
- (b) the approximate quantity of Natural Gas discharged;
- (c) an initial assessment of the damage to the Pipeline and/or the environment that resulted from the discharge and/or ignition of Natural Gas;
- (d) an initial assessment of the conditions that caused or contributed to the discharge or ignition;
- (e) the methods adopted or proposed to be adopted to carry out repairs;
- (f) an initial assessment of the circumstances generally relating to the discharge and its control; and
- (g) steps taken or to be taken to minimize the chances of such circumstances recurring.

Within five (5) days from the submission of the preliminary report, the Permit holder shall submit a final and detailed report to the DOE, with a copy to the DENR, containing its final findings on the damage to the pipeline and/or the environment resulting from the discharge and/or ignition, the conditions that caused or contributed thereto, the methods adopted to carry out repairs, the circumstances relating to the discharge and its control and the steps taken to minimize a recurrence of such discharge and/or ignition.

SECTION 8. Onshore Pipeline Abandonment

The abandonment of a pipeline shall comply with the following requirements:

- (a) The line shall be depressurized and purged of all flammable gases and fluids pigged twice and flushed with corrosion inhibitor;
- (b) The line shall be filled with light weight cement;
- (c) All risers shall be cut off at the line burial level;
- (d) All open access into the line shall be covered with a material that will prevent internal access to the pipeline; and
- (e) The right of way shall be cleaned of debris and returned to as close to original condition as possible.

The abandonment of Transmission and/or Distribution-related Facilities consented to by the DOE, on the other hand, shall comply with the following requirements:

- (i) The Facilities shall be completely dismantled; and
- (ii) The site will be cleaned of debris and remediated to as close to original condition as possible.

SECTION 9. Submarine Pipeline Abandonment

A submarine pipeline may be abandoned in place if, in the opinion of the DENR the pipeline will not present a hazard to the environment, marine navigation, fishing and other marine uses; and

- (a) The pipeline shall be depressurized, flushed and filled with seawater;

- (b) Any riser shall be cut off at the sea floor and the ends of the line shall be properly plugged; and

- (c) Where a pipeline comes to shore, the pipeline will be cut off at a distance from the shore or at a depth below sea level as recommended by the DENR.

SECTION 10. Compliance with Environmental and Other Laws and Regulations

All Permit holders shall conduct their activities and operations consistent with all environmental and other laws of the Philippines, including the provisions of rules and regulations and compliance plans developed to implement such laws.

RULE 15

NATURAL GAS PRICING

SECTION 1. Determination of Rates and Price Schedules

All matters related to fixing and regulating the rate or schedule of prices of piped gas (to be charged by duly franchised gas companies that distribute gas by means of an underground pipe system) shall remain the responsibility of ERC consistent with the ERB Charter as amended by RA 9136 and Section 20 of RA 8479 which amended Section 3 of the ERB Charter.

SECTION 2. Guiding Principles for Pricing

The following guiding principles are hereby adopted for pricing:

- (a) Prices of Transmission, Distribution and supply of Natural Gas to Customers will be regulated until such time that the Secretary of Energy determines that the markets for such products and/or services are effectively competitive.
- (b) The energy value of Natural Gas sold to consumers shall likewise be regulated.

- (c) Prices of products and/or services in competitive markets shall be deregulated.

SECTION 3. Just and Reasonable Standard

The rates and prices in respect of the Transmission, Distribution or supply of Natural Gas shall be just and reasonable taking into account the classifications and terms for service under the Tariff or provisions of a Gas Sales and Purchase Contract.

SECTION 4. Unbundled Service

Any provision of Gas Sale and Purchase Contracts to the contrary notwithstanding, the indicative Tariff for Transmission or Distribution of Natural Gas submitted to the DOE shall be calculated on the basis of Unbundled Service.

RULE 16

PROMOTION OF COMPETITION

SECTION 1. Promotion of Competition

- (a) Agreements, decisions and concerted practices of Persons or associations of Persons to fix prices and/or fix output shall be prohibited.
- (b) Other practices and/or conduct by a Person or groups of Persons that restrict, prevent or distort competition such as but not limited to predatory pricing and practices, excessive pricing, bundling and other vertical restraints, denial of access to essential facilities on fair terms, discriminatory conditions on transactions that restrict, prevent or distort competition shall likewise be prohibited.
- (c) Subject to the provisions of relevant laws, the Secretary of Energy will adopt measures and/or corresponding remedies to restore competition following an investigation of the relevant circumstances and a definitive finding of:

- (i) price and/or output fixing; or
- (ii) that other practices/conduct that are the subject of investigation restrict and/or prevent and/or distort competition.

SECTION 2. Take-or-Pay Obligations

- (a) For the purpose of determining their eligibility for a passthrough to Customers, take-or-pay provisions in Gas Sales and Purchase Contract may:
 - (i) Index the contract price to the price of competing alternative fuels such as heavy fuel oil (HFO) and/or gas oil based on internationally accepted reference standards;
 - (ii) Include re-opener mechanism(s) to allow for the adjustment of the price and/or volume commitments under extraordinary circumstances causing severe economic hardship to either party such as price movements in competing alternative fuel market or changes in the gas purchaser's market such as substantial contraction in forecast demand levels; and
 - (iii) Provide for a reasonable period for recovery of take-or-pay payments.
- (b) Potential parties to a Gas Sales and Purchase Contract may, at their option, and prior to the execution of such contract, request that the DOE review their take-or-pay provisions for their consistency with a(i) and a(ii) above;

No party to a Gas Sales and Purchase Contract may be compelled to renegotiate any term or condition of a duly executed Gas Sales and Purchase Contract or to incorporate terms or conditions in such contract which are not commercially acceptable to it or its counterparty, it being sufficient that the terms and conditions of the contract as a

whole mitigate the potential impact upon Customers of take-or-pay provisions.

**PART IV
TRANSITORY PROVISIONS**

**RULE 17
EXISTING SYSTEMS**

SECTION 1. Permits

Pipelines and Transmission and/or Distribution-related Facilities that have been constructed prior to the date of effectivity of this Circular shall continue to operate under their existing authorities but are required to obtain a Permit from the DOE. Permits for such Pipelines and Transmission and/or Distribution-related shall be granted as a matter of right in accordance with Rule 12. Suppliers who have entered into Gas Sales and Purchase Contracts with Customers and have delivered indigenous or imported Natural Gas under said contracts prior to the date of effectivity of this Circular are required to obtain a Permit from the DOE. Permits for such Suppliers shall be granted as a matter of right in accordance with Rule 9.

SECTION 2. Application

Within sixty (60) days from the date of effectivity of this Circular, the owners of existing Pipelines and Transmission and/or Distribution-related Facilities shall submit an application for a Permit to the DOE. Only the provisions of Annex 1 subsection (a) through (m) shall apply to applications made under this Rule 17. In addition, the application need only contain a certified copy of the as-built drawing of the Pipeline.

Within sixty (60) days from the date of effectivity of this Circular, the Suppliers of existing Gas Sales and Purchase Contracts who have delivered indigenous or imported Natural Gas under said contracts shall secure an authorization from the DOE as a Supplier.

**RULE 18
PENDING APPLICATIONS**

This Circular shall apply to all applications pending before the DOE for construction of Pipelines and Transmission and/or Distribution-related Facilities prior to its date of effectivity.

**PART V
FINAL PROVISIONS**

**RULE 19
REPORTORIAL REQUIREMENTS**

To assure compliance with this Circular, all Gas Transmission Utilities, Gas Distribution Utilities, owners of Transmission and/or Distribution-related Facilities and Suppliers shall comply with the pertinent reportorial requirements provided in Annex 3.

RULE 20. OFFENSES AND PENALTIES

SECTION 1. Offenses

Any Person that violates:

- (a) Any section or rule of this Circular;
- (b) Any condition of a Permit; or
- (c) Any relevant order of the DOE shall be deemed to have committed an offense under this Circular.

SECTION 2. Enforcement of Rules

The DOE shall conduct investigations upon its own initiative or upon receiving a complaint in writing of any allegation of an offense under Section 1 of this Rule in accordance with Department Circular 2002-07-004.

SECTION 3. Penalties

Except with respect to violation of rates set by the ERC which shall be subject to its jurisdiction, a violation of any of the provisions in this Circular or any condition of

the Permit shall be subject to the imposition of penalties by the DOE in accordance with existing laws. Each day of non-compliance shall be considered a separate violation.

SECTION 4. Cancellation of Permit

In addition to the imposition of penalties, the DOE may suspend or cancel the Permit where there is a violation of a condition under which the Permit was issued or any provision in this Circular.

RULE 21
SEPARABILITY CLAUSE

Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or the legality of the other provisions not so declared.

RULE 22
AMENDMENT OF RULES

Amendments and/or modifications to any provision of this Circular shall be made by the DOE in consultation with the Natural Gas industry participants.

RULE 23. EFFECTIVITY

This Circular shall take effect fifteen (15) days after publication in the Official Gazette or in at least two (2) newspapers of general circulation and submission of a copy to the University of the Philippines Law Center.

Done this twenty seventh day of August 2002 in Fort Bonifacio, Taguig, Metro Manila.

VICENTE S. PÉREZ, JR.
Secretary

ANNEX 1

DOCUMENTS TO ACCOMPANY APPLICATION FOR PIPELINE PERMIT

All applications for Pipeline Permits shall be accompanied by such documents as are applicable and relevant, in the form of exhibits, including but not limited to the following:

- (a) A certified true copy of applicant's articles of incorporation and by-laws, if the applicant is a corporation;
- (b) A list of the names and business addresses of applicant's officers and directors, or similar officials, if the applicant is not a corporation;
- (c) If the applicant or any of its officers or directors, directly or indirectly, owns, controls, or holds with power to vote, ten (10) percent or more of the outstanding
- voting shares of any Person or organized group of Persons engaged in production, Transmission, Distribution, or pricing of Natural Gas, or of any Person or organized group of Persons engaged in the construction or financing of such enterprises or operations, a detailed explanation of each of the above relationships, including the percentage of voting strength represented by such ownership of shares. If any Person or organized group of Persons, directly or indirectly, owns, controls or holds with power to vote, ten (10) percent or more of the outstanding voting securities of applicant a detailed explanation of each such relationship;
- (d) A certified true copy of the application for Environmental Compliance Certificate

with the DENR including its Environmental Impact Statement;

(e) A certified true copy of applicant's Pipeline Concession or Franchise or charter where the applicant is a government-owned or controlled corporation;

(f) A certified true copy of the applicant's Service Contract where the Pipeline is to be constructed and operated as part of Petroleum Operations;

(g) A geographical map of suitable scale and detail showing:

- 1) Location, length and capacity of the Pipeline;
- 2) Location and size (rated horsepower) of compressor stations;
- 3) Location and designation of each point of connection of proposed facilities with Customers and Franchises showing communities and Customers taking delivery of more than 10,000 MCF or 283 MCM of gas in any calendar month; and
- 4) Whether the locations designated in 3) are to be served at wholesale or retail, and gas fields, or other sources of gas supply.

(h) A flow diagram showing daily design capacity reflecting conditions with proposed facilities in operation, including:

- 1) Diameter, wall thickness and length of pipe proposed to be installed;
- 2) Size, type and number of proposed compressor units, horsepower required, horsepower proposed to be installed, quantity of Natural Gas to be used as fuel, suction and discharge pressures and compression ratio;

3) Pressures and volumes of Natural Gas at the main line inlet and outlet connections at each compressor station;

4) Pressures and volumes of Natural Gas at each entry and exit point at the beginning and terminus of the proposed pipeline;

5) Maximum deliveries which applicant's proposed Pipeline would be capable of achieving under most favorable operating conditions with utilization of all facilities with and without compression.

(i) A description of engineering design data to support the diagrams above-mentioned and the proposed project, which explain:

- 1) Assumptions, bases, formulae and methods used in the development and preparation of such diagrams and accompanying data;
- 2) A description of the pipe and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fabrication and methods of testing proposed;
- 3) When a pipeline is to be looped by construction of a parallel pipeline, the length and size of the pipe in each loop;
- 4) If the daily design capacity shown in subsection (j) is predicated upon an ability to meet each Customer's maximum contract quantity on the same day, explain the reason for such coincidental peak-day design. If the design day capacity shown in subsection (j) is predicated upon an assumed utilization factor, state that factor and explain its derivation.

(j) A statement by applicant describing:

1) The Service Contract areas accessible to the Pipeline that contain sufficient existing or potential Natural Gas supplies for the initial and subsequent stages of a proposed development project associated with the construction or extension, and of the Pipeline; and

2) How the Service Contract areas are to be connected to the Pipeline;

(k) The proposed route of the Pipeline together with:

1) A map showing surface land-use and occupation;

2) A list of the names of the landowners; and

3) A copy of the proposed access agreement or easements to be entered into with landowners.

Provided, That the submission of requirements 2 and 3 herein may be deferred to anytime before the Permit is issued by the DOE.

(l) A system-wide estimate of the quantity of Natural Gas and rate of delivery during each of year of the Pipeline's full operation as well as the period when the Pipeline and Transmission- and/or Distribution-related Facilities are used for commissioning and build up of delivery, together with:

1) Names and locations of Customers, showing the number of residential, commercial, firm industrial interruptible industrial, and other types of Customers and the names and locations of each firm and interruptible Customer whose estimated consumption totals 283 MCM or more in any calendar month

or 2,830 MCM or more per calendar year together with an explanation of the end use to which each of these industrial Customers will put the gas;

2) Where applicable, applicant's total annual and peak day or hourly gas requirements by classification of service in subsection (1) above, divided as follows:

(i) for each Gas Distribution Utility where Natural Gas is sold by applicant at retail;

(ii) for each buyer under a Gas Sales and Purchase Contract;

(iii) For all main line direct industrial gas Customers; and

(iv) Pipeline use and unaccounted for Natural Gas, for both the applicant and each buyer under a Gas Sales and Purchase Contract;

3) Explanation and derivation of basic factors used in estimating future requirements, and full details concerning all other sources of Natural Gas supply available to applicant and to each of its Customers;

(m) If it is assumed that proposed Customers in new areas or firm and interruptible direct industrial Customers whose estimated consumption totals 283 MCM or more in any calendar month or 2,830 MCM or more in any calendar year, will convert from other fuels to Natural Gas, to the extent possible, state the basis for such assumption and include a study showing estimated cost of converting Customers' facilities to Natural Gas. The study should indicate the number of Customers of each of the other fuels which the applicant anticipates will convert to Natural Gas and the current cost of fuel to be displaced compared to

the cost of Natural Gas on an equivalent Joule basis;

(n) A detailed estimate of total capital cost of the Pipeline and Transmission- and/or Distribution-related Facilities for which application is made, showing cost of construction by operating units such as compressor stations main Pipelines, laterals, measuring and regulating stations and separately stating the compensation for right-of-way, landowner damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other services, allowance for funds used during construction and other contingencies. Include a brief statement indicating the source of information used as the basis for the above estimate. If not otherwise stated, submit data on preliminary bids, if any, for the proposed facilities and recent experience cost data for facilities of similar character;

(o) Plans for financing the proposed facilities for which the application is filed, supported by documents describing.

1) the ratio of equity and debt to total financing;

(a) For equity financing, names and addresses of stockholders, the respective equity contribution by value (paid-up and not paid-up) and type;

(b) For debt financing, type of debt instruments, their maturities, respective share to total debts, source of debt financing, i.e., whether domestic or foreign;

2) A statement of anticipated cash flow, including provision during the period of construction and the first three (3) full years of the Pipeline's capital requirements including interest and dividends;

3) A balance sheet and income statement for three (3) years from the most recent date available;

4) Certified true copies of all applications and supporting exhibits, registration statements or other similar submissions, if any, to the Securities and Exchange Commission, including all supplements, changes or modifications of the above;

5) Any additional data and information upon which the applicant proposes to rely in showing the adequacy and availability to it of resources for financing the Pipeline and Transmission and/or Distribution-related facilities.

(p) A concise statement setting forth arrangements for supervision, management, engineering, accounting, legal or other similar services that will not be performed by employees of the applicant, including references to any existing or contemplated agreement to be entered into in connection with the construction or operation of the Pipeline together with a statement showing any affiliation between the applicant and any parties to such agreements or arrangements referred to in paragraph (d) above;

(q) Provide reference tariff, indicative Tariff as well as any Tariff for which approval will be sought from the ERC, and depreciation rates calculated according to the prescribed methodology and rate setting procedures of the ERC.

(r) Pro-forma copies of contracts to be entered into with third parties for the Transmission or Distribution of Natural Gas, including any code of operations or transmission policy.

ANNEX 2

ACCESS CONDITIONS FOR PIPELINES

Gas Transmission and Distribution Utilities will provide the DOE with the following information in respect of conditions for third - party access:

(a) The technical and economic feasibility of transporting Natural Gas for third-parties by using spare capacity, if any, or expanding the rated capacity of the Pipeline and taking into consideration:

- 1) The extent, production profiles and composition of proved, probable and potential Natural Gas reserves within adjacent Service Contract areas that are technically and economically feasible for connection to the Pipeline during the remaining term of the Pipeline Permit.
- 2) The potential to establish interconnections with other Pipelines and Pipeline Networks along the route.
- 3) The location of delivery points to be installed for Customers along the Pipeline's route.
- 4) The Pipelines that are to be included within the scope of the access conditions.

(b) The requirement for third parties to enter into agreements that include a procedure for good faith negotiation and consultation between the parties prior to the DOE issuing the Permit that:

- 1) Describes the type of service (transmission, gathering, processing, treatment, line-pack, balancing, etc.) that is to be provided to third parties. The service provided must

be unbundled and include those that are likely to be sought by a significant part of the market.

- 2) Determines the priority for allocating spare capacity and developable capacity (auction, first-come-first-served, foundation user and etc.) among users where the rated capacity is not adequate to transport the Natural Gas. The queuing policy must be economically efficient, reasonably accommodate the legitimate business interests of providers, users and prospective users and does not discriminate between Affiliates and non-Affiliates with respect to the supply of the capacity. If capacity allocation is proposed to be undertaken by auction, the auction rules must be submitted for prior approval to the DOE to ensure that the process is competitive.
- 3) Provides information (maps, calculations, etc.) about the location and capacity of the Pipeline.
- 4) Places reasonable conditions such as the reservation of capacity, minimum volumes, location and construction of receipt points and delivery points, direction of transmission, quality specifications and schedules for nomination.
- 5) Describes the relationship, if any, between transmission agreement with users and other contracts (such as sale and purchase, lifting, unit development, etc.) which have been or will be entered into by the Pipeline Permit holder.

- 6) Informs a third party whether the Pipeline will be operated by Affiliates of the Permit holder or other persons under a management or technical assistance contract.
 - 7) Describes the procedure for users to convince the owner of the Pipeline to analyze the technical and commercial feasibility for expansion of rated capacity for Natural Gas producers, or for the installation of new entry points or delivery points including the method for financing such expansion and the manner in which spare capacity would be allocated between the users and the Permit holder.
 - 8) Responds to the user's request for access within thirty (30) days from receipt of the access application. If a definitive response cannot be provided within thirty (30) days due to the requirement to conduct more investigations, the provider must describe the nature of the investigations to be undertaken, the schedule for its completion and any related, reasonable costs which the prospective user may have to pay.
 - 9) Protects the disclosure and use commercially sensitive information exchanged by the parties.
 - 10) Furnishes regular reports to users on Pipeline efficiency and reliability
- as well as spare capacity and developable capacity of the Pipeline.
 - (c) Provide reference tariff calculated according to the prescribed methodology and rate setting procedures of the ERC.
 - (d) Identifies interconnected facilities that are integral to the Pipeline.
 - (e) Provides a procedure for the resolution of disputes between the Pipeline and users that may arise either during negotiation or performance of transportation services agreements by referring the matter for hearing before the DOE including any preliminary procedures for conciliation or mediation irrespective of whether the disputants are in privity of contract.
 - (f) Contains the terms and conditions of all agreements to be entered into between the users and the Pipeline including:
 - 1) Pro forma transportation services contracts;
 - 2) Security bonds or letters of credit; and
 - 3) Pipeline operating and nomination procedures.
 - (g) A Pipeline may not impose any minimum volume requirements for transportation service without first filing an application with, and obtaining an approval from, the DOE authorizing the imposition of reasonable minimum volume requirements.

ANNEX 3

REPORTING AND DOCUMENTATION

SECTION 1. Gas Transmission and Distribution Utilities and/or Operators of Transmission and/or Distribution-related Facilities

To assure compliance with this Circular, every Gas Transmission Utility, Gas Distribution Utility or operator of a Transmission and/or Distribution-related Facility shall comply with the following reporting requirements:

- (a) *Initial report* – Within thirty (30) days from commencement of its operation, a Gas Transmission Utility, or Gas Distribution Utility shall submit to the DOE a written report signed under oath by a senior official of the company containing the following information:
 - 1) The name of the Person and location of the facility to which gas was transported or of the third party for whom transportation service was provided by the Gas Transmission Utility or Gas Distribution Utility ;
 - 2) A description of the transportation service, including:
 - i. The dates of commencement and projected termination of the transportation service;
 - (ii) The estimated total and maximum daily quantities of Natural Gas to be transported;
 - (iii) The points between which the Natural Gas is to be transported (i.e., barangay, town and province) from the original source and the location (i.e., barangay, town and province) to the ultimate delivery point of the gas; and
- (iv) The Tariff approved by the ERC.
- 3) If transportation is provided to a Customer that is located in the service area of a Gas Transmission Utility or Gas Distribution Utility a statement that the transporter has notified the holder of the Franchise in writing prior to commencing the transportation.
- (b) *Subsequent Reports* – A Gas Transmission Utility or Gas Distribution Utility shall amend its initial report to reflect any material change with pertinent transportation arrangement. Any change in the initial report shall be submitted in writing to the DOE, within thirty (30) days of the material change, and shall be signed under oath by a senior official of the Gas Transmission Utility or Gas Distribution Utility.
- (c) *Record Maintenance.* Each Gas Transmission Utility and Gas Distribution Utility shall maintain records for each category of transportation service provided during the preceding calendar year, but not limited to, the following information:
 - (1) The docket number assigned to the transaction by the DOE;
 - (2) List of Customers connected to the Pipeline;
 - (3) Total volumes sold to Customers and transported for third parties;
 - (4) Interruption of service by date; and
 - (5) Total revenues received for the services provided.

Such records shall be made available to and submitted as required by the DOE.

(d) *Notification of Termination.* Not later than thirty (30) days following the termination of any transportation arrangement (except storage) authorized under this Circular, the Gas Transmission Utility or Gas Distribution Utility, shall submit to the DOE a statement in writing containing the following information:

- (1) The docket number assigned to the transaction by the DOE with the date when the transaction was terminated;
- (2) A statement certifying that the service was provided under the terms and conditions previously prescribed in that docket.

Operators of Transmission and/or Distribution-related Facilities shall be subject to similar reporting and documentation requirements with respect to the service that they provide.

SECTION 2. Gas Suppliers

(a) *Initial Report:* Within sixty (60) days after commencing deliveries of Natural Gas under a sale effected pursuant to this Circular, the Supplier engaging in the sale of Natural Gas shall submit an initial written report to the DOE. The report shall be signed under oath by a senior official of the company and will contain the following information:

- (1) The name of the seller and Customer to whom the Natural Gas has been supplied
- (2) A description of the Supply, including:
 - (i) The dates of the commencement and anticipated termination of the Supply;

- (ii) The estimated total and daily quantities (in Joules) of Natural Gas; and

- (iii) The Unbundled Price.

(3) A statement whether the Supply is subject to interruption to the extent that the Natural Gas is required to enable the seller involved to provide adequate service to other Customers at the time of shortages.

(b) *Subsequent Report:* If any significant change occurs with respect to the information given in Section 1 above, the seller shall submit to the DOE, under oath, appropriate amendments to its initial report signed by a senior official of the company.

(c) *Extension Report:* Not less than ninety (90) days prior to the expiration of a Gas Sales and Purchase Contract, a seller or buyer seeking an extension of the period set forth in the contract shall submit to the DOE an extension report under oath signed by a senior official, stating:

- (1) Current information concerning any matters required to be reported under Paragraph (a) above; and
- (2) The proposed terms of the extension.

(d) *Record Maintenance.* Each Supplier that engages in the supply of Natural Gas shall maintain a record of the following information for the preceding calendar year:

- (1) Total volumes sold to Customers and third parties who intend to on-sell to Customers; and
- (2) Total revenues received for the sales.

(e) *Notification of Termination:* Not later than thirty (30) days following the

termination of any arrangement for the Supply of Natural Gas authorized by the DOE, the enterprise shall submit a statement in writing, containing the following information:

- (1) The docket number assigned to the transaction by the DOE with the date when the transaction was terminated;
- (2) A statement certifying that the sales were made provided at the rate and conditions previously prescribed in that docket.

SECTION 3. Construction and Operational Reporting

The Permit holder shall submit to the DOE a written report on the construction and operation of the Pipeline and the Transmission and/or Distribution-related Facility during each six (6) month period ending on the thirtieth day of June or the thirty first day of December in each year and shall submit such

report within one (1) month after the end of the period to which the report relates. A report shall contain:

- (a) Such information on the construction and operation of the Pipeline as the DOE may require;
- (b) During the construction of the Pipeline and/or Transmission and Distribution-related Facility, the Permit holder shall submit a monthly progress report to the DOE. The Permit holder shall report to the DOE any emergency situations and action taken or to be undertaken within twenty four (24) hours from the time the emergency situation occurred.

SECTION 4. Corrosion Records

The Permit holder shall keep full and complete records of the control of corrosion of the Pipeline or the Transmission and/or Distribution-related Facility, and shall submit such records when required by the DOE.

EXECUTIVE ORDER NO. 290

IMPLEMENTING THE NATURAL GAS VEHICLE PROGRAM FOR PUBLIC TRANSPORT

WHEREAS, Republic Act No. (RA) 7638, otherwise known as the “Department of Energy Act of 1992”, declares that it is the policy of the State to ensure continuous, adequate and economic supply of energy through the integrated and intensive exploration, production, management and development of the country’s indigenous energy resources, with due regard to ecological concerns;

WHEREAS, RA No. 8749, also known as the “Philippine Clean Air Act of 1999”, declares as a policy the promotion and protection of the environment against pollution from mobile

sources;

WHEREAS, the Malampaya Gas-to-Power Project represents the beginning of the natural gas industry in the Philippines with three gas-fired power plants with a total installed capacity of 2,760 MW as initial customers;

WHEREAS, apart from its application in the power sector, natural gas may be used as fuel for vehicles in the transport sector and as a source of energy in the industrial and commercial sectors;

WHEREAS, the launching on October 16, 2002 of the Natural Gas Vehicle Program for Public Transport saw the unveiling of a portfolio on incentives to encourage active participation of the private sector to provide the necessary support, logistics and infrastructure;

WHEREAS, the NGVPPT is envisioned to enhance energy supply security in the transport sector through fuel diversification using indigenous natural gas;

WHEREAS, natural gas is a clean burning alternative fuel for vehicles which has the potential to produce substantially lower pollutant emissions and can provide a solution to the pressing environmental problems in urban areas.

NOW, THEREFORE, I GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Program Objective. – The Natural Gas Vehicle Program for Public Transport (NGVPPT) shall have the following objectives:

- 1.1 To enhance energy supply security in the transport sector through fuel diversification using indigenous natural gas; and
- 1.2 To use compressed natural gas (CNG) as a clean alternative fuel for transport.

SECTION 2. Coverage. – The NGVPPT, as an integral part of the Philippine Natural Gas Industry, shall cover the following key components;

2.1 Gas Supply

Natural gas shall be supplied as CNG in the transport sector through: i) the use of indigenous gas resource, i.e., the Malampaya gas from Palawan, for the NGVPPT and other local gas that will be explored for additional demand; and ii)

the importation of liquefied natural gas (LNG) from gas producers around the world to supplement existing indigenous gas supply.

2.2 Infrastructure development

CNG refueling stations and all related facilities shall be established in strategic locations along major thoroughfares in Metro Manila and Luzon to serve the fuel needs of CNG-powered public utility vehicles (PUVs).

The CNG refueling stations may involve a combination of a “mother-daughter” system and/or an on-line station where the required gas pipeline is already available.

In the absence of a pipeline at the initial phase of the NGVPPT, the refueling set up shall be a “mother-daughter” scheme where a high pressure mother station shall be built inside the Malampaya Onshore Gas Plant (MOGP) and the daughter stations shall be established in identified strategic locations.

2.3 Market development

The public transport sector, which includes public utility buses (PUBs), public utility jeepneys (PUJs), taxis and other PUVs, shall be encouraged to use natural gas as fuel.

2.4 Technology

Existing NGV technology in the world for refueling systems and transport vehicles shall be adopted locally in compliance with applicable local and international standards.

For transport vehicles, available NGV technology shall include Original Equipment Manufactured (OEM)-NGVs, retrofit system and conversion options.

The use of OEM-NGVs shall be strongly recommended as the technology to be adopted during the initial phase of the NGVPPT followed by the retrofit system and conversion option when the same shall have become technically and commercially feasible.

2.5 *Incentives and Financial Assistance*

The NGVPPT shall develop and offer incentive package for all NGV industry stakeholders.

2.6 *Manpower development*

Local technical capability and expertise on NGV retrofitting; conversion; fabrication of conversion systems; NGV and refueling station operation and maintenance; and other related activities as well as the capability to locally produce NGV chassis, bodies and engines shall be pursued through technology transfer and training.

2.7 *Standards and other regulatory concerns*

The standards, codes of practice and other regulatory procedures shall be established by the relevant agencies to ensure the integrity of the NGVPPT and public safety.

2.8 *Information Education Communication (IEC)*

An IEC program shall inform and educate stakeholders and the general public on the benefits of using natural gas particularly in the transport sector.

SECTION 3. Lead Implementing Agency. – Consistent with Executive Order No. 66, Series of 2002 designating the DOE as the lead agency in developing the Philippine natural gas industry, the DOE shall be the lead implementing agency for the NGVPPT. In coordination with different government agencies, institutions and the private sector,

the DOE shall:

- (i) Take the lead in implementing the NGVPPT, including pilot projects to spur accelerated development, to encourage the use of CNG-powered PUVs and establishment of the necessary refueling infrastructure;
- (ii) Develop an implementation plan to ensure the success, synergy and continuity of all activities related to the NGVPPT;
- (iii) Develop and implement the necessary guidelines for the accomplishment of the objectives of this Executive Order;
- (iv) Develop a CNG Masterplan in coordination/cooperation with concerned government agencies/institutions and in consultation with all stakeholders; and
- (v) Facilitate program participants' access to privileges and incentives.

SECTION 4. Co-Implementing Agencies. – The following government agencies/institutions shall work with the DOE to implement the NGVPPT:

4.1 The Department of Environment and Natural Resources (DENR), through its Environmental Management Bureau (EMB), shall fast track the issuance of Environmental Compliance Certificates (ECC) for NGV facilities and refueling stations and shall formulate emission standards for CNG.

4.2 The Department of Finance (DOF) shall create a pricing environment conducive to the use of CNG vis-à-vis diesel and shall formulate tax policies relative to the NGVPPT, and through

- (i) The Bureau of Internal Revenue (BIR), develop revenue regulations for the

implementation of time-bound tax incentives for CNG, NGVs and related facilities and infrastructure; and

- (ii) The Bureau of Customs (BOC), implement guidelines on reduced tariffs on NGVs, NGV engines and other NGV industry related equipment, facilities parts and components duly certified by the DOE.

4.3 The Department of Science and Technology (DOST) shall develop and promote locally manufactured NGV conversion kits, parts and components; develop training modules on NGV conversion, operation and maintenance and refueling station operation and maintenance; and establish testing centers for NGV systems, components and related equipment and facilities together with the DOE.

4.4 The Department of Trade and Industry (DTI), through

- (i) The Bureau of Product Standards (BPS), shall establish Philippine National Standards for Natural Gas Utilization in the Transport Sector and certify the safety of CNG fuel, NGVs, NGV systems and components and related equipment and facilities; and
- (ii) The Board of Investments (BOI), shall enhance existing incentive package for land transportation using CNG, conversion shops, terminals with CNG refueling stations and the manufacture/assembly of NGVs and provide incentives to other NGV industry related activities.

4.5 The Department of Transportation and Communications (DOTC) shall work with the DOE to develop an implementation plan for a gradual shift to CNG fuel

utilization in PUVs and promote NGVs in Metro Manila and Luzon through the issuance of directives/orders providing preferential franchises in present day major routes and exclusive franchises to NGVs in newly opened routes, compliance with emission standards and other preferential incentives though

- (i) The Land Transportation Office (LTO), which shall issue Certificates of Compliance (COC) with emission standards to NGVs;
- (ii) The Land Transportation Franchising and Regulatory Board (LTFRB), which shall grant preferential and exclusive Certificates of Public Convenience (CPC) or franchises to operators of NGVs based on the results of the DOTC surveys.

4.6 The Department of Interior and Local Government (DILG) shall formulate safety measures relative to NGV industry practices and apprehend violators of standards and safety rules and regulations.

4.7 Metro Manila Development Authority (MMDA) shall provide regulatory and administrative support and introduce traffic schemes favoring NGVs to enhance the use of such NGVs in Metro Manila, and shall integrate the location of CNG refueling stations within the overall plan/rationalization of its intermodal terminal program.

4.8 The Tariff Commission (TC) shall reduce tariffs on NGVs, NGV engines, conversion kits/systems, refueling equipment and other NGV industry related equipment, facilities, parts and components.

4.9 The Technical Education and Skills Development Authority (TESDA) shall develop training modules and conduct training for NGV conversion/retrofit/

maintenance engineers, mechanics and technicians and certify the same after the training.

4.10 Government financing institutions (GFIs) such as, but not limited to, the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Trade and Investment Development Corp. of the Philippines (TIDCORP) and the Small Business Guarantee Fund Corporation (SBGFC) shall develop separate financing windows for the NGV industry which provide affordable and commercially tenable financing to NGV, refueling station and related infrastructure operators.

4.11 The Philippine National Oil Company (PNOC), together with its subsidiary, PNOC-Exploration Corporation, shall provide the necessary support for infrastructure development such as, but not limited to, the gas supply for performance testing of demo NGVs.

SECTION 5. Privileges. – The following privileges and incentives may be availed of by the NGVPPT participants:

5.1 Income tax holiday for pioneering projects qualifying under the BOI's Investments Priorities Plan;

5.2 One percent (1%) rate of duty on imported NGVs, NGV engines and other NGV industry related equipment, facilities, parts and components as certified by the DOE;

5.3 Issuance by the LTO of Certificates of Compliance with Emissions Standards to NGVs;

5.4 Preferential and exclusive franchises from the LTFRB for NGVs to newly opened routes;

5.5 Accelerated issuance by the DENR of ECC for NGV facilities and refueling stations;

5.6 Affordable and commercially tenable financial packages from GFIs;

5.7 Manpower development and capability building through training and technology transfer programs;

5.8 Attractive CNG prices which translate to a discount to diesel price;

5.9 Other privileges and incentives that may be subsequently provided.

SECTION 6. Pilot Project. – A Pilot Project shall be established to demonstrate and showcase the initial operation of natural gas buses for public transport in the Batangas-Manila and/or Metro Manila routes using indigenous natural gas from the MOGP in Batangas.

The overall objective of the Pilot Project is to promote the use of CNG as an indigenous clean alternative fuel to diesel and improve air quality. The Pilot Project will evaluate the commercial viability, technical requirements, market demand, impact of incentives and public acceptance for natural gas in the public transport sector.

The components of the Pilot Project include (i) launching of 100 OEM natural gas buses; (ii) construction/operation of mother-daughter CNG refueling stations; (iii) application/operationalization of newly designed incentives and financing packages; and (iv) IEC campaigns.

SECTION 7. Creation of the Executive Forum.

– A NGVPPT Executive Forum (Executive Forum) is hereby created to function as a regular and permanent body to provide effective leadership, coordination and proper direction in the implementation of the NGVPPT.

SECTION 8. Composition of the Executive Forum. –

8.1 The Executive Forum shall be composed of the lead implementing and co-implementing agencies with the Undersecretary of the Department of Energy as Chairperson and senior officials of the co-implementing agencies as members.

8.2 Representatives from the private sector may be invited to serve as members and/or resource participants of the Forum to promote an environment conducive to active private sector participation in the NGVPPT. Such private sector representatives may include representatives from infrastructure developers, refueling station operators, the transport sector, non-government organizations and other similar entities.

8.3 The Chairperson and each of the members shall designate a permanent alternate.

SECTION 9. Powers and Functions. –

9.1 The Executive Forum shall accelerate, integrate and coordinate interagency activities that include the implementation of existing privileges and incentives and formulation of additional fiscal and non-fiscal incentives, financial packages and standards;

9.2 The Executive Forum shall develop its own programs, plans and activities in pursuit of the objectives of this Executive Order. Monitor the implementation of agency actions and recommendations arising therefrom and recommend the necessary measures that will enhance

competitiveness of the NGV industry;

9.3 The Executive Forum shall develop its own internal rules that shall govern the conduct of its meetings and other deliberations or proceedings;

9.4 The Executive Forum shall meet as often as necessary but in no case less than once every quarter to discuss or deliberate on any action, recommendation and/or proposal.

SECTION 10. Secretariat. – Technical and secretariat support to the Executive Forum shall be provided by the DOE.

SECTION 11. Separability Clause. – In the event that any of the provision of this Executive Order is declared unconstitutional with finality by a court of competent jurisdiction, the validity of the other provisions shall not be affected by such declaration.

SECTION 12. Effectivity. – This Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of Republic of the Philippines to be affixed.

DONE in the City of Manila, this 24th day of February, in the year of Our Lord, Two Thousand and Four.

By the President:

ALBERTO G. ROMULO
Executive Secretary

DEPARTMENT ORDER NO. DO 2004-02-001

CREATING A NATURAL GAS VEHICLE-TECHNICAL WORKING GROUP FOR COMPRESSED NATURAL GAS (CNG) VEHICLES

Pursuant to Executive Order No. 66 and consistent with the Department's thrust of empowering and balancing the various interest of the energy related policies particularly in the emerging Natural Gas Vehicles (NGV) Industry and in order to accelerate, integrate and coordinate various efforts towards the demonstration of the NGV technology, implementation of an effective Information, Education and Communication program and development of the necessary safety practices relative to the operation of NGVs, the following directive is hereby issued:

SECTION 1. Creation of a Natural Gas Vehicle-Technical Working Group for CNG vehicles.

There is hereby created a Natural Gas-Technical Working Group for CNG Vehicles, hereinafter referred to as the NGV-TWG, that shall ensure the safe operation and conduct the necessary assessment and evaluation of the performance of CNG Vehicles in the Philippines.

SECTION 2. Composition of the TWG.

The NGV-TWG shall be composed of the following:

Chairperson:

Director Teresita M. Borra

DOE-Energy Utilization Management Bureau

Vice-chair:

Asst. Director Mario C. Marasigan

DOE-Energy Utilization Management Bureau

Members

DOE-Alternative Fuels and Energy Technology Division

Permanent Clovis T. Tupas

Alternate Vilma F. Co

DOE-General Services Division

Permanent Marcos D. Echaves

Alternate Benjamin Marante

Department of the Interior and Local Government –Bureau of Fire Protection

Permanent Nelson S. Se, Sr.

Alternate Felixberto F. Abrinica

Department of Environment and Natural Resources-Environmental Management Bureau

Permanent Jean N. Rosete

Alternate Cesar Siador

Department of Science and Technology-Metals Industry Research and Development Center

Permanent Dominic S. Guevarra

Alternate Eduardo M. Deang, Jr

Department of Science and Technology-Philippine Council for Industry and Energy Research and Development

Permanent Gil T. Miranda

Alternate Albert G. Mariño

Department of Transportation and Communications

Permanent Roberto G. Delfin
Alternate Renato R. David

Department of Transportation and Communications-Land Transportation Office

Permanent Filemon N. Villespin
Alternate Roberto Se

Department of Trade and Industry-Bureau of Product Standards

Permanent Norma C. Hernandez
Alternate M. Teresita G. del Rosario/
Myra F. Magabilin

Philippine National Oil Company

Permanent Joy O. Gonzales
Alternate Heidi M. Cruz

Philippine National Oil Company-Exploration Corporation

Permanent Eriberto S. Garcia
Alternate Rolando V. Oliquino

Transport Organizations For Clean Air

Permanent Alberto H. Suansing
Alternate Ramon Castillo

University of the Philippines-National Center for Transportation Studies

Permanent Rene Val R. Toedoro
Alternate Karl N. Vergel

Other government agencies and private organizations may be invited as members and/or resource participants as may be determined by the NGV-TWG.

SECTION 3. Powers and Functions of the TWG.

The TWG shall meet once every other week for the three (3) months following its creation and thereafter once a month to:

1. Develop a testing and evaluation mechanism for the CNG vehicles;
2. Undergo training/seminar with engineers and technicians of the companies that provided the bus;
3. Conduct orientation and training for the bus drivers and mechanics/technicians;
4. Participate in the test drivers test and continuously monitor, gather and record data;
5. Submit monthly report on the status of the demo vehicles to the DOE and a final report at the end of the demonstration period; and
6. Such other functions that may deemed necessary to accomplish the foregoing.

SECTION 4. Source of Funds

Expenses that may be incurred in connection with the implementation of this Department Order including the testing of the demo vehicles shall be charged against the budget allocated for the Natural Gas Vehicle Program for Public Transport budget subject to usual accounting and auditing rules and regulations.

SECTION 5. Technical, Administrative and Secretariat Support.

For the effective discharged of its responsibilities, the TWG may call on the assistance of any unit of each member’s respective department or other concerned agencies of the Government. Administrative and secretariat support to the TWG shall be provided by the DOE-Alternative Fuels and Energy Technology Division which shall coordinate TWG activities.

SECTION 6. Affectivity.

This Department Order shall take effect immediately.

Fort Bonifacio, Taguig, Metro Manila, 19 January 2004.

(sgd)

VICENTE S. PEREZ, JR.

Secretary

DEPARTMENT CIRCULAR NO. DC2006-04-0004

ADOPTING DEPARTMENT CIRCULAR NO. DC 2004-04-004 ENTITLED "GUIDELINES ON THE ISSUANCE OF CERTIFICATE OF ACCREDITATION AND CERTIFICATE OF AUTHORITY TO IMPORT UNDER THE NATURAL GAS VEHICLE PROGRAM FOR PUBLIC TRANSPORT" AS THE IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NOS. 396 AND 488 DATED DECEMBER 31, 2004 AND JANUARY 12, 2006, RESPECTIVELY, AND DEPARTMENT CIRCULAR NO. DC2005-07-006 DATED JULY 5, 2005 AND AMENDING CERTAIN PROVISIONS OF THE SAID D.C. 2004-04-004

WHEREAS, Executive Order (E.O.) No. 66, series of 2002 entitled "Designating the Department of Energy (DOE) as the Lead Agency in Developing the Philippine Natural Gas Industry", mandates the DOE to ensure a unified and coordinated effort towards establishing a successful and robust natural gas industry;

WHEREAS, Her Excellency, President Gloria Macapagal-Arroyo launched the Natural Gas Vehicle Program for Public Transport (NGVPPT) on October 16, 2002 that aims to enhance the energy supply security in the transport sector through fuel diversification using indigenous natural gas and to use natural gas as a clean alternative fuel for transport, and at the same time unveiled a portfolio of incentives to encourage private sector participation to private the necessary support, logistics and infrastructure;

WHEREAS, Executive Order No. 164, series of 2003 entitled "Modifying the Nomenclature and the Rates of Import Duty on Various Products under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464, as amended)", reduces the rates

of duty for NGV industry-related equipment, parts and components to encourage active private sector participation;

WHEREAS, Executive Order No. 290 entitled "Implementing the NGVPPT" was approved and signed on February 24, 2004 to ensure effective implementation of the program;

WHEREAS, to enable the DOE to effectively implement E.O. No. 290 and E.O. No. 164 and successfully pursue the overall execution plan of the NGVPPT, it issued and promulgated Department Circular No. 2004-04-004 which prescribed the Guidelines on the Issuance of certificate of accreditation and certificate of authority to import under the NGVPPT;

WHEREAS, Executive Order No. 396, series of 2004, further reduces the rates of duty from 1% to 0% for NGV industry-related equipment, parts and components to encourage active private sector participation;

WHEREAS, Section 4 of the said Executive Order mandates the DOE, in coordination with the Department of Trade and Industry (DTI),

the National Economic and Development Authority (NEDA) and the Bureau of Customs (BOC) to promulgate the implementing rules and regulations that will govern the implementation of this Executive Order;

WHEREAS, in a meeting held on March 8, 2005 and attended by representatives of the DOE, NEDA, BOC and DTI through the Board of Investments, it was agreed upon that D.C. No. 2004-04-004 be adopted as the IRR of E.O. No. 396 and certain provisions thereof be amended;

WHEREAS, Department Circular No. DC2005-07-006, series of 2005, was issued to set the policy direction to guide all stakeholders particularly as regards to securing access to the supply of indigenous natural gas and establishment of CNG distribution infrastructure;

WHEREAS, after several meetings of the Technical Working Group established under the D.C. No. 2005-07-006, it was agreed upon that D.C. No. 2004-04-004 be adopted as the IRR of D.C. No. 2005-07-006 and certain provisions thereof be amended;

WHEREAS, Executive Order No. 488, series of 2006, modifies the import duty on components, parts and accessories for the assembly of hybrid, electric, flexible fuel and compressed natural gas (CNG) motor vehicles to provide opportunity for the manufacture and assembly of the emerging alternative fuel vehicle technology;

WHEREAS, in a meeting called by BOI on February 2, 2006 which was attended by representatives from the DOE and industry players including car manufacturers for the drafting of the guidelines for E.O. 488, it was agreed upon that registration and issuance of Certificate of Authority to Import for Category I: Manufacture and Assembly of CNG motor vehicles under D.C. 2004-04-004 shall be transferred to BOI's Motor Vehicle Development Program;

NOW, THEREFORE, the DOE in coordination with the DTI through BOI, NEDA, BOC and concerned industry players hereby adopts the DOE Circular No. D.C. 2004-04-004 as the IRR of E.O. 396, E.O. 488 and D.C. 2005-07-006 and likewise promulgates the following rules and regulations/amendments to certain provisions of D.C. No. 2004-04-004:

SECTION 1. Section 1(b & d), Rule I are hereby amended to read as follows:

RULE I

**GUIDELINES ON THE ISSUANCE OF
CERTIFICATE OF ACCREDITATION**

“Section 1. Requirements

xxx xxx xxx

b) Any natural or juridical person, organized under Philippine laws that will engage in any NGV industry-related businesses including CNG refuelling station and transport operation; NGV operation; NGV and related parts/components manufacture and assembly; NGV re-power/retrofit/conversion including repair and maintenance; and related activities such as research and development (R&D) activities and operation of NGVs as shuttle service;

d) “Qualified participants may be categorized under any of the following groups:

**“Category I – Manufacture/
Assembly of NGVs**

- “Engaged in the establishment of new assembly facilities or utilization of an existing assembly facility for the assembly/manufacture of brand new quality NGVs registered under the BOI’s Motor Vehicle Development Program

“Category II – Operation of NGVs

- “Engaged in the operation of NGVs in accordance with relevant Philippine National Standards (PNS) and procedures including the provision of warranties to NGV owners/operators

“Category III – Re-powering/ Retrofitting/Conversion of NGVs

- “Engaged in the re-power, retrofit, conversion, repair and maintenance of NGVs in accordance with relevant Philippine National Standards (PNS) and procedures including the provision of warranties to NGV owners/operators

“Category IV – CNG Refuelling Station/Transport Operation

- “Engaged in the design, construction, installation and operation of CNG refuelling station/s and related infrastructures and facilities including hauling/transport of CNG in accordance with relevant PNS standards and procedures.

“Category V – Others

- “Engaged in research and development (R&D) activities and operation of NGVs as shuttle service by government entities as approved by the DOE.”

SECTION 2. Section 1(e) is hereby amended to read as follows:

e) As their commitment under the NGVPPT, each participant, over a period of one (1) year from the date of issuance of their CA, shall invest and/or bring in investments in any

NGV industry-related business. The minimum investment requirements* are as follows:

“Category I (Manufacture and assembly) : (MVDP)

“Category II (Operation) : US\$0.40 million

“Category III (Re-powering/Retrofit/ Conversion) : US\$0.20 million

“Category IV (Refuelling Station) : US\$0.50 million

“Category V (Others) : (to be determined by the DOE)”

*Note: * The minimum investment requirements shall be recomputed every five (5) years to validate the viability of the figures to the prevailing conditions.*

“Proof of investments in the NGV industry-related businesses shall be in accordance with the commitments submitted to the DOE. Such proof may include an update report on the undertakings from the date of accreditation and accompanied by certified photocopies of documents relative to the undertakings. The DOE may automatically cancel the CA after the Committee finds each participant to be non-compliant with its commitment, subject to the imposition of the following penalties payable to the pertinent government agency involved: (a) payment of duty differential on all importations; and (b) payment of other incentives provided under the program.”

xxx xxx xxx

SECTION 3. Section 2(b-f), Rule I are hereby amended to read as follows:

Section 2. Procedures.

xxx xxx xxx

b) The DOE-EUMB shall only receive and record duly accomplished application forms with complete requirements as stated in the checklists (Annexes 2 and 3). A non-refundable processing fee of Php 5,000.00 shall be charged to the proponent/applicant upon filing of each application.

c) The DOE-EUMB shall review and evaluate the application submitted by the proponent/applicant and recommend appropriate action on the application. The evaluation of the applicant’s business proposal and/or feasibility study shall be based on, but not be limited to the following criteria:

- Viability of the project;
- Impact on the industry and economy as a whole; and
- Impact on the NGVPPT

d) Upon EUMB recommendation, the DOE NGVPPT Committee created under D.C. 2005-07-006 shall decide on each application. If found meritorious, the Committee will recommend to the Undersecretary the approval of the application.

e) Applicants with approved application shall be issued a Certificate of Accreditation (CA) signed by the DOE Undersecretary, with clearance and authority from the DOE Secretary, and shall comply with terms and conditions specified therein (Annex 1). The CA shall be valid for two (2) years from the date of issuance and shall be renewed every two (2) years subject to regular procedure.

f) The original CA shall be claimed from the Office of the Director, Energy Utilization Management Bureau (EUMB), Energy Center, Merritt Road, Fort Bonifacio, Taguig, Metro Manila.

SECTION 4. A new provision to be known as Section I is incorporated under Rule 2 which reads as follows:

RULE II

GUIDELINES ON THE ISSUANCE OF CERTIFICATE OF AUTHORITY TO IMPORT (CAI) NATURAL GAS VEHICLES (CBU, CKD AND KD), COMPRESSED NATURAL GAS (CNG) REFUELING SYSTEMS, NGV CONVERSION/ RETROFIT SYSTEMS, RELATED INFRASTRUCTURE AND FACILITIES , PARTS AND COMPONENTS

“Section 1. Coverage.

“The program shall cover the important of NGV-CNG industry related equipment, parts and components by qualified participants to the NGVPPT at zero duty within the seven year pilot phase period in accordance with the schedule provided under Annex A of E.O. 396. However, importation of CBU-CNG buses at zero duty is limited to the first 200 units for the Pilot CNG Project.”

SECTION 5. Section I, Rule 11 is hereby renumbered as Section 2, Rule 11 and Section 2(c) thereof is hereby amended to read as follows:

“Section 2. Requirements

xxx xxx xxx

c) All applicants complying with the requirements under Section

1(a) hereof shall submit a duly accomplished application form signed by himself or a duly authorized representative, as the case may be, and duly verified together with the following documents for proper evaluation:

- “Pro forma Invoice;
- “Detailed list of items to be imported;
- “Liquidation Report (if applicable, to be submitted within one (1) month from end of each quarter duly signed by the company’s authorized representative and duly verified);
- Authenticated Certificate of Compliance with relevant Philippine National Standards and procedures to be submitted prior to the shipment of units from the country of origin.”

xxx xxx xxx

SECTION 6. Section 2 is hereby renumbered as Section 3, Rule 11 and Section 3(iv) hereof is hereby amended to read as follows:

“Section 3. Procedures.

“a) Issuance of CAI:

“iv) The CAI shall be addressed and released to the NGVPPT participants/ importer by the DOE-EUMB. All NGVPPT importations shall be processed by the BOC only on the basis of an original CAI. The BOC shall record all importations processed against the CAI running balance on utilization at the back of the said CAI. The DOE-EUMB shall provide the BOC and the BOI a list of CAIs issued on a monthly basis for their reference and information. The BOC shall provide the DOE-EUMB and BOI records of importation processed for reference and monitoring purposes.”

SECTION 7. The pertinent provisions of Department Circular No. 2004-04-004 not otherwise affected by the above amendments shall remain in force and in effect.

SECTION 8. This department Circular shall take effect immediately upon its publication in at least two (2) national newspapers of general circulation and submission of three (3) certified copies thereof to the University of the Philippines Law Center.

Fort Bonifacio, Taguig City, Metro Manila April 20, 2006.

RAPHAEL M. LOTILLA
Secretary

ANNEX 1

GENERAL TERMS AND CONDITIONS FOR THE NGVPPT ACCREDITATION

1. Applicants for NGVPPT accreditation shall fully observe and abide by the provisions of the Natural Gas Vehicle Program for Public Transport (NGVPPT) and its implementing guidelines as well as the commitments and representations made in the application for accreditation. Applicants shall further take adequate measures to ensure that its obligations therein are faithfully discharged.
2. Participants shall fully comply with the directives and instructions issued by the DOE from time to time in pursuance of its authority under E.O. 66, E.O. 290, E.O. 396 and D.C. 2005-07-006.
3. The CA is non-transferable and participants to the Program shall not transfer and/or assign to any person, partnership, corporation or other entity without the written approval of the DOE.
4. The participant shall allow duly authorized representatives of the DOE to inspect its assembly facilities, manufacturing facilities, refuelling stations and other NGV industry related operation/facilities and examine pertinent books of account, records and documents in order to ascertain compliance with the provision of the NGVPPT guidelines, the Supplemental Guidelines to the Program, its commitments and representations, as well as the general and specific terms and conditions of its accreditation.
5. The participant shall not make any changes or deviate from the business plan submitted in connection with its application for accreditation as a participant in Program without prior written DOE approval.
6. The participant's facilities, products and services related to the Program shall be subjected to safety tests in accordance with the duly approved standards and/or whenever the DOE so requires.
7. The participant shall be responsible for all expenses that may be incurred in the testing and certification of its facilities, products and services for purposes of meeting the safety and products standard of the natural gas vehicle industry. The DOE, at its sole option, may require that appropriate tests be conducted in acceptable laboratories, located in the country and/or abroad.
8. The participant shall notify the DOE of any adjustments or increase in the retail prices of its products and services two (2) weeks before implementation.
9. The participant shall ensure that the consumers are well informed of the retail prices of its products and services. It shall endeavour to make its authorized dealers observe sound business practices and refrain from any illegal trading activities.
10. The participant shall exert efforts to be properly represented in all meetings that shall be called in connection with the implementation of the NGVPPT Guidelines.
11. The participant shall submit the following reports to the DOE EUMB in accordance with the following schedule:
 - a. *Quarterly reports which must be submitted one (1) month after the end of each calendar quarter.*
 1. Accomplishment Report;
 2. Monthly Production and Sales Report (if applicable);

3. Quarterly schedule of manufacturing cost per model (if applicable);
 4. Quarterly export earnings (if applicable).
- b. Annual reports which must be submitted one (1) month after the end of each calendar year.*
1. Accomplishment Report;
 2. Annual Production and Sales Report (if applicable);
 3. Annual schedule of manufacturing cost per model (if applicable);
 4. Annual export earnings (if applicable);
 5. Itemized prices.
- c. Latest Audited Financial Statements and Income Tax Return one (1) month after submission to BIR*
- d. Itemized Prices upon the introduction of a new model or change in FOB prices.*
- Note: These reports must be submitted using the prescribed forms.*

ANNEX 2-A

APPLICATION FOR NGVPPT ACCREDITATION

“Category I – Manufacture & Assembly of NGVs”

Checklisting Guide

- I. Check completeness of documents (3 sets)
 - Duly accomplished application form
 - MVDP Certificate of Registration
 - Business proposal/feasibility study
 - Board Resolution authorizing official representative to sign in behalf of the applicant enterprise, if applicable
 - Other relevant documents required by the DOE
- II. Check correctness of application
 - Check if application is duly signed by authorized representative and notarized
 - Validate the authenticity of permits and other documents
 - Validate the authenticity of the technical licensing agreement with the supplier
 - Evaluate the business proposal/feasibility study

ANNEX 2-B

APPLICATION FOR NGVPPT ACCREDITATION

“Category II – Operation”

Checklisting Guide

I. Check completeness of documents (3 sets) • Duly accomplished application form • Duly accomplished project outline form • Business name and brand name • Business proposal feasibility study • Business permits (DTI, SEC registration, Mayor’s Permit, others) • Income Tax Return from the last three (3) years (or other proof of financial capability, if newly established company) • Technical Licensing Agreement/ Technical Certification (or other proof of technical capability) • Pictures of terminal/s if applicable	• Bank Certification, if applicable • Board Resolution authorizing official representative to sign in behalf of the applicant enterprise, if applicable • Other relevant documents required by the DOE II. Check correctness of application • Check if application is duly signed by authorized representative and notarized • Validate the authenticity of permits and other documents • Validate the authenticity of the technical licensing agreement with the supplier • Evaluate the business proposal/ feasibility study

ANNEX 2-C

APPLICATION FOR NGVPPT ACCREDITATION

“Category III – Re-powering/ Retrofit/Conversion”

Checklisting Guide

I. Check completeness of documents (3 sets) • Duly accomplished application form • Duly accomplished project outline form • Business name and brand name • Business proposal feasibility study	• Business permits (DTI, SEC registration, Mayor’s Permit, others) • Income Tax Return from the last three (3) years (or other proof of financial capability, if newly established company) • Technical Licensing Agreement/ Technical Certification

- Certificate of Accreditation of facilities
- Bank Certification, if applicable
- Board Resolution authorizing official representative to sign in behalf of the applicant enterprise, if applicable
- Other relevant documents required by the DOE
- by authorized representative and notarized
- Validate the authenticity of permits and other documents
- Validate the authenticity of the technical licensing agreement with the supplier
- Evaluate the business proposal/feasibility study

II. Check correctness of application

- Check if application is duly signed

ANNEX 2-D APPLICATION FOR NGVPPT ACCREDITATION

“Category IV – Refueling station/transport.”

Checklisting Guide

I. Check completeness of documents (3 sets) • Duly accomplished application form • Duly accomplished project outline form • Business name and brand name • Business proposal feasibility study • Business permits (DTI, SEC registration, Mayor’s Permit, others) • Income Tax Return from the last three (3) years (or other proof of financial capability, if newly established company) • Technical Licensing Agreement/ Technical Certification • Bank Certification, if applicable	• Board Resolution authorizing official representative to sign in behalf of the applicant enterprise, if applicable • Other relevant documents required by the DOE
II. Check correctness of application • Check if application is duly signed by authorized representative and notarized • Validate the authenticity of permits and other documents • Validate the authenticity of the technical licensing agreement with the supplier • Evaluate the business proposal/feasibility study	

ANNEX 3

APPLICATION FOR AUTHORITY TO IMPORT

Checklisting Guide

- I. Check completeness of documents (3 sets)
- Proforma Invoice (original/certified true copy)
 - Detailed list of parts and/or equipment to be imported
 - Liquidation Report (to be submitted within one (1) month from the end of each quarter)
 - Authenticated certificate of compliance with relevant Philippine National Standards and procedure (to be submitted before shipment of items)
- II. Check correctness of application
- Check description items – those indicated in the invoice should match those indicated in the application
 - Check bank information and name of equipment/parts suppliers
 - Check correctness of Tariff Heading
- Example:
- | Tariff Heading | Description |
|----------------|---|
| 7613.00 00 | Aluminum containers for compressed or liquified gas |
| 8407.34 90 | Other |
| 8414.90 90 | Parts |
| 8702.90 90 | Other |
- Check if application is duly signed by authorized representative and notarized.

DEPARTMENT CIRCULAR NO. DC2017- 11 - 0012

RULES AND REGULATIONS GOVERNING THE PHILIPPINE DOWNSTREAM NATURAL GAS INDUSTRY

Pursuant to Republic Act (RA) No. 7638, otherwise known as the “Department of Energy Act of 1992”, creating the Philippine Department of Energy (DOE); Executive Order (EO) No. 66, designating the DOE as the lead agency in developing the Philippine Downstream Natural Gas Industry; Administrative Order No. 38, providing for the Institutional Strengthening of the DOE; Department Circular No. 95-06-006, entitled “Policy Guidelines on the Overall Development and Utilization of Natural Gas in the Philippines”; Department Circular No. 2002-07-004, otherwise known as the Rules of Practice and Procedures before the DOE, and Executive Order 30, establishing the Energy Investment Coordinating Council to facilitate an efficient and effective administration of Energy projects of National Significance and fasten the implementation of the Philippine Energy Plan (PEP),” the DOE, in consultation with appropriate government agencies and private stakeholders, hereby issues, adopts and promulgates the following regulations.

PART I

GENERAL PROVISIONS

This Circular establishes the regulations to be followed with respect to siting, design, construction, expansion, rehabilitation, modification, operation and maintenance of the PDNGI Value Chain. The State shall ensure that the PDNGI Value Chain, from its emerging state, will be developed into a mature market to gain greater energy security and sustainability.

RULE 1. TITLE AND SCOPE

SECTION 1. Title

This Circular shall be known as the Philippine

Downstream Natural Gas Regulation (PDNGR).

SECTION 2. Scope

This PDNGR applies to the following:

- a. Industry compliance to policies, rules, standards and best practices on areas of siting, design, construction, expansion, modification, operation and maintenance any Project necessary to the development of the PDNGI Value Chain;
- b. Industry compliance to policies, rules, standards and best practices on the importation of LNG and the supply and transport of the following:
 1. Imported LNG or liquefied Indigenous Natural Gas from the connection point of the loading arm to the LNG Terminal, the Transmission System and the Distribution System;
 2. Indigenous Natural Gas after the point of sale up to the Customer; and
 3. LNG from the filling connection of the storage specifically used for reticulation or delivery up to the satellite LNG Terminal in the Philippines and foreign market.
- c. Industry compliance to policies, rules, standards and best practices on TPA;
- d. Industry compliance to policies, rules, standards and best practices towards the development of the Philippines as an LNG trading and transshipment hub for the Asia-Pacific Region;

- e. Overall monitoring and supervision of the activities of the PDNGI Value Chain.

RULE 2. DECLARATION OF POLICY

It is hereby declared the policy of the State to:

- a. Provide a conducive environment through the issuance of policies, plans and programs geared towards the promotion and development of the PDNGI Value Chain where in all cases, the State shall ensure its safe, transparent, competitive and environmentally friendly operation;
- b. Ensure continued operation of currently operating gas-fired power plants after the depletion of the Malampaya Natural Gas supply;
- c. Promote Natural Gas as an energy fuel with tremendous potential to satisfy the increasing local demand and that of the Asia-Pacific Region through the development of the necessary infrastructure for LNG trading and transshipment hub;
- d. Promote the conversion of existing liquid fuel-operated machines and facilities to Natural Gas use and allocation by the distribution utilities of power supply from gas-fired power plants;
- e. Ensure access and financial viability of the PDNGI Value Chain by liberalizing entry under a system of competition, transparency and fair trade with the end goal of attaining fair price for all stakeholders; and
- f. Ensure compliance with International and Philippine Health, Safety, Security, Environment (HSSE) standards and best practices to achieve and sustain safe operation, high-quality service and consumer protection.

RULE 3. RESPONSIBILITIES OF THE DOE

The DOE shall have the overall responsibility on the promotion and supervision of the development and operation of the PDNGI Value Chain through:

- a. The evaluation of applications for the issuance of authority to Operator, namely a Notice to Proceed (NTP), a Permit to Construct, Expand, Rehabilitate and Modify (PCERM) and a Permit to Operate and Maintain (POM) Downstream Natural Gas Facilities;
- b. The issuance, among others, of Acknowledgement to Import (ATI) LNG and Acknowledgement to Supply and Transport (AST) Natural Gas;
- c. The issuance of directives to qualified Government Agencies, in their capacities as investing arms, to spearhead the development of the PDNGI Value Chain when the DOE deems it imperative to catalyze its development within a given timeline;
- d. The implementation of the industry compliance to Philippine or International Standards on Natural Gas product, Downstream Natural Gas Facilities and practices;
- e. The creation of a Downstream Natural Gas Review and Evaluation Committee (DNG-REC) which shall evaluate and recommend, for the approval of the Secretary, applications referred to in the Permit Application Guideline, including the conduct of downstream inspection and monitoring activities in coordination with a Philippine Inter-Agency Health, Safety, Security and Environment Inspection and Monitoring Team (PIA-HSSE IMT), and the creation of Technical Committees (TC) which shall formulate applicable standards. The PIA-HSSE IMT and the TC shall be chaired both by the DOE;

- f. The recommendation of the DNG-REC to concerned Heads of Agencies the approvals of Memorandum of Agreement or Joint Circular whenever necessary to implement DOE responsibilities; and
- g. The implementation all other necessary measures allowed under existing laws, rules and regulations.

RULE 4. DEFINITION OF TERMS

As used in this Circular, the following terms shall mean as follows:

- a. Affiliate - means any corporation that directly or indirectly, through one or more intermediaries (subsidiaries or affiliates), is controlled by, or is under the common control of another corporation, which thereby becomes its parent corporation;
- b. Anti-Competitive Acts - refer to any of the acts prohibited under the Philippine Competition Act (RA10667);
- c. Applicant - refers to:
 - 1. any local and/or foreign individual company; or
 - 2. incorporated joint venture company; or
 - 3. the designated member of an unincorporated joint venture or consortium which is authorized for the purpose of engaging in a Project, and wishes to secure any Permit under this Circular;
- d. Applicant Group - refers to (1) the Applicant's shareholders, and/or (2) their respective Parent Company;
- e. Capacity - means the maximum capacity of the Natural Gas Facility to provide the services for which that Natural Gas Facility is developed, expressed in normal cubic meters per time unit or in energy unit per time;
- f. Control - means the power of a parent company to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through its subsidiaries or affiliates, more than one-half (1/2) of the voting power of an enterprise unless, in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half (1/2) or less of the voting power of an enterprise when there is power:
 - 1. over more than one-half (1/2) of the voting rights by virtue of an agreement with investors;
 - 2. to direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
 - 3. to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
 - 4. to cast the majority votes at meetings of the board of directors or equivalent governing body.
- g. Customer - refers to a Person who purchases Natural Gas for resale or final use;
- h. Department of Energy or "DOE" - refers to the government agency created pursuant to Republic Act No. 7638;
- i. Deregulation - refers to the removal of Government price control;
- j. Distribution Pipeline - refers to a pipeline that forms part of a Distribution System including the Spur lines;

- k. Distribution System - refers generally to the pipeline and its related facilities used to transport Natural Gas extending between the last delivery points of the Transmission System to the last connection point to the Customer;
- l. Downstream Natural Gas Facility - means the facilities referred to in Rule 6 including the pipeline and its related facilities used to transport Indigenous Natural Gas after the point of sale up to the last connection point to the Customers;
- m. Energy Regulatory Commission or “ERC” - refers to the regulatory agency created by RA 9136;
- n. Financial Closing - means generally to the stage of negotiation where a legally binding financial commitment actually exists to provide funding for a Project and all conditions have already been met to permit the mobilization of funds;
- o. Force Majeure - means any event or circumstance not within the reasonable control of a party including, without limiting the generality of the nature of those events or circumstances, any of the following events or circumstances:
 - 1. acts of God including earthquakes, floods, washouts, landslides, lightning, storms and similar causes;
 - 2. strikes, lockouts, or other industrial disturbances ;
 - 3. inability to access land or the inability to use land due to latent or soil conditions;
 - 4. acts of the enemy, terrorists, wars, blockades or insurrections, riots and other civil disturbances;
 - 5. fire or explosion including radioactive and toxic explosions;
 - 6. epidemic or quarantine;
 - 7. order of any court or tribunal or the order, act, or omission or failure to act of any government or governmental authority having jurisdiction; and
 - 8. failure of Government Agencies to act and/or issue the necessary permits or clearances, without fault of the Operator.
- p. Franchise - refers to the right, privilege and authority issued by Congress in favor of any Person to engage in the transmission or distribution of Natural Gas;
- q. Gas Sales and Purchase Agreement or “GSPA” - refers to a contract or agreement for the delivery and sale of Indigenous Natural Gas or imported Natural Gas by and between seller and buyer;
- r. Government Agency - refers to any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, and any bureau of the Republic of the Philippines;
- s. Importer - refers to any Person registered with the DOE and engaged to import LNG into the Philippines;
- t. Importer and Supplier Accreditation Guideline - refers to the Guideline issued by the DOE under Section 3 (b) of Rule 6 of this Circular and attached hereto as Annex C;
- u. Indigenous Natural Gas - means Natural Gas produced from fields within the entitlement or territorial jurisdiction of the Republic of the Philippines;
- v. Insurance - refers generally to a risk-transfer mechanism that ensures full or

partial financial compensation for the loss or damage caused by event(s) beyond the control of the insured party wherein, compensation is normally proportionate to the loss incurred;

- w. Landed Cost - refers to the cost of imported LNG upon delivery to the Philippines, which consist generally of the total of FOB, insurance, freight cost, currency conversion, custom duties, taxes, port related fees and other applicable fees;
- x. Liquefied Natural Gas or “LNG” - refers to Natural Gas which has been liquefied by cooling at a cryogenic temperature;
- y. Maritime Agencies - refers to Government Agencies having jurisdiction over the administration of maritime related matters;
- z. Natural Gas - refers to gas obtained from boreholes and wells consisting primarily of a mixture of methane, ethane, propane and butane with small amounts of heavier hydrocarbons and some impurities, notably nitrogen and complex sulphur compounds and water, carbon dioxide and hydrogen sulphide which may exist in the feed gas but are removed before liquefaction;
- aa. Operator - refers to a natural or juridical Person who is granted a Permit by the DOE to engage in the siting, design, construction, expansion, rehabilitation, modification, operation and maintenance of Natural Gas Facilities;
- bb. Operator and Facility Registry and Reportorial Requirements Guideline - refers to the Guideline issued by the DOE under Section 3 (b) of Rule 6 of this Circular and attached hereto as Annex B;
- cc. Parent Corporation - refers to the respective controlling corporation of each

of the shareholders of the Applicant;

- dd. Person - refers to a natural person or a juridical entity such as a partnership, joint venture, association, corporation, or a Government Agency;
- ee. Permit - means a permit referred to under Section 1 of Rule 6;
- ff. Permit Application Guideline -- refers to the guideline issued by the DOE under Section 1 of Rule 6 of this Circular and attached hereto as Annex A;
- gg. Petroleum Service Contractor - refers to a holder of a Petroleum Service Contract duly issued by the DOE pursuant to PD 87, as amended;
- hh. Philippine and Internationally Accepted Standards - refers to those internationally recognized practices, methods and acts which would ordinarily be expected from an experienced and competent operator of Natural Gas Facilities in the Philippines under comparable conditions and consistent with applicable laws in the Philippines at the relevant time;
- ii. Philippine Downstream Natural Gas Industry Value Chain or “PDNGI” Value Chain - refers to the Downstream Natural Gas Facilities and the operations or activities related thereto which involve LNG importation, storage, regasification, transmission and distribution to Customers including the pipeline and its related facilities used to transport Indigenous Natural Gas and the operations or activities related thereto after the point of sale up to the last connection point to the Customers;
- jj. Pipeline - means Transmission Pipeline or Distribution Pipeline;
- kk. Project - refers to the siting, design, construction, expansion, rehabilitation,

modification, operation and maintenance of any Downstream Natural Gas Facility of the PDNGI Value Chain;

II. Public Utility - refers to a business or service engaged in regularly supplying the public with some commodity or service of public consequence which cannot be denied to anyone who is willing to pay for it or as may be defined as such by applicable Philippine law and jurisprudence;

mm. Supplier - refers to any person, registered with the DOE and engaged to trade and supply Natural Gas to Customers;

nn. Tariff - refers to the payment on the utilization of the capacity and use of other services offered by the Operator of the LNG-related facilities, Transmission System and Distribution System;

oo. Third Party Access or "TPA" - means a transparent and non-discriminatory access and utilization by third party users of the excess capacity and other services offered by the Operator of the LNG Terminal, Transmission System and Distribution System subject to defined governing rules, terms and conditions;

pp. Tolling Fee - is composed of (1) capacity payments, (2) operating expenses, (3) taxes, and (4) other incidental costs used for receiving, storage and regasification of LNG into Natural Gas form usable as fuel and its delivery to the Customer or buyer;

qq. Transmission System - refers generally to the pipeline and its related facilities used to transport Natural Gas extending between the connections from the gathering facilities to the last connection point before the Distribution System;

rr. Transshipment - refers to the act of taking cargo out of one ship and loading it in another, or the transfer of goods from the

vessel stipulated in the freight contract to another vessel, before the place of destination named in the contract has been reached; and

ss. Transmission Pipeline - refers to pipeline that forms part of a Transmission System.

PART II COVERED FACILITY

RULE 5. DOWNSTREAM NATURAL GAS FACILITY

This Circular shall cover the regulation of the following facilities of the PDNGI Value Chain.

SECTION 1. LNG Terminal

- a. Jetty and Unloading/Loading arms;
- b. Cryogenic Pipelines;
- c. Storage Tanks;
- d. Send out system;
- e. Low and High Pressure Pumps;
- f. Boil-Off Gas (BOG) compressors and re-condensers;
- g. Vaporizers;
- h. Metering; and
- i. Other relevant components.

SECTION 2. Pipelines

- a. Transmission;
- b. Distribution (including Spur lines); and
- c. Other relevant components.

SECTION 3. Transmission and/or Distribution-Related Facilities

- a. Pressing plants;
- b. Facilities for pipeline interconnections and metering;
- c. Natural Gas Refilling Stations; and

d. Other relevant components.

SECTION 4. Indigenous Natural Gas Facility

This Circular shall cover the regulation of pipelines and their related facilities used to transport Indigenous Natural Gas after the point of sale up to the last connection point to the Customers

PART III REGULATIONS AND STANDARDS

RULE 6. PERMITS

No Person, natural or juridical, shall construct, expand, rehabilitate, modify, operate or maintain a Downstream Natural Gas Facility unless that Person is authorized to do so by a Permit issued under this Circular.

SECTION 1. Permits

For purposes of this Circular, the following Permits shall be issued in accordance with the Permit Application Guideline:

- a. Notice to Proceed (NTP);
- b. Permit to Construct, Expand, Rehabilitate, Modify (PCERM); and
- c. Permit to Operate and Maintain (POM).

SECTION 1.1 Guiding Principles for Evaluation

In order to meet the PDNGI Value Chain development, the DOE shall utilize a specific method of accepting applications for Project with due consideration for objectivity and transparency in the conduct of evaluation, recommendation and issuance of Permits.

The DNG-REC will recommend the issuance of Permits, for the approval of the Secretary, after compliance to the following considerations:

- a. The proposed Project is consistent with the declaration of policies in this Circular;

b. Applicant has complied with the complete submission of the legal, technical and financial documentations as set out in the Permit Application Guideline;

c. The proposed Project shall be technically and financially viable by ensuring, among others, that there is:

- 1. sufficient market for Natural Gas to justify the construction of the Downstream Natural Gas Facility;
- 2. sufficient supply of imported LNG or Indigenous Natural Gas; and
- 3. clear source of funding for the construction, expansion, rehabilitation, modification, operation and maintenance of the proposed Natural Gas Facility.

d. The proposed Project shall not result to any Anti-Competitive Act.

SECTION 1.2 Periods and Application Procedures for the Issuance of Permit

The periods and application procedures for the issuance of Permits are provided for in guideline no. 6 of the Permit Application Guideline.

Request for any extension on the periods granted for NTP and PCERM shall be allowed by the DNG-REC with the approval of the DOE Secretary but only in case of Force Majeure subject to the following conditions:

- a. That the Operator shall notify the DNG-REC in writing, with details and proof of the existence of the cause of the force majeure and the actions taken to resolve it, within thirty (30) days from the knowledge of its existence or occurrence; and
- b. That the Operator satisfies the DNG-REC and the DOE Secretary of its proposed

work program and funding commitments to warrant the extension.

The Operator shall then be given an extended period equivalent to the approved amended work program supporting the extension.

SECTION 1.3 Modification

The DNG-REC may recommend, for the approval of the DOE Secretary, the modification of any condition of any Permit upon application by the Operator but subject to applicable provisions of this Circular and its annexed guidelines.

SECTION 2. Natural Gas Supply

- a. The existing Philippine laws and rules governing the Upstream Natural Gas Sector allow the Government the option to sell directly or otherwise authorize a petroleum service contractor to sell its share in the production of Indigenous Natural Gas. For this purpose, the Secretary or his/her authorized representative may consider the evaluation and recommendation of the joint Upstream Conventional Resource Review and Evaluation Committee and the DNG-REC in the negotiation process and subsequent approval of the gas sale and purchase agreement; and
- b. The Operator of the LNG Terminal shall ensure the accommodation of both Liquefied Indigenous Natural Gas and imported Liquefied Natural Gas. The DOE shall support and ensure the implementation of any plans to upgrade the terminal and its ancillary facilities into a hub for international trading and Transshipment.

SECTION 3. Accreditation, Registry and Reportorial Requirements of PDNGI Value Chain Participants

- a. Importer and supplier complying with the Importer and Supplier

Accreditation Guideline shall be issued an Accreditation Certificate (LNG-IAC) and shall be qualified thereafter to apply with the OIMB for the issuance of an Acknowledgement to Import LNG (ATI-LNG) and Acknowledgement to Supply and Transport Natural Gas (AST-NG) consistent to the application; and

- b. The Operators, their facilities and activities shall be registered and the required reportorial requirements shall be submitted to the OIMB for proper supervision and monitoring in accordance with the Operator and Facility Registry and Reportorial Requirements Guideline.

SECTION 4. Application Fee

The Applicant shall pay the DOE a non-refundable fee for the processing and evaluation of its application as provided in the latest DOE Approved Schedule of Fees and Charges.

SECTION 5. Confidential Information

The DOE shall not use confidential or commercially sensitive information for purposes other than those provided herein and shall protect and limit the disclosure of confidential or commercially sensitive information unless allowed by the Operator or when required by law, rules and regulations.

SECTION 6. Rules of Practice

Any legal proceeding relative to the application, interpretation and implementation of this PDNGR before the DOE shall be in accordance to the Department Circular No. DC2002-07-004, otherwise known as the Rules of Practice and Procedure before the Department of Energy. The Rules of Court shall apply in suppletory manner.

RULE 7. FRANCHISE REQUIREMENT

SECTION 1. Transmission and Distribution Pipeline as Public Utility

Transmission and/or Distribution Pipelines functioning as Public Utility shall require a congressional franchise and certificate of public necessity and convenience or similar legislative authorization.

SECTION 2. Public Utility Pipeline Service Pricing

The DOE in coordination with ERC shall be responsible in the fixing and regulating of rates or schedule of prices for the use of Transmission and/or Distribution Pipelines functioning as Public Utility. The principle of full recovery of prudent and reasonable costs incurred, including a reasonable return on rate base that is consistent with the encouragement of private investment and goal of developing the PDNGI Value Chain, or such other principles that will promote the determination of just and reasonable rates shall be applied.

SECTION 3. Ownership Requirement of a Public Utility

A Congressional Franchise as a Public Utility must only be granted to Persons complying with Article XII, Section 11 of the 1987 Philippine Constitution.

RULE 8. THIRD PARTY ACCESS

SECTION 1. Third Party Access Guiding Principles

Excess Capacity of the LNG Terminal, Transmission System, Distribution System and other services offered by the Operator shall be available on a transparent and non discriminatory access by third party users.

The TPA guidelines to be subsequently issued by the DOE shall be based on the following principles:

- a. Encourages competition which drives efficiencies and lowers costs and price to consumer;

- b. Supports foreign and local investments in energy supply and infrastructure which is otherwise prevented by actions of incumbent monopolistic companies;
- c. Promotes diverse and sustainable sources of energy and enhance security of supply;
- d. Introduces safe and measurable standards of service and practices;
- e. The Operator shall comply with an open and sufficient consultation process on both existing and potential third party users to discuss the available excess capacity and other available services; and
- f. For the purpose of ensuring transparency, the Operator shall comply with the release and publication of the access terms and conditions;

SECTION 2. Available Excess Capacity

Third Party Access obligations shall apply to the available and uncommitted excess Capacity of the LNG Terminal, Transmission System and Distribution System.

To ensure safe and reliable operation, the Operator shall determine, subject to the review and recommendation of the ONG-REC and approval of the DOE Secretary, the maximum and excess capacity of the Natural Gas Facilities offered to third parties. The Operator shall allocate such excess capacity based on, but not limited to, the following criteria as they pertain to the Third Party User:

- a. Proposed contract price and terms;
- b. Credit-worthiness;
- c. Existence of off-take facility; and
- d. Ability to meet fuel specification parameters of the LNG facility.

Non- availment by any Third Party User of the excess capacity so allocated and offered shall not be a ground for the denial or cancellation of any Permit under this Circular.

SECTION 3. Infrastructure Development Period

- a. To encourage initial capital investment in new infrastructure that is critical for developing a viable Downstream Natural Gas Industry, an Infrastructure Development Period shall be considered and determined, during which the Operator shall be exempted from Third Party Access; and
- b. This provision shall also apply to significant increases of capacity in existing Natural Gas Facilities and to any modification of such facilities to enable the development of new sources of gas supply and new gas markets. The exemption may cover all or parts of the new Natural Gas Facility, the existing facilities with significantly increased capacity or the modification of the existing facilities.

RULE 9. PROMOTION OF COMPETITION AND NATURAL GAS RETAIL PRICING

SECTION 1. Guiding Principle

- a. The commercial operations of the activities in the PNRI shall be competitive, transparent and primarily governed by market forces;
- b. Agreements, decisions and concerted practices by a Person or Persons to fix prices and/or fix output are prohibited;
- c. Other practices and/or conduct by a Person or Persons that undermine, restrict or distort competition are likewise prohibited; and
- d. Consist with the applicable provisions of laws, findings and recommendations of

the Philippine Competition Commission (PCC), the DOE Secretary shall adopt asures and/or corresponding remedies to maintain competition.

SECTION 2. Cross-Ownership

Cross-ownership from the Natural Gas Facilities, their operations, importation and supply of Natural Gas to Customers, shall be allowed for operational and financial feasibility considerations. In all cases, the State shall apply the provisions of this Circular and other applicable laws and regulations concerning the ownership and operation of businesses affected with public interest and prohibition of monopolies and combinations in restraint of trade.

SECTION 3. Natural Gas Retail Pricing

The retail price of Natural Gas converted from LNG shall be deregulated, except operation of facility considered as Public Utility, but shall be unbundled to the extent of reflecting the following basic pricing components: (1) Landed Cost of the Natural Gas and (2) Tolling Fee.

RULE 10. STANDARDS OF FACILITY, PRODUCT AND SAFETY PRACTICE

A. FACILITY

SECTION 1. Standards

Downstream Natural Gas Facilities must be predicated on their high quality and efficient service, stringent safety systems and overall attention to detail in design, solid construction and best operational practices. Regulations shall focus on its consistency to both applicable Philippine and Internationally Accepted Standards in the Natural Gas industry.

SECTION 2. Critical Safety Conditions of the LNG Ships

- a. The Operator of the LNG Terminal and the Maritime Agencies shall require a certification from the LNG vessel operator that the LNG vessel design, construction, and operations complied with international standards and codes relating to fitness to travel, hull requirements, cargo containment, pressure/temperature controls, safety systems, fire protection, and crew training, among other issues.

Marine quality assurance for LNG carriers is provided through the process of vetting, which assesses ship quality against a known standard to determine its acceptance for use. Vetting is conducted by shipping companies using employees or independent contractors on their own ships as well as chartered ships;

- b. LNG ship unloading to the LNG receiving facility shall be equipped with redundant safety system on emergency shutdown, quick release, containment and rescue; and
- c. Ship must have a comprehensive security plan which shall provide preventive, detection, alert and rescue system.

SECTION 3. Critical Safety Conditions of the Facility

Generally, multiple layers of protection are created by critical safety conditions, all of which are integrated with a combination of industry standards and regulatory compliance. Industry standards are written to guide industry and enable public officials to efficiently evaluate safety, security, and environmental impacts of LNG facilities. Regulatory compliance should ensure transparency and accountability in the public domain.

The following requirements for primary containment, secondary containment,

safeguard systems, separation distance, industry standards/regulatory compliance, operational safety and accident, damage and discontinuation of operation standards, shall be applied across the PDNGI Value Chain, from production, liquefaction, and shipping, to storage and re-gasification:

a. Primary Containment

Employing suitable materials for storage tanks and other equipment and appropriate engineering design throughout the PDNGI Value Chain is the most important safety requirement for the industry in order to contain the LNG.

b. Secondary Containment

This second layer of protection ensures that if leaks or spills occur, the LNG can be contained and isolated. For onshore installations, dikes and berms should surround liquid storage tanks to capture the product in case of a spill. In some installations, a reinforced concrete tank should surround the inner tank that normally holds the LNG. Secondary containment systems are designed to exceed the volume of the storage tank. Double and full containment systems for onshore storage tanks may eliminate the need for dikes and berms.

c. Safeguard Systems

In the third layer of protection, the goal is to minimize the release of LNG and mitigate the effects in case of a release. At this level of safety protection, LNG operations use systems such as gas, liquid and fire detection to rapidly identify any breach in containment including use of remote and automatic shut off systems to minimize leaks and spills in case of failures. Operational systems (procedures, training and emergency response) supplement in the prevention and mitigation of hazards. Regular

maintenance of these systems is vital to ensure their reliability.

d. Separation Distance

Regulations have always required that LNG facilities be sited at a safe distance from adjacent industrial, communities and other public areas. Safety zones are to be established by the Operator around LNG ships while underway in Philippine waters and while moored. The safe distances or exclusion zones are based on LNG vapor dispersion data, and thermal radiation contours and other considerations as specified in regulations used by the Operator.

e. Industry Standards/Regulatory Compliance

No systems are complete without appropriate operating and maintenance procedures being in place and with insurance that these are adhered to, and that the relevant personnel are appropriately trained. Organizations such as the Society of International Gas Tanker and Terminal Operators (SIGTTO), Gas Processors Association (GPA) and National Fire Protection Association (NFPA) produce guidance which comes from industry best practices.

f. Safety Standard

In order to maintain HSSE best practices, policies and regulations in the operation of the Natural Gas Facility, all operators shall comply with the Philippine and Internationally Accepted Safety Standards and best practices on areas of design and construction, management system, operation system, maintenance system, personnel development and training community health and safety preparedness and emergency response.

g. Accident, Damage and Discontinuation of Operations

Should there be an accident, damage or discharges of Natural Gas or hazardous materials or substances from the Natural Gas Facility, the Operator, in addition to the obligations stated above, shall promptly inform the DOE Secretary, DNG-REC Chair and the Director of the Oil Industry Management Bureau (OIMB), and submit a preliminary report to the DOE within forty eight (48) hours containing relevant information on the initial assessment of the incident and the emergency response taken.

Within seven (7) days from the submission of the preliminary report, the Operator shall submit a comprehensive and detailed report to the DOE Secretary, DNG-REC Chair and the Director of OIMB and the members of the PIA-HSSE-IMT containing its official findings on the damage to the Natural Gas Facility and its corresponding environment and all other relevant information on the steps taken to resolve and address the cause of the incident.

Should the Operator and the DOE, in coordination with the PIA-HSSE-IMT, determine that a condition exists in any segment of the Natural Gas Facility which may endanger life or property, the affected segment or facility shall be taken out of operation and proper remedial action shall be taken to prevent further damage and apply subsequent repair or replacement measures. In all these stages, the Operator shall submit a complete report and documentation to the DOE.

SECTION 4. Critical Safety Conditions of the Pipelines and the Transmission and/or Distribution Related Facilities

In addition to the compliance requirement of the safety conditions under Section 3 of Rule 10, the following conditions shall further apply:

a. Impact on Public Infrastructure

The Operator shall ensure technical and regulatory compatibility to that of other public infrastructures with proper consultation, coordination and permitting done with other Government Agencies responsible for any bridges, roads, harbors, streams, rivers and coastal waterways.that will be affected by the Pipeline projects.

b. Pipeline Testing

No Pipeline testing shall be done without the presence and proper coordination with the DNG-REC in coordination with PIA-HHSE-IMT.

All certificates for hydrostatic tests referred to in this section and all radiographs or ultrasonic testing results of pipeline welds shall at all times be readily available to a DOE inspector or its authorized representative and shall not be destroyed or otherwise disposed of except with the permission in writing from the DOE.

c. Signage

In the interest of public safety and welfare, signs or markers shall be erected and maintained in strategic locations. Operator shall advise concerned local government units (LGUs) and appropriate government agencies about the existence of the pipeline related facilities within their respective jurisdiction and shall provide such LGUs and appropriate government agencies detailed maps of their Pipeline routes.

B. PRODUCT

SECTION 1. Quality

The Operator shall maintain the quality of gas supply to Customers in accordance with

the Philippine or Internationally Accepted Standards and ensure that delivery of Indigenous or imported LNG must always pass the purification requirements from associated compounds unnecessary or damaging to the LNG regasification facility.

SECTION 2. Measurement of Natural Gas

Unless otherwise approved by the DOE, the Natural Gas will be measured according to the relevant standards as developed and maintained by the Organization for Standardization (ISO) and in particular:

- a. The volume of Natural Gas will be measured in cubic meters under standard conditions specified in Section 3 below and all reporting will be in units of standard cubic meter (SCM); and
- b. The net value of Natural Gas will be measured in Joules and all reporting will be in joules (J) with a quantity prefix, such as megajoules (MJ), terajoules (TJ), • oules(PJ), etc., as appropriate.

SECTION 3. Standard Conditions

Standard conditions for the purpose of this Circular shall mean the conditions of Natural Gas at a temperature of 15.5 degrees Celsius (°C) (288.15°Kelvin) and an absolute pressure of 0.101325 megapascals (Mpa) or 1013.25 millibars.

C. SAFETY PRACTICE

Submission of HSSE Management Systems, management and employee structure, manpower complement, qualification and competency / training development program and mitigation plans to address the risks at ALARP levels in the following areas:

- a. Environmental Risk Assessment and Management Plan;
- b. Occupational Health and Safety Risk Assessment and Management Plan;

- c. Facility Security Risk Assessment and Management Plan; and
- d. Disaster/ Emergency Preparedness and Response Plan.

RULE 11. RESPONSIBILITIES OF THE OPERATOR

- a. Align all its goals and objectives to the accomplishment of the declared policies of this Circular;
- b. Be directly responsible for the construction and operation by providing the necessary services, technology and financing, either by itself or through its duly authorized subcontractors, without entitlement from the Philippine Government to any reimbursement of any expense incurred;
- c. Comply with applicable Philippine laws and regulations relating to tax, labor, health, safety, indigenous people's rights, environment and specially protected areas and ecology;
- d. Comply with the regulatory obligations, maintenance of complete records and submission of all reportorial requirements and other documents as maybe required by the DOE under the authority of this Circular and its implementing Guidelines;
- e. Implement the Natural Gas Facility strictly adhering to the scope and limits of the Permit and Operate in accordance to the Philippine and Internationally Accepted Standards;
- f. Provide Insurance Policy pursuant to Section 1 of Rule 15;
- g. Submit an abandonment plan and establish a corresponding sinking fund pursuant to Section 2 Rule 15;
- h. Abide by the requirements of assignment or transfer of interest pursuant to Section 3, Rule 15;

- i. Facilitate the necessary preparations based on a valid order, and allow examiners of the Bureau of Internal Revenue and Bureau of Customs entry, to the facility premises and full access to accounts, books, and records for tax and other fiscal purposes, in accordance with BIR and Customs rules and procedures;
- j. Facilitate the necessary preparations , based on a valid order, and allow DOE, PIA HSSE IMT and other Government Agencies, entry to facility premises and full access to operational records for inspection and monitoring activities in accordance with the rules and procedures of such government agencies;
- k. Give preference to qualified local talents for hiring and local companies/agencies in entering into subcontracts on projects or services which are required in the constructions or operations;
- l. Hold the DOE, its officers and employees, and PIA-HSSE IMT free from all claims, demands or actions arising out of its failure to comply with laws, regulations, standards, contracts, and permits in connection but not limited to accidents, damages or injuries; and
- m. Participate in regular operational meeting with the DNG-REC and in the development, issuance and review of plans, protocols, standards and codes applicable to the Natural Gas Facility.

RULE 12. DOWNSTREAM NATURAL GAS REVIEW AND EVALUATION COMMITTEE

This Circular authorizes the creation of a Downstream Natural Gas Review and Evaluation Committee (DNG-REC) which shall perform the following functions:

- a. Examines, evaluates, and reviews the legal, technical and financial capabilities of Applicants and recommends to the Secretary the issuance of Downstream

Natural Gas Permits, namely NTP, PCERMs and POMs;

- b. Recommends to the Secretary the issuance of directives to qualified Government Agencies in their capacities as investing arms to spearhead the development of the PDNGI Value Chain in case it is imperative to catalyze its development with.in the timeline given;
- c. Recommends to the Secretary the issuance of standards and policies on facility, product and practice to ensure safety, quality, efficiency and economy;
- d. Supervises and monitors the progress of construction and operation of Downstream Natural Gas Facilities and authorizes conduct of inspection and monitoring activities in coordination with the Philippine Inter-Agency Health, Safety, Security and Environment Inspection and Monitoring Team (PIA-HSSEIMT);
- e. Addresses any inquiry that maybe raised by the Secretary in connection to the policies and programs endorsed for the Secretary’s execution and approval;
- f. Recommends for approval of the Secretary and in coordination with the ERG the applicable rates or schedule of prices for the use of Transmission and/or Distribution Pipelines;
- g. Resolves issues in relation to the legal, technical and financial capabilities of Applicants; and
- h. Implements all other necessary measures allowed under existing laws, rules and regulations.

PART IV TRANSITORY PROVISIONS

RULE 13. EXISTING SYSTEMS

Natural Gas Facilities that have been constructed prior to the Effectivity of this Circular shall continue to be operated under their existing Permits and comply with additional requirements, if applicable, under this Circular.

Suppliers who have entered into GSPAs with Customers and have delivered Indigenous Natural Gas or imported Natural Gas prior to the Effectivity of this Circular shall continue to operate under said contracts subject to compliance to the additional requirements in this Circular.

RULE 14. PENDING APPLICATIONS

All pending applications under the PDNGI Value Chain before the DOE shall be covered by this Circular.

**PART V
FINAL PROVISIONS**

**RULE 15. INSURANCE, ABANDONEMENT
AND DECOMMISSIONING AND
ASSIGNMENT OF INTEREST**

SECTION 1. Insurance

The Operator shall secure an Insurance policy to be provided to the DOE within sixty (60) days from date of issuance of PCERM and POM, respectively, to adequately cover/ answer any identified potential damage to the environment, lives and/or property, in accordance with existing laws, rules and regulations based on the environmental (land, air, water and people) impact identification, prevention and mitigation assessment and the seismic, geologic, oceanographic, atmospheric and security hazard to infrastructure and process identification, prevention and mitigation assessment.

**SECTION 2. Abandonment and
Decommissioning**

- a. The Operator shall submit an abandonment plan and establish a corresponding sinking fund in the form of a trust account with a reputable commercial bank in the Philippines in favor of the DOE, the amount of which shall be equivalent to the estimated abandonment and decommissioning cost, starting three years (3) years before the end of the POM term if without any plan for renewal or at any point whenever an immediate withdrawal from the Natural Gas Facility is made without any transferee; and
- b. No Natural Gas Facilities for which a Permit has been issued shall be abandoned or withdrawn from service by the Operator without obtaining prior written authorization from the DOE and approval by the DOE of an abandonment and decommissioning plan based on Philippine or Internationally Accepted Standards at that time. The Operator shall complete the abandonment and decommissioning in accordance with the approved abandonment and decommissioning plan.

SECTION 3. Assignment or Transfer of Interest of Operatorship

Assignment or transfer of interest of Operatorship shall be allowed only upon prior written approval of the DOE Secretary based on the requirements of Guideline 7.a.4 of the Permit Application Guideline.

RULE 16. CONSULTATION AND ARBITRATION

- a. The DOE and Operator (Parties) shall make their best efforts to amicably settle any dispute arising from the performance or interpretation of any provision hereof.
- b. Disputes arising between the Parties relating to this Circular or any Permit, the interpretation and performance of any of their provisions or conditions, which cannot be settled amicably, shall be settled by arbitration. The Parties shall each appoint one (1) arbitrator and so advise the other Party within thirty (30) days after receipt of a written request to do so. Such two (2) arbitrators shall appoint a third arbitrator. If either Party fails to appoint an arbitrator within thirty (30) days after receipt of a written request from the other Party to do so, such arbitrator shall be appointed, at the request of the other Party, by the President of the International Chamber of Commerce. If the first two (2) arbitrators appointed as aforesaid fail to agree on a third arbitrator within thirty (30) days after receipt of a written request from the other Party to do so, such third arbitrator shall be appointed, at the request of the other Party, by the President of the International Chamber of Commerce. If an arbitrator fails or is unable to act, his successor will be appointed in the same manner as the arbitrator whom he succeeds. Unless the Parties agree otherwise, Singapore shall be the venue of the arbitration proceedings.
- c. The English language shall be the official language to be used in the arbitral proceedings. All hearing materials, statement of claim or defense, award and the reasons supporting them shall be written in English.
- d. The decision of a majority of the arbitrators shall be final and binding upon the Parties. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial recognition of the award and an order of enforcement as the case may be. Each Party shall bear its respective cost of arbitration unless the arbitrators decide otherwise.
- e. Except as provided in this Rule, arbitration shall be conducted in accordance with the

Rules of Arbitration of the International Chamber of Commerce, then in effect and administered by the International Chamber of Commerce.

RULE 17. INCENTIVES

To attract foreign and domestic investment into the PDNGI, the Government offers various incentives through the Board of Investments (BOI) pursuant to Executive Order (EO) No. 226 or its successor, otherwise known as the Omnibus Investments Code of 1987 or pursuant to RA 7916 or the Special Economic Zone Act of 1995. The Operator, with the assistance of the DOE, may avail of these incentives subject to compliance to its inclusion and registration as either part of preferred areas of investments, pioneer or non-pioneer, export production as well as those rehabilitating and expanding its existing operation.

RULE 18. OFFENSES AND PENALTIES

SECTION 1. Offenses

An offense is committed by an Operator who violated:

- a. Any section or rule of this Circular;
- b. Any condition of a Permit; and
- c. Any relevant order of the DOE.

SECTION 2. Penalties

Commission of an offense under Section 1 of this Rule shall be subject to the imposition of penalties by the DOE in accordance with existing laws. Each day of non compliance shall be considered a separate violation.

In addition DOE may suspend or cancel the Permits issued under this Circular including

recommendations for the cancellation of the relevant permits and clearances from the other Government Agencies;

SECTION 3. Enforcement of Rules,

The DOE shall conduct investigations upon its own initiative or upon receiving a complaint in writing and under oath of any allegation of violation under Section 1 of this Rule in accordance with Department Circular No. 2002-07-004 otherwise known as the Rules of Practice and Procedures before the DOE

RULE 19. REPEALING CLAUSE

DOE Circular 2002-08-005 or the Interim Rules and Regulations Governing the Transmission , Distribution and Supply of Natural Gas and all other rules and regulations or parts thereof, which are inconsistent with the provisions of this Circular are hereby repealed or modified accordingly.

RULE 20. SEPARABILITY CLAUSE

Should any provision of this Circular be subsequently declared invalid or unconstitutional, such parts not affected thereby shall remain in full force and effect.

RULE 21. EFFECTIVITY

This Circular shall take effect fifteen (15) days after its complete publication in at least two newspapers of general circulation and submission of a copy to the University of the Philippines Law Center.

Done this ____ of _____, 2017 in Bonifacio Global City, Taguig City, Metro Manila.

ALFONSO G. CUSI
Secretary

ANNEX A

PERMIT APPLICATION GUIDELINE

1. Coverage

This Guideline shall apply to the determination of the legal, technical and financial qualifications of an Applicant, the evaluation of applications and the grant of permits to construct, expand, rehabilitate, modify, operate and maintain Downstream Natural Gas Facilities referred to in Rule 5 of the Philippine Downstream Natural Gas Regulation (PDNGR).

2. Downstream Natural Gas Review and Evaluation Committee (ONG-REC).

The DNG-REC is hereby constituted to carry out the responsibilities as set forth in Rule 12 of the PDNGR and shall be composed of the following:

Chair Supervising Undersecretary,
Oil Industry Management Bureau or as otherwise designated by the DOE Secretary

Vice Chair: Supervising Assistant Secretary, Oil Industry Management Bureau or as otherwise designated by the DOE Secretary

Members Director, Oil Industry Management Bureau (OIMB) Director, Legal Services (LS) Director, Financial Services (FS) Director, Information Technology and Management Services (ITMS)

3. Responsibilities of the ONG-REC.

- a. Examines, evaluates, and reviews the legal, technical and financial capabilities of Applicants and recommends to the Secretary the issuance of Downstream Natural Gas Permits, namely NTP, PCERMs and POMs;
- b. Recommends to the Secretary the issuance of directives to qualified Government Agencies in their capacities as investing arms to spearhead the development of the PDNGI Value Chain in case it is imperative to catalyze its development within the timeline given;
- c. Recommends to the Secretary the issuance of standards and policies on facility, product and practice to ensure safety, quality, efficiency and economy;
- d. Supervises and monitors the progress of construction and operation of Downstream Natural Gas Facilities and authorizes conduct of inspection and monitoring activities in coordination with the Philippine Inter-Agency Health, Safety, Security and Environment Inspection and Monitoring Team (PIA-HSSE IMT);
- e. Addresses any inquiry that maybe raised by the Secretary in connection to the permits, policies and programs endorsed for the Secretary's execution and approval;
- f. Recommends for approval of the Secretary and in coordination with the ERC the applicable rates or

- schedule of prices for the use of Transmission and/or Distribution Pipelines functioning as Public Utility;
- g. Resolves issues in relation to the legal, technical and financial capabilities of Applicants; and
- h. Implements all other necessary measures allowed under existing laws, rules and regulations.

4. DNG-REC Secretariat.

The DNG-REC Secretariat shall assist the DNG-REC in all activities related to PDNGI and shall be composed of the following:

Head	Assistant Director, OIMB
Members	Head, Natural Gas Management Division, OIMB
	Head, Downstream Conventional Energy Division, LS
	Head, Downstream Conventional Energy Division, FS
	Head, Information Services, ITMS

5. Special Evaluation Committee or Technical Working Group.

The DNG-REC shall recommend to the Secretary the creation of Special Evaluation Committee or Technical Working Group to support the DNG-REC in the implementation of this Guideline.

6. Application Procedures and Periods

- a. Notice To Proceed (NTP)

1. The Applicant shall submit a letter-request for a pre-application conference addressed to the DNG-REC Chair;
2. The DNG -REC shall, within three (3) working days from receipt of the letter request, send a reply-letter to the Applicant stating thereof the schedule of the pre-application conference;
3. During the pre-application conference, the Applicant shall present the general project concept to the DNG-REC including the discussions on any clarification or the rules and requirements of the permit application;
4. The Applicant shall submit the application with all the documentary requirements, including the payment of processing fee, addressed to the DNG-REC Chair;
5. The DNG-REC shall, within thirty (30) working days from receipt of the application, evaluate, resolve and inform the Applicant whether or not it has submitted completely all the documentary requirements. A complete application shall qualify for further substantive legal, technical and financial evaluation while incomplete submission shall be automatically rejected without prejudice to the right of the Applicant to re-apply;
6. The DNG-REC shall conduct, within forty five (45) working days, the substantive legal, technical and financial evaluation and recommend, for approval of the DOE Secretary, the issuance or non-issuance of the NTP;

7. The DOE Secretary shall, within fifteen (15) working days from date of receipt of the recommendation from the DNG-REC, review and decide on the recommendation for approval or non-approval of the NTP.

The DOE Secretary may, within an appropriate additional period given to the DNG-REC, require further explanation, clarification or re-evaluation of the recommendation;

b. Permit to Construct, Expand, Rehabilitate, and Modify (PCERM)

8. Upon approval and issuance of the NTP, the Applicant shall be given an NTP period of six (6) months from date of issuance of NTP, extendable for up to a maximum of six (6) months upon approval of the DNG-REC, unless extended again due to Force Majeure, to secure permits or clearances from the other Government Agencies and Financial Closing (NTP Conditions);
9. Within five (5) working days from the end of the NTP period, the Applicant shall submit, for validation of the DNG-REC, its compliance to the NTP Conditions;
10. Upon validation of the fulfillment of the NTP Conditions, the DNG-REC shall then recommend, for approval of the DOE Secretary, the issuance or non issuance of the PCERM as an authority of the Operator to proceed with the construction or expansion , rehabilitation or modification, whenever applicable, of the Natural Gas Facilities;

11. The DOE Secretary shall, within fifteen (15) working days from date of receipt of recommendation from the DNG-REC, review and decide on the recommendation for approval or non- approval of the PCERM.

The DOE Secretary may, within an appropriate additional period given to the DNG-REC, require further explanation, clarification or re-evaluation of the recommendation;

12. To monitor the progress of the project, the Operator is required to submit regular progress report, as required under guideline no. 10 of this Annex A, to the DNG-REC and, in coordination with the PIA-HSSE IMT, shall conduct on-site progress validation. The completion of construction shall be within the approved construction timeline;

c. Permit to Operate and Maintain (POM)

13. Within thirty (30) working days from the practical completion of the construction, the Operator shall submit an application for POM attaching the Requirements for the issuance of POM under Guideline 7.2.3 of this Annex A;
14. The DNG-REC , in coordination with the PIA-HSSE IMT, shall verify the completion of construction and compliance to the testing and commissioning requirements under the EPC contract and that the Natural Gas Facility otherwise complies with applicable regulation. Upon

verification, the DNG-REC shall recommend, for approval of the Secretary, the issuance of POM; and

15. The DOE Secretary shall, within fifteen (15) working days from date of receipt of the recommendation from the DNG-REC, review and decide on the recommendation for approval or non- approval of the POM.

The DOE Secretary may, within an appropriate additional period given to the DNG-REC, require further explanation, clarification or re-evaluation of the recommendation ; and

16. By the authority of POM, the Operator shall proceed to the commercial operation of the Downstream Natural Gas Facilities for an initial period of twenty (25) years renewable for up to a maximum of twenty five (25) years subject to the following conditions:

- i. That the Operator and the Natural Gas Facilities continue to be legally, technically and financially competent to operate for the renewal period; and
- ii. That the Operator shall submit the renewal application at least six (6) months before the expiration of the POM.

7. Documentary Requirements

a. General Information

1. The Applicant shall refer to (1) any local and/or foreign individual company, or

(2) incorporated joint venture Company, or (3) the designated member of an unincorporated joint venture or consortium, which is authorized for the purpose of engaging in the Downstream Natural Gas Project and wishes to secure any Permit under this Circular. The ownership and operation of the transmission and distribution pipeline considered as Public Utilities shall comply, however, with the ownership requirements pursuant to Section 3, Rule 7 of the PDNGR;

2. If the Applicant is an unincorporated joint venture or consortium, it shall, in all cases and stages of the application, construction or operation, designate from among them an Applicant who shall, in behalf of the joint venture/consortium, apply and represent the joint venture/consortium in all its dealing with the DOE;
3. The Applicant may include the submission of the qualifications of its Applicant Group;
4. Assignment or transfer of interest of Operatorship shall be allowed only upon prior written approval of the DOE Secretary based on the following documentary submissions:
 - i. Letter to the Secretary and attention to the DNG-REC of the notice of assignment/ transfer of interest and the reasons thereof;
 - ii. Original Copy of the assignee's Corporate Secretary's Certificate

showing assumption by the assignee of all the rights and obligations of the Operatorship and attached thereof is the certified true copy of the assignment agreement ;

- iii. Submission of assignee's complete legal and financial documentation as set out in the Permit Application Guideline;
 - iv. Description of the assignee's project management team; and
 - v. Proof of its financial closing to continuously fund the Downstream Natural Gas Project.
5. A foreign-registered Applicant shall submit its legal, technical and financial documents in English language and duly authenticated by its embassy which has operational coverage of the Philippines;
6. The application must be both in paper, with two (2) complete sets of legal, technical and financial documents, and digital (USB Drive in PDF format).

Recommended format is the use of the Times New Roman at 12 font and in single line spacing, figures in A4 size and maps at an appropriate scale;

7. A non-refundable processing fee shall be paid by the Applicant in accordance with the latest DOE approved schedule of fees and charges (Annex A-1), upon submission of the application

and its supporting documents. Payment may be made in cash, manager/company check or by wire/bank transfer payable to the Philippine Department of Energy. All payments should be net of all applicable foreign and local bank and financial charges. Application is not considered accepted by the DOE without full payment of the processing fee; and

8. The application shall be sent by courier, registered mail, or hand-delivered, stamped-received by the DOE Records Division and addressed to:

The Chair

Downstream Natural Gas-Review and Evaluation Committee
Department of Energy
Energy Center, Rizal Drive,
Bonifacio Global City, Taguig City,
Metro Manila, 1632,
Philippines

b. Documentation

1. Requirements for the Issuance of NTP

The Applicant shall submit the following documents to the DOE and shall keep all such documents and other information forming part of an application confidential in accordance with Section 5, Rule 6 of the PDNGR:

i. Legal Documentation

1. Duly filled-out covering information sheet showing a brief profile of the Applicant (Annex A-2);

2. Certified true copies of the Securities and Exchange Commission (SEC) Certificate of Registration, Articles of Incorporation and By laws, and latest Certificate of Amendment, if applicable; or their foreign equivalents. The corporate purpose of the Applicant shall include the authority to construct and operate Downstream Natural Gas Facilities;
3. Certified true copy of the updated General Information Sheet (GIS), or their foreign equivalent, and stamped-received by the Securities and Exchange Commission (SEC) within twelve (12) months from date of the filing of application; and
4. Original Copy of the Secretary's Certificate showing authority of the Applicant's representative to apply, negotiate, sign and execute documents in relation to the application.

ii. Technical Documentation

1. Applicant Profile

The Applicant shall submit a duly notarized description of its own, or if necessary

including that of the chosen member/s of the Applicant Group, experience and technical capability relevant to carrying out the proposed Project, specifically:

- a. A summary of the company profile, business direction, strategy and major accomplishments in the downstream Natural Gas industry;
- b. A summary and description of all gas-related projects completed and pending, if any, for at least the past three (3) years preceding the date of the application including the assessment of the performance of their construction, operation and economic feasibilities;
- c. Description of the qualifications and experience of key management, professional and technical personnel in the Downstream Natural Gas Facility construction and operation;
- d. Disclosure of any pending or determined with

- finality major safety or environmental enforcement actions by relevant authorities;
- e. Description of existing Natural Gas supply sustainability program and arrangements;
- f. If Applicant Group's technical capability will be used, the Secretary's certificate of the chosen member/s confirming a board resolution authorizing the commitment of the identified technical capability to the proposed Project;
- g. Other information that the Applicant may deem necessary to support its application or as maybe required by the DNG-REC.
- d. Environmental (land, air, water and people) impact identification, prevention and mitigation assessment report of the proposed infrastructure and processes on the proposed site consistent with the Philippine Environmental Impact Statement System Law (EISS) and its implementing rules;
- e. Geologic, Oceanographic, Seismic, Atmospheric, and Security hazard identification, prevention and mitigation assessment report;
- f. Distribution Impact Study (DIS) and Distribution Asset Study (DAS) or embedded power plant construction plan for power supply requirement;
- g. FrontEndEngineeringDesign (FEED) and detailed building and equipment plans and designs (as developed during FEED and together with evidence of completion of the FEED stage) and their corresponding work program and budget;

2. Construction Plans and Designs

- a. General Project Description;
- b. Locational zoning clearance subject to the local government zoning ordinance;
- c. Quantitative risk assessment report for safe distance requirements ;
- 1. Conceptual plans and designs of buildings, other facilities and equipment, with descriptions and flow diagram of their construction and installation processes including the integrity and safety engineering methods and technology applied

- with due consideration of the results of the assessments made from items guideline 2.a to 2.f above;
2. Summary list with sufficient description of the Philippine or Internationally accepted codes and standards specifically used as basis on the formulation of the plans and designs for the construction of buildings and other facilities and the installation of equipment including the materials used therein;
 3. Planned Construction Schedule;
 4. Plot Planis and list of key buildings, other facilities, equipment, access roads, safety zones and distances ;
 5. Manpower and construction equipment requirements ;
 6. Management of change system;
 7. Maintenance of records system;
- h. Third party quality assurance program validation:
1. Safety and Quality Assurance Certifications of the plans and designs of the buildings, other facilities and installed equipment;
 2. Safety and Quality Assurance Certifications of the material used on the construction, facilities and equipment; and
 3. Safety and Quality Assurance Certifications of the applied engineering and technology for the construction, installation and operation of the buildings, facilities and equipment;
 - i. A summary of the execution plan for the establishment of a professional project management team for construction, installation, testing and commissioning;
 - j. A summary report prepared by the Applicant on other Government agencies' permitting requirements before construction and before operation; and
 - k. Other relevant studies or assessment reports that the Applicant may deem necessary to support its application.
- 3. Health, Safety, Security and Environment (HSSE) Assessment and Management Plan (Construction and Equipment Installation Phase)**
- Submission of HSSE Management Systems, management and employee structure, manpower

complement, qualification and competency/training development program and mitigation plans to address the risks at ALARP levels in the following areas:

a. Environmental Risk Assessment and Management Plan

Consistent with the Philippine environmental regulations and/or International Standard, a comprehensive assessment and management program shall be established to address project specific risks and potential impacts to the environment.

Potential environmental issues associated with the construction and installation of LNG equipment which includes, but are not limited to, the following:

1. Threats to aquatic and shoreline environments;
2. Hazardous material management;
3. Wastewater;
4. Air emissions;
5. Waste management; and
6. Noise

b. Occupational Health and Safety Risk Assessment and Management Plan

Occupational health and safety issues shall be part of a comprehensive hazard identification, risk assessment and

management study which include but is not limited to Hazard Identification study (HAZID), Hazard and Operability study (HAZOP), and qualitative and quantitative risk assessments shall be conducted as appropriate. The results of these studies shall be used as input to the Health and Safety Plans (HASP) specific to construction and equipment installation phases. The HASP shall include but is not limited to environmental and safety processes, and safe systems of work/procedures which shall be prepared, communicated and implemented to manage the risks.

Occupational health and safety issues associated with the construction and installation of Downstream Natural Gas Facilities which includes, but are not limited to, the following:

1. Fire and, explosion ;
2. Roll-over ;
3. Contact with cold surfaces;
4. Chemical hazards;
5. Confined spaces;
6. Working at heights ;
7. Lifting and rigging ;
8. Excavation ; and
9. Other construction and installation related hazards.

c. Facility Security Risk Assessment and Management Plan

Facility security assessment shall be conducted to identify threats which include but is not limited to criminal and terrorist. The vulnerability of the facility/ location against identified threats shall likewise be assessed and corresponding plans shall be put in place.

d. Disaster/ Emergency Preparedness and Response Plan

Based on the HSSE assessment, a plan shall be put in place to prevent, mitigate, respond to, and maintain continuity from an incident that threatens life, property, operations and the environment. Incident as defined is anything that has the potential to cause interruption, disruption, loss, emergency, crisis, disaster or catastrophe; and

e. Other areas of concern that the Operator may deem necessary.

iii. Financial Documentation

The Applicant shall submit the following financial reports for each application:

1. Economic/Financial Feasibility report with clear demonstration of the projected revenue versus the costs associated with the project; and
2. Financial Closing methodology report covering the entire proposed

work program and budget with clear demonstration of ability to meet funding requirements;

Supporting Documents:

1. Certified executed copies, which may be redacted for confidentiality reasons, of all key binding agreements required for the development of the proposed Project:
 - a. Engineering, Procurement and Construction (EPC) agreement/s;
 - b. LNG supply agreement/s of Operators and/or terminal user/s; and
 - c. Gas sales agreement/s by Operator and/or terminal user/s with power or non-power customers.
2. Certified true copy of Applicant's tax clearance certificate from its respective tax regulating Government Agency for the immediate preceding year from year of application as required by the Philippine Executive Order No. 398;
3. For corporations existing for more than two (2) years at the time of filing of application:
 - a. Certified true copy of the Annual Report or Audited Financial Statements (FS) for

- the last two (2) years from the date of the Application and Original copy of the latest Unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer;
- b. Original copy of the Projected Cash Flow Statement covering the cash availability for the entire construction and expansion or modification, if applicable;
 - c. Proof of ability to raise its equity share earmarked for the proposed Project as described in the Financial Closing methodology through any or a combination of the following:
 - i. Original copy of the bank certification to substantiate the cash balance as of 10 business days prior to the date of application; and
 - ii. Existing and readily available credit lines;
4. For newly-organized corporations existing for less than two (2) years at the time of filing of application:
- a. Certified true copy of the Audited Financial Statements (FS) or Original copy of the latest Unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer;
 - b. Original copy of the Projected Cash Flow Statement covering the cash availability for the entire construction and expansion or modification, if applicable;
 - c. Proof of ability to raise its equity share for the project through any or a combination of the following:
 - i. Original copy of the bank certification to substantiate the cash balance as of 10 business days prior to the date of application; and
 - ii. Existing and readily available credit lines;
5. Applicant with insufficient ability to raise its equity share for the proposed Project may seek earmarked fund guarantee from the chosen member/s of the Applicant Group but shall be limited to its corresponding participating interest and shall thereby submit the following:
- a. Certified true copy of the shareholders or Parent Company's

financial documents per 3.a to 3.c and 4.a to 4.c, as applicable; and

- b. Secretary's certificate confirming a board resolution authorizing the contribution to the funding of the equity share corresponding to its participating interest.

2. Requirements for the Issuance of PCERM

The Operator shall proceed with the acquisition of permitting requirements of other Government Agencies for the construction, expansion, rehabilitation or modification, based on the summary report prepared by the Applicant on other Government agencies' permitting requirements which shall include the following:

a. Permits

1. Applicable regulatory permits from the Department of Environment and Natural Resources (DENR) and other requirements to satisfy the Environmental Compliance Certificate (ECC) provisions from the DENR;
2. Endorsement and Permits for Operation from the Local Government Unit (LGU);
3. Certificate of Pre-Condition (CP) from the National Commission

on Indigenous Peoples (NCIP), if applicable;

4. Registration and Permit to Operate from the Department of Labor and Employment (DOLE);
5. Registration with the Bureau of Internal Revenue (BIR), Philippine Health Insurance Corporation (PhilHealth), HDMF-Pag-ibig and Social Security System Corporation (SSS);
6. Fire Safety Inspection Certificate (Fire Code);
7. Sanitary Permit (Sanitary Code); and
8. Other permits as maybe required by law or rules

b. Submission of Proof of Financial Closing.

3. Requirements for the Issuance of POM

After completion of construction, the Operator shall proceed to the application of POM. The Operator shall submit an application for a POM to the DOE within thirty (30) working days from the completion of construction which shall include the following documents:

a. Certificate of Completion;

Refers to the certificate of practical completion and certificate of completion testing issued by the

Engineering, Procurement and Construction (EPC) Contractor with the conformity of the Owner's project manager;

- b. Summary List of Buildings, Facilities and Equipment;
- c. Operational Process with Flow Diagram;

Description of operational process with flow diagram of building, facilities, and equipment for testing, commissioning, operation, repair and maintenance for DOE guidance and reference;

- d. Health, Safety, Security and Environment (HSSE) Assessment and Management Plan (Operational Phase)

Submission of HSSE management systems, management and employee structure, manpower complement, qualification and competency / training development program and mitigation plans to address the risks at ALARP levels in the following areas:

- 1. Environmental Risk Assessment and Management Plan

Consistent with the Philippine environmental regulations and/or International Standard, a comprehensive assessment and

management program shall be established to address project-specific risks and potential impacts to the environment.

Potential environmental issues associated with the construction and installations of LNG equipment include but are not limited to the following:

- i. Threats to aquatic and shoreline environments;
- ii. Hazardous material management;
- iii. Wastewater;
- iv. Air emissions;
- v. Waste management; and
- vi. Noise.

- 2. Occupational Health and Safety Risk Assessment and Management Plan

Occupational health and safety issues shall be part of a comprehensive hazard identification, risk assessment and management study which include but is not limited to Hazard Identification study (HAZID), Hazard and Operability study (HAZOP), and qualitative and quantitative risk assessments shall

be conducted as appropriate. The results of these studies shall be used as input to the Health and Safety Plans (HASP) specific to construction and equipment installation phases. The HASP shall include but is not limited to environmental and safety processes, and safe systems of work/ procedures which shall be prepared, communicated and implemented to manage the risks.

Occupational health and safety issues associated with the construction and installation of Downstream Natural Gas Facilities include but are not limited to the following:

- i. Fire and explosion;
- ii. Roll-over;
- iii. Contact with cold surfaces;
- iv. Chemical Hazards;
- v. Confined spaces;
- vi. Working at heights;
- vii. Lifting and rigging;
- viii. Excavation; and
- ix. Other construction and installation related hazards.

3. Facility Security Risk Assessment and Management Plan

Facility security assessment shall be conducted to identify threats which include but is not limited to criminal and terrorist. The vulnerability of the facility/ location against identified threats shall likewise be assessed and corresponding plans shall be put in place.

4. Disaster/ Emergency Preparedness and Response Plan

Based on the HSSE assessment, a plan shall be put in place to prevent, mitigate, respond to, and maintain continuity from an incident that threatens life, property, operations and the environment which shall be developed in close coordination with the community, local government unit and other stakeholders of the location where they operate. Incident as defined is anything that has the potential to cause interruption, disruption, loss, emergency, crisis, disaster or catastrophe.

5. Community social development program

These programs are intended to improve the well-being of the community in the

- locality where the project is located on areas such as health, education, livelihood and other programs that promotes improvement of the lives and welfare of the community.
6. Other areas of concern that the Operator may deem necessary.
- e. Permitting Requirement of Other Government Agencies for the Operation of the Facility which shall include the following:
1. Applicable regulatory permits from the Department of Environment and Natural Resources (DENR) and other requirements to satisfy the Environmental Compliance Certificate (ECC) provisions from the DENR;
 2. Endorsement and Permits for Operation from the Local Government Unit LG U);
 3. Certificate of Pre-Condition (CP) from the National Commission on Indigenous Peoples (NCIP), if applicable;
 4. Registration and Permit to Operate from the Department of Labor and Employment (DOLE);
 5. Registration with the Bureau of Internal Revenue (BIR), Philippine Health Insurance Corporation (PhilHealth), HDMF-Pag-ibig and Social Security System Corporation (SSS);
 6. Fire Safety Inspection Certificate (Fire Code);
 7. Sanitary Permit (Sanitary Code); and
 8. Other permits as maybe required by law or rules
- 8. Evaluation Criteria**
- a. In order to meet the objectives of the PDNGI development, the DOE Secretary, upon the recommendation of the DNG-REC , shall grant Permits applied for under the formal application process as described under this Guideline on a first-come, first-served basis, with due consideration for objectivity and transparency in the conduct of evaluation, recommendation and issuance of permits.
 - b. First-come, first-served basis shall refer to the process of prioritizing the acceptance and substantive evaluation by order of time and date of application but applicable only . to those with complete legal, technical and financial documentary submissions.
 - c. The DNG-REC and the DOE Secretary shall consider the following criteria in the evaluation of the proposed Project:
 1. The proposed Project is consistent with the Declaration

of Policies in this Circular; and

2. The Applicant:

- i. Has submitted the complete documentary requirements;
- ii. Has shown that the proposed Project can be actually constructed and operated;
- iii. Has clearly demonstrated its ability to meet the funding requirements;
- iv. Has early demonstrated that the proposed Project has sufficient market to justify its construction;
- v. Has clearly demonstrated that the proposed Project has sufficient supply of LNG; and
- vi. Has clearly demonstrated that the proposed Project shall not result to any Anti-Competitive Act.

9. Operational Meeting

The Operator shall participate, with the DNG-REC, in a regular operational meeting and special workshops for the development, issuance and review of plans, protocols, standards and codes applicable to the Natural Gas project;

10. Progress Report and Validation

The Operator shall submit a monthly progress report, as set out in Annex B, of its work commitments under the NTP and PCERM which shall be subject for validation by the DNG-REC in coordination with the PIA- HSSE IMT.

11. Performance

Operators whose permits issued under this Guideline and/or service/operating contract holders whose contracts executed with the DOE, have been terminated for breach, and shall be disqualified from applying under this Guideline.

Annex A-1

SCHEDULE OF FEES AND CHARGES CY 2013

Name of Fee	Amount (Php)
1. For filing an application for the grant of permit or other form of authorization to construct, install, own, operate, and maintain pipeline system to transport energy resources	Php 10.00 per meter of pipeline
2. Processing fee for permit application for LNG terminal and related facilities	Php 113,000 per project application
3. Processing fee for permit application for LNG terminal and related facilities	Php 93,000 per project application
4. Processing fee for permit application for supply of natural gas	Php 81,000 per project application
6. Annual fee for the regulation and supervision of pipeline & transmission and distribution related facilities\	Php 41,000 per facility

Annex A-2

PARTICULARS	OPERATOR	PARENT COMPANY	JOINT VENTURE/ CONSORTIUM MEMBERS	PARENT COMPANY
1. NAME AND PARTICIPATING INTEREST				
2. ADDRESS				
3. COUNTRY OF REGISTRATION				
4. NAME OF AUTHORIZED REPRESENTATIVE				
5. POSITION				
6. TELEPHONE NUMBER/S				
7. FAX NUMBER/S				
8. EMAIL ADDRESS				
9. WEBSITE ADDRESS				
10. SUMMARY DESCRIPTION OF APPLICATION:				
☐ Construct ☐ Expand ☐ Rehabilitate ☐ Modify ☐ Operate & Maintain				

Certification

I certify under penalty of law, based on information and belief formed after reasonable inquiry, the statements and information contained in these documents are true, accurate and complete.

Name and Signature of Authorized Representative: _____ Date: ____/____/____

ANNEX B

OPERATOR AND FACILITY REGISTRY AND REPORTORIAL REQUIREMENTS GUIDELINE

a. NTP Holder

1. Monthly Progress Report

The Operator shall submit a monthly progress report on the status of the permitting, clearances and financial closing acquisition to the DNG-REC, copy furnished the Department of Energy- Oil Industry Management Bureau, Department of Energy (DOE-OIM B) , on or before the fifteenth (15th) day of the succeeding month.

The Operator shall report to the DNG-REC , copy furnished the DOE-OIMB, on any lost-time incident situation and the corresponding action/s taken or to undertaken within twenty-four (24) hours from the time the Applicant has made aware of the situation

b. PCERM Holder

1. Monthly Progress Report.

During construction / expansion / rehabilitation / modification of the Project the Permit holder shall submit a monthly progress report to the DNG-REC, copy furnished the DOE-OIMB , on or before the fifteenth (15th) day of the succeeding month.

This Report shall include, among others, the following;

- i. Gantt chart showing the rate of completion based on the construction timeline;
- ii. Summary of ongoing site activities, schedules and photos;
- iii. Compliance update report to Government permitting, clearances and obligations; and
- iv. Update Report on issues and challenges encountered during the month.

2. Lost-Time Incident Report.

c. POM Holder

1. Registry

The DOE-OIMB shall maintain a registry of all Downstream Natural Gas Facility Operators, their buildings, facilities and equipment. For this purpose, all Operators are required to submit on or before the fifteenth (15th) day of January Annual facility update report containing, among others, the following:

- i. Updated Management Profile; and
- ii. Inventory of building, facilities and equipment and their operational and disposal status

2. Reportorial Requirements to be submitted to the DNG-REC, copy furnished the DOE-OIMB, on or before the fifteenth (15th) day of the succeeding month.

i. Monthly Operation Report.

The Report shall include, but not limited to, the following:

1. Operational Performance;

2. Planned or Projected System Availability and Maintenance Schedule (for the next two years);
3. Production output;
4. Goal-zero Milestones/ Days since Loss Time Incident (LTI);
5. Key developments/ Highlights and Lowlights;

and

6. HSSE Integrity Performance

ii. Lost-Time Incident Report.

The Operator shall report any lost-time incident situation and the corresponding action/s taken or to be undertaken within twenty-four (24) hours from the time the Applicant has been made aware of the situation.

ANNEX C

IMPORTER AND SUPPLIER ACCREDITATION GUIDELINE

1. Accreditation

a. Applicant

Any Person who intends to engage in the import and/or supply and transport of any quantity of Natural Gas shall apply for accreditation with the Department of Energy- Oil Industry Management Bureau (DOE-OIMB).

b. Documentary Requirements

All applications for accreditation to import and/or supply and transport of Natural Gas shall comply with all of the following documentary requirements otherwise the application shall not be accepted:

1. Letter of Intent with the following information:

- i. Company Name (Business name, address, telephone number/s, email address);
- ii. Contact Person and Contact Details; and

iii. Activity to engage in:

- () Import;
- () Supply and Transport
- () Both

2. Supporting documents required:

i. Importer

1. Articles of Incorporation/ Certificate of Registration approved by Securities and Exchange Commission (SEC) including Audited Financial Statement, if corporation and Department of Trade and Industry (DTI), if single proprietorship;
2. Duly executed Secretary's Certificate and Board Resolution naming their authorized representative/s;
3. Business Permit;
4. Importer's Clearance Certificate (ICC) from the Bureau of Internal Revenue ;

5. Certificate of Accreditation as Importer from the Bureau of Customs;
6. Duly executed redacted importation agreement; and
7. Other supporting and relevant documents that the law or rules may require.

ii. Supplier

1. Articles of Incorporation/ Certificate of Registration approved by Securities and Exchange Commission (SEC) including Audited Financial Statement, if corporation and Department of Trade and Industry (DTI), if single proprietorship;
2. Duly executed Secretary's Certificate and Board Resolution naming their authorized representative/s;
3. Business Permit;
4. Duly executed redacted supply agreement; and
5. Other supporting and relevant documents that the law or rules may require.

c. Importer and Supplier Accreditation Certificate

All compliant applications shall be accredited by DOE-OIMB and be issued by an LNG Importer Accreditation Certificate (Annex C-1) and Natural Gas Supplier Accreditation Certificate (Annex C-2)

c. Validity

LNG Importer Accreditation Certificate and Natural Gas Supplier Accreditation Certificate shall have a validity of fifteen (15) years from date of issuance unless earlier revoked or cancelled by DOE-OIMB for a cause. Application for renewal shall be file not later than thirty (30) working days prior to the expiration of the accreditation certificate.

2. Acknowledgement to Import LNG (ATI-LNG) and Acknowledgement to Supply and Transport Natural Gas (AST-NG)

Accredited Importer and Supplier shall send applicable notice prior to every activity. An Acknowledgement to Import LNG (ATI-LNG) (Annex C-3) and Acknowledgement to Supply and Transport Natural Gas (AST-NG) (Annex C-4) shall likewise be issued by the DOE-OIMB.

a. Importation

1. Pre-Importation Requirements

To effectively monitor and ensure conformance to the Basel Convention, accredited Importer shall file a notice (Annex C-5) with the DOE-OIMB not later than seven (7) working days prior to loading of every importation, indicating details and/or supporting documents, as follows:

i. Details of Pre- Importation Notice:

1. Name of Company and OIMB-Accreditation No.;
2. Estimated quantity;
3. Specified quality of Natural Gas or LNG;

4. Estimated date of loading and arrival (ETL & ETA);
5. Supplier of imported LNG;
6. Estimated FOB price, freight, insurance cost and other importation cost;
7. Vessel particulars (name and voyage number); and
8. Country and port of loading and discharge.

ii. Supporting Document:

1. Invoice

2. Post-Importation Documents

Post-importation notice shall be submitted to the DOE-OIMB not later than twenty (20) working days after unloading of every importation with the following supporting documents:

- i. Commercial Invoice;
- ii. Import bill of lading;
- iii. Safety Data Sheet (SDS);
- iv. Certificate of quality;
- v. Final import entry declaration; and
- vi. Statement of Settlement of Duties and Taxes (SSDT)

b. Supply and Transport

1. Domestic

Accredited Supplier shall submit monitoring reports to DOE-OIMB not later than the 15th of the succeeding month.

2. Export

i. Pre-exportation notice

To effectively monitor and ensure conformance to the Basel Convention, accredited Supplier shall file a notice (Annex C-6) with the OIMB-OIMB not later than seven (7) working days prior to loading of every exportation indicating the details and submission of supporting documents, as follows:

1. Details

- a. Name of Company and DOE-OIMB-Accreditation No.;
- b. Type and quantity (volume) of Natural Gas or LNG;
- c. Estimated date of loading and arrival (ETL & ETA); Buyer of exported LNG;
- e. FOB price, freight and insurance cost;
- f. Vessel Particulars (name and voyage number);
- g. Port of Loading; and
- h. Country and Port of Discharge.

2. Supporting Document:	iv. Average unbundled LNG sales Price;
a. Proforma Invoice	
ii. Post-exportation documents	2. Supplier
To account for the record of the actual export, a notice shall be likewise submitted to the OIMB-DOE not later than twenty (20) working days after loading of every export with the following supporting documents:	i. Actual quantity of LNG supply made for the previous month;
1. Commercial Invoice;	ii. Running Inventory;
2. Export Bill of Lading;	iii. Average unbundled LNG purchase price; and
3. Certificate of Quality; and	iv. Average unbundled LNG sales Price;
4. Cargo Manifest.	b. Annual Reports:
3. Monitoring Reports	1. Projected quantity of Imports and/or supply for the next three (3) years.
All registered importers and suppliers shall submit to the DOE-OIMB the monthly reports on or before the fifteenth (15th) day of the succeeding month, with the following details as follows:	4. Compliance
a. Monthly Reports:	Failure to comply with the requirements of this guideline shall be ground for the suspension or cancellation of the accreditation and the non-issuance of ATI and AST for succeeding applications.
1. Importer	Annex C-1 LNG Importer Accreditation Certificate
i. Actual quantity of LNG importation made for the previous month;	Annex C-2 Natural Gas Supplier Accreditation Certificate
ii. Running Inventory;	Annex C-3 Acknowledgement to Import LNG (ATI-LNG)
iii. Average unbundled LNG purchase price; and	Annex C-4 Acknowledgement to Supply and Transport Natural Gas (AST-NG)

Annex C-1: LNG Importer Accreditation Certificate

Date

Company Name

Company Address

Contact Numbers

Email Address

Salutation:

This is to acknowledge receipt of your notification letter dated < Date > relative to your interest in the business as **LNG Importer** with the following information/documents:

- ☐ Company Name (Business name, address, telephone number/s , email address);
Contact Person and Contact Details;
- ☐ Activity to Engage in:
 - () Import;
 - () Supply and Transport;
 - () Both;
 - () Others:
- ☐ Articles of Incorporation/Certificate of Registration approved by Securities and Exchange Commission (SEC), if corporation and Department of Trade and Industry (DTI), if single proprietorship;
- ☐ Duly Executed Secretary's Certificate and Board Resolution naming their authorized representative/s;
- ☐ Importer's Clearance Certificate (ICC) of the Bureau of Internal Revenue (BIR); and
- ☐ Certificate of Accreditation as Importer by Bureau of Customs (BOC);

In this regard, you are deemed to have fully complied with the requirements of Import and Supply Guidelines of PDNGR and as such, you are now a Registered and Accredited Importer of LNG and been issued an LNG Importer Accreditation Certificate.

Further, you are reminded to comply with the requirements of PNCR's Reportorial Requirements including submission of reports.

For your proper guidance and strict compliance.

Very truly yours,

Director

Oil Industry Management Bureau

Annex C-2: Natural Gas Supplier Accreditation Certificate

Date

Company Name

Company Address

Contact Numbers

Email Address

Salutation:

This is to acknowledge receipt of your notification letter dated < Date > relative to your interest in the business as ***Natural Gas Supplier*** with the following information/documents:

- ☐ Company Name (Business name, address, telephone number/s , email address);
- ☐ Contact Person and Contact Details;
- ☐ Activity to Engage in:
 - () Import;
 - () Supply and Transport;
 - () Both;
 - () Others:
- ☐ Articles of Incorporation/Certificate of Registration approved by Securities and Exchange Commission (SEC), if corporation and Department of Trade and Industry (DTI), if single proprietorship; and
Duly Executed Secretary's Certificate and Board Resolution naming their authorized representative/s.

In this regard, you are deemed to have fully complied with the requirements of *Importer and Supplier Accreditation Guideline of PDNGR* and as such, you are now a *Registered and Accredited Natural Gas Supplier* and been issued a *Natural Gas Supplier Accreditation Certificate*.

Further, you are reminded to comply with the requirements of PDNGR's Reportorial Requirements including submission of reports.

For your proper guidance and strict compliance.

Very truly yours,

Director

Oil Industry Management Bureau

ANNEX C-3: Acknowledgement to Import LNG (ATI-LNG)

Date
DOE-OIMB Accreditation#: YYYY-MM-Doc#

Company Name
Company Address
Contact Numbers
Email Address

Attention:

Salutation:

This is to certify your compliance with (reference. i.e. DC or RA) notification requirement for your Importation of LNG from_ _ _ _ _ with details as follows:

PRODUCT	VOLUME (in cubic meter)	EST. GIF PRICE (US\$/mmBTU)	LOADPORT	DISPORT	B/L Date	VESSEL

The following documents were attached in your notification:

- 1. Commercial Invoice
- 2. Import Bill of Lading
- 3. Safety Data Sheet (SDS)
- 4. Certificate of Quality
- 5. Final Import Entry Declaration
- 6. Statement of Settlement of Duties and Taxes (SSDT)

However, as per the reportorial requirements of (reference. i.e. DC or RA), you are also required every 15th of the month, to submit monthly activity report of your actual importation to this Bureau. Failure to comply with the notice requirement shall mean non-issuance of ATI-LNG for your succeeding transactions.

Please be guided accordingly.

Very truly yours,

Director
Oil Industry Management Bureau

cc: BOC Commissioner

ANNEX C-4: Acknowledgement to Supply and Transport Natural Gas (AST-NG)

Date
DOE-OIMB Accreditation#: YYYY-MM-Doc#

Company Name
Company Address
Contact Numbers
Email Address

Attention:

Salutation:

This is to certify your compliance with (reference, i.e. DC or RA) notification requirement for your Supply and Transport Natural Gas to (Name of Company) with details as follows:

PRODUCT	VOLUME (in cubic meter)	EST. FOB PRICE (US\$/mmBTU)	LOADPORT	DISPORT	8 /L Date	VESSEL

The following documents were attached in your notification:

- 1. Commercial Invoice
- 2. Export Bill of Lading
- 2. Certificate of Quality
- 3. Cargo Manifest

However, as per the reportorial requirements of (reference. i.e. DC or RA), you are also required every 15th of the month, to submit monthly activity report of your actual importation to this Bureau. Failure to comply with the notice requirement shall mean non-issuance of AST- NG for your succeeding transactions.

Please be guided accordingly.

Very truly yours,

Director
Oil Industry Management Bureau

cc: BOC Commissioner

Chapter X

DEPARTMENT CIRCULAR NO. DC 2002-07-004

RULES OF PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF ENERGY

Pursuant to the provisions of Section 5 (k) of R.A. 7638, otherwise known as the Department of Energy Act of 1992, in compliance with Executive Order No. 26 dated 7 October 1992, and in line with Department Special Order No. 2000-07-016, dated 13 July 2000, the following Rules of Practice and Procedure are hereby adopted and promulgated:

PART I GENERAL PROVISIONS

RULE 1

Title, Definition, Scope and Construction

SECTION 1. *Title of Rules* – These Rules shall be known as the *Rules of Practice and Procedure of the Department of Energy*.

SECTION 2. *Definitions* – For purposes of these Rules, the terms:

- (a) “*Department*” shall refer to the Department of Energy.
- (b) “*Deregulation Act*” shall refer to the “Downstream Oil Industry Deregulation Act of 1998”.
- (c) “*Director*” shall mean the Director of the Office of the Legal Counsel.

- (d) “*EPIRA*” shall refer to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001.”
- (e) “*Energy Act*” shall refer to Republic Act No. 7638, the Department of Energy Act of 1992.
- (f) “*OLC*” shall mean the Office of the Legal Counsel of the Department of Energy.
- (g) “*Public Service Act*” shall refer to C.A. No. 146, as amended.
- (h) “*Rules*” shall refer to these Rules.
- (i) “*Secretary*” shall refer to the Secretary of Energy.

SECTION 3. *Scope* – These rules shall govern all pleadings, practice and procedure before the Department in all matters concerning inquiry, investigation, hearing, study and/ or any other proceedings conducted by the Department in the performance of its functions. However, in the public interest and consistent with due process, the Department may, in any particular matter, except itself from these rules and apply such fair and reasonable procedures to assist the parties to obtain speedy disposition of cases.

These rules shall likewise cover applications for the issuance of permits or other forms of authorization to entities involved in the supply and distribution of energy resources.

SECTION 4. *Construction* – These rules shall be liberally construed in order to protect and promote public interest and attain the objectives of the Public Service Act, the Energy Act, the Deregulation Act, the EIRA and any other law, statute, executive order or decree that is being, or may hereafter be, implemented by the Department in the most speedy and inexpensive disposition of cases. In the broader interest of justice and to avoid unnecessary delay, the Department may resort to summary proceedings in cases hereinafter provided.

SECTION 5. *Suppletory Application of the Rules of Court of the Philippines.* – In the absence of any applicable provision in, and provided they are not inconsistent with these Rules, the pertinent provisions of the Revised Rules of Court of the Philippines may, in the interest of expeditious disposition of cases and whenever practicable and convenient, be applied by analogy or in a suppletory manner.

RULE 2
PARTIES

SECTION 1. *Who may be a Party* – Any person or group of persons whether natural or juridical, who may be affected by the decision to be rendered by the Department in a particular case may be a party and may appeal, and participate in the manner hereinafter provided.

SECTION 2. *Applicant* – An applicant is any person who applies with the Department for a permit for the operation of services involved in energy resource supply activities or who seeks any other form of authorization, to undertake any matter or business that is within the jurisdiction of the Department.

SECTION 3. *Complainant* – A complainant is any aggrieved person who files a complaint against another party for legal redress on matters within the jurisdiction of the Department.

SECTION 4. *Petitioner* – A petitioner is any person who files an application with the Department **ex parte**, or where there are no parties in opposition, praying for the exercise of the powers of the Department, for authority to do some act which requires the sanction of the Department.

SECTION 5. *Respondent* – A respondent is any person or party, who may or may not be a holder of a permit or other form of authorization to whom an order is issued by the Department to appear or give his explanation in writing, or who is otherwise summoned to answer any allegation, imputation or issue in any case, hearing or proceeding cognizable by the Department, or any person who may also hearing or proceeding cognizable by the Department, or any person who may also be adversely or is otherwise affected by a complaint or petition.

SECTION 6. *Oppositor* – An oppositor is any person who interposes any objection against the approval of an application or petition.

RULE 3
PLEADINGS

SECTION 1. *Pleading* – The pleadings allowed by these Rules are the application, the complaint, the petition, the opposition, the answer, and such further pleadings as the Department may allow.

SECTION 2. *Form of Pleading, Copies* – All pleadings filed with the Department must be in triplicate and typewritten or printed on legal size bond paper and shall be in English. Every pleading shall contain the names and addresses of all the parties, the Department file number and designation of the pleading.

SECTION 3. *Application* – By means of an application or petition for permit or other forms of authorization, the applicant seeks for authorization or permission to undertake any matter within the power of the Department under the Public Service Act, the Energy Act, the Deregulation Act, the EIRA or any other law, statute, executive order or decree that is being, or may hereafter be, implemented by the Department, stating the ultimate facts on which the relief sought is based.

The Department will refer to the proper bureau or office the evaluation of the technical and financial qualifications of an applicant for a permit or other forms of authorization.

SECTION 4. *Complaint* – A complaint is a concise statement of the ultimate facts constituting the acts or matters complained of, and shall specify the relief sought. The names and addresses of the complainants and the respondents must be stated in the complaint, and whenever practicable, the date and place of the commission of the alleged act or omission complained of.

SECTION 5. *Petition* – A petition is an application made to the Department **ex parte** or where there are no parties in opposition, praying for the exercise of the powers of the Department for authority to do some act which requires the sanction of the Department.

SECTION 6. *Opposition* – An opposition is a pleading filed by an oppositor against the grant of an application or petition in which the oppositor states his right or interest affected by the application or petition and the ultimate facts constituting all his grounds for opposition.

SECTION 7. *Answer* – An answer is a pleading in which the respondent sets forth the defense upon which he relies. The respondent to whom an order is issued by the Department to show cause or against whom a complaint or petition is filed, shall file an answer within

ten (10) calendar days from receipt of the order, complaint or petition, order, complaint or petition.

SECTION 8. *Verification* – All pleadings filed with the Department must be verified and accompanied by such documents as would reasonably tend to establish **prima facie** the truth of the factual allegations thereof.

SECTION 9. *Service* – Service may be by personal delivery or by registered mail, properly addressed to each party, together with all annexes attached thereto. All pleadings and motions submitted to the Department for filing must show proof of service thereof upon all parties to the case.

SECTION 10. *Service upon Parties Represented by Counsel* – When any party is represented by counsel, service shall be made to his counsel of record.

SECTION 11. *Contents of Pleadings* – All pleadings filed with the Department must state clearly and categorically the ultimate facts upon which the pleader relies. Pleadings shall contain a prayer for the principal relief sought and may also add a general prayer for such further or other reliefs as may be deemed just and equitable.

SECTION 12. *Amendments* – Any modification or supplement to an application, complaint, petition or other pleadings shall be deemed as an amendment and must comply with the formal requirements of pleadings as mentioned in these rules.

SECTION 13. *Amendment when Allowed* – Amendments may be made as a matter of right at any time before any responsive pleading is filed and, thereafter, only with leave of the Department.

SECTION 14. *Defect of Form* – No defect in the form of any pleading allowed to be filed under these Rules will prejudice the pleader; however, the Department may direct

amendments or require the submission of additional affidavits or supporting documents.

SECTION 15. *Filing Fees* – The Treasury Division of the Administrative Services Unit of the Department shall receive, collect or take the following fees:

- a. For filing a complaint – P 10,000.00;
- b. For filing an appeal – P 10,000.00;
- c. For certified copies of any paper, record, judgment – P 10.00 per page;
- d. For filing an application for the grant of permit or other form of authorization to construct, install, own, operate and maintain pipeline system to transport energy resources – P 10.00 per meter of pipeline.

RULE 4

MOTIONS IN GENERAL

SECTION 1. *Scope & Contents* – Every application for any procedural or interlocutory ruling or relief may be made through a motion. Motions shall state the relief sought and the grounds therefor and, if necessary, shall be accompanied by supporting affidavits and documents. Motions shall be in writing and copies thereof shall be served upon all parties at least three (3) days before the hearing thereof. All written motions shall specify the date and time for the hearing thereof.

SECTION 2. *Provisional Permit or Authorization* – Motions praying for the issuance of a provisional permit or other form of authorization to operate must be in writing and accompanied by affidavit(s) of merit and other supporting documents showing the necessity of the relief prayed for, together with proof of service to the other party. Such motions shall be governed by Rule 15 hereof.

PART II

PROCEDURE IN APPLICATIONS

RULE 5

APPLICATION

SECTION 1. *How Commenced* – Any proceeding the object of which is to obtain a permit or any form of authorization under the Public Service Act, the Energy Act, the Deregulation Act, the EIRA and/or any other law, statute, executive order or decree that is being, or may hereinafter be, implemented by the Department shall be commenced by the filing of the corresponding application.

SECTION 2. *Contents* – The application shall contain a concise statement of the service proposed or permit or authorization applied for, and the ultimate facts that would qualify or entitle the applicant to the grant of the permit or authorization. When the application is predicated on a permit or other form of authorization, sale, lease, mortgage or any other contract, such permit or authorization or contract shall be impleaded in the application by alleging in substance its salient provisions and appending to the application a copy of the permit or authorization, contract or pertinent document.

RULE 6

NOTICE OF APPLICATION

SECTION 1. *Issuance of the Notice* – After the filing of the application, it shall be docketed, and the hearing officer/s duly designated by the Department shall issue a notice that such application has been filed with the Department and furnish the list of affected parties, if any, to the applicant.

SECTION 2. *Publication and Service* – The applicant shall cause the aforesaid notice, at his own expense, to be published once in one (1) newspaper of general circulation in the Philippines at least ten (10) calendar days before the date of the proceeding; provided, that if an application covers only one (1) region, publication in the local newspaper circulated within that region is sufficient. The applicant shall also serve copies of the notice,

with copies of the application, to the affected parties, as furnished by the Department.

RULE 7

OPPOSITION

SECTION 1. *Contents* – Within ten (10) calendar days from receipt by the affected party of the notice referred to in Section 1 Rule 6 hereof, a written opposition, not a motion to dismiss, may be filed against an application with copy served upon the applicant, in which the oppositor shall state concisely his right of interest affected by the application and the ultimate facts constituting all his grounds for opposition.

PART III

PROCEDURE IN COMPLAINTS AND PETITIONS

RULE 8

COMPLAINTS & PETITIONS

SECTION 1. *How Commenced* – Any action, the object of which is to subject a holder of a permit or authorization or any person operating without authority from the Department to any penalty that may be imposed, or other measure that may be taken in the public interest by the Department for violation by such holder or any person of the provisions of the Public Service Act, the Energy Act, the Deregulation Act, the EIRA or any other law, statute, executive order or decree that is being, or may hereinafter be, implemented by the Department, or the terms and conditions of his certificate or any order, decision or regulations of the Department shall be commenced by the filing of a complaint or petition.

SECTION 2. *Sufficiency of Complaint or Petition* – A complaint or a petition is sufficient if it contains the name of the complainant or offended party, the name of the respondent, a reference, whenever practicable, to the provisions of the law, statute, executive

order or decree being implemented by the Department or the permit or authorization, order, decision or regulation violated; the acts or omissions complained of as constituting the offense, and the date and place of the commission of the offense.

SECTION 3. *Separate Allegations* – Whenever two or more offenses are charged in one (1) complaint or petition, each offense must be separately alleged.

RULE 9

MOTU PROPRIO ACTIONS

SECTION 1. *Institution of Action by the Department* – The Department may **motu proprio** initiate an action or inquiry against any person or entity when so required by law, public or national interest, and/or in its exercise of any of the powers vested upon it. In the exercise thereof, the Department may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

SECTION 2. *Other Instances* – When the basis of a **motu proprio** action is a violation of Department orders, rules or regulations, the order shall allege with definiteness and clarity, the violation and also the range or extent of the sanction that may be imposed should the violation be substantiated.

RULE 10

ANSWER

SECTION 1. *Answer* – Within a period of ten (10) calendar days from receipt of a **motu proprio** order or a copy of the petition or complaint, the respondent shall file an answer whether admitting or denying the material allegations or facts set forth in said **motu proprio** order, petition or complaint, or setting forth the reason why respondent cannot admit or deny said allegations. The pleader must state the facts and law upon which he relies for his defense with definiteness and clarity.

RULE 11
MOTION TO DISMISS

SECTION 1. *Grounds* – No motion to dismiss shall be entertained unless such motion is incorporated in the answer of the respondent under any of the following grounds:

- (A) The facts alleged in the complaint or **motu proprio** order do not constitute a violation of the Department’s rules and regulations or do not entitle the complainant or petitioner to the relief sought.
- (B) The Department has no jurisdiction over the nature of the case or controversy.
- (C) The applicant has not complied with the jurisdictional requirements of an application.

PART IV
PROCEEDINGS BEFORE THE DEPARTMENT

RULE 12
PRE-HEARING CONFERENCE

SECTION 1. *Pre-Hearing Conference* – After the answer or the opposition has been filed, the hearing officer/s duly designated by the Department shall issue notice to all the parties to appear for a pre-hearing conference to consider:

- (A) The possibility of an amicable settlement in cases that may be compromised;
- (B) Simplification of the issues through stipulation of facts and/or admission, including admissions of documents and their authenticity; and
- (C) Such other matters as may aid in the just, speedy, and inexpensive disposition of the case.

SECTION 2. *Failure to Appear* – All parties and their counsels, if any, shall attend the pre-

hearing conference with full authority to enter into an agreement on any and all matters necessary to expedite the proceedings. The Department may, in case of failure to appear on the part of a party and his counsel, issue an order of default against the absent party, and, thereafter, the hearing officer/s may receive evidence **ex parte**.

SECTION 3. *Amicable Settlement* – When an amicable settlement is reached as provided under Section 1 (A), Rule 12 hereof, it shall be reduced to writing duly signed by the parties. Such compromise agreement shall then be the basis of an order or decision of the Department.

SECTION 4. *Nature of Proceedings* – The proceedings before the Department shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Department may avail itself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well informed persons.

SECTION 5. *Postponement* – Postponement or continuance of hearing may be granted only on highly meritorious grounds provided that no more than two (2) postponements or continuances shall be allowed.

RULE 13
SUMMARY PROCEEDINGS

SECTION 1. Cases that may be the subject of summary proceedings are:

- (A) ***Non-Contested Cases*** – When there is no opposition filed against an application or no answer has been filed against a complaint or petition or when the opposition or the answer filed fails to tender an issue, the Department may conduct summary proceedings.

(B) *Contested Cases* – When the opposition or the answer does not contest the material allegations of the application or the complaint for violation of Department rules and regulations, respectively, although affirmative defenses are stated therein, the Department may conduct summary proceedings.

(C) *Applications* – All applications for permit or other forms of authority to engage in business in the petroleum industry in whatever capacity, or classification may be conducted through summary proceedings.

SECTION 2. *Summary Proceedings, How Conducted* – After the time for filing an answer has expired and none has been filed or after the issues have been joined by the filing of the answer or the opposition, and the hearing officer/s shall have determined that the case is one which may be the subject of summary proceedings under Section 1 of this Rule 13, the hearing officer/s shall summon the parties to appear before him/them and require the parties to bring all documentary evidence that they may have in support of their claims or defenses.

SECTION 3. *Offer of Exhibit/Documentary Evidence* – The complainant, the petitioner or applicant shall submit all documentary evidence he may have which shall be authenticated before the hearing officer/s and marked as exhibits; then the respondent, or the oppositor shall submit counter documents or affidavits which shall be authenticated before the hearing officer/s as exhibits after which the parties shall formally offer their respective exhibits in the same order, stating the purposes for which they are offered. After the formal offer of evidence, the hearing officer/s may propound clarificatory questions on the documents presented and may require the submission of position papers or memoranda.

SECTION 4. *Submission of Memorandum, Position Paper, etc.* – In order to expedite resolution of the case, the hearing officer/s may require the parties to submit, in addition to the memoranda, position papers or last pleading required of them, a draft of the decision they seek, stating clearly and distinctly the facts and the law or rules and regulations upon which it is based. Following the termination of the hearing and the submission by the parties of the required memorandum and draft of the decision they seek, the Department may, after considering and appreciating the applicable laws, rules and regulations and the evidence submitted, adopt, in whole or in part, either of the parties' draft decision or reject both.

RULE 14

POWERS AND DUTIES OF HEARING OFFICER/S

SECTION 1. *Powers and Duties* – The hearing officer/s shall have the following powers and duties:

- (A) To administer oaths and affirmations;
- (B) To receive evidence and rule on the admissibility of evidence as to relevance, materiality or competence of such evidence.

SECTION 2. *Period to Decide Case* – Should the hearing officer/s determine that the case cannot be heard by summary proceedings, he/they shall inform the Secretary who shall then issue an order setting the case for hearing, which hearing shall be terminated within sixty (60) calendar days from initial hearing.

SECTION 3. *Role of Hearing Officer/s in Proceedings* – The hearing officer/s shall personally preside in the conferences/hearings and, except as otherwise provided by law, he/they shall determine the order of presentation of evidence by the parties, subject to the requirements of due process.

He/they shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself/themselves with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. He/they shall limit the presentation of evidence to matters relevant to the issue before him/them and necessary for a just and speedy matters relevant to the issue before him/them and necessary for a just and speedy disposition of the case.

SECTION 4. *Presentation of Evidence* – The party initiating the case shall be the first to present his evidence to support his case.

SECTION 5. *Extent of Cross-Examination* – In the cross-examination of witnesses, only relevant, pertinent and material questions necessary to enlighten the hearing officer/s shall be allowed.

SECTION 6. *Records of Proceedings* – The proceedings before a hearing officer/s need not be recorded by stenographers but the hearing officer/s shall prepare a written summary of the proceedings, including the substance of the evidence presented, in consultation with the parties. The written summary shall be signed by the parties and shall form part of the records.

RULE 15

PROVISIONAL RELIEF

SECTION 1. *Grounds for Provisional Relief* – Upon the filing of an application, complaint or petition or at any stage thereafter, a party to a case may, pending hearing of the main case, file a motion seeking a procedural remedy, interlocutory order or a provisional authority to operate or undertake any activity within the jurisdiction of the Department, setting forth the remedy or relief prayed for and the grounds relied upon for the grant of such provisional relief. The motion must be accompanied by an affidavit of merit and

other supporting documents together with proof of service to the other party.

SECTION 2. *Grant of Provisional Relief* – The Department may grant or deny a motion for provisional relief, without prejudice to a final decision on the matter. However, nothing shall prohibit the Department, **motu proprio**, from granting any provisional relief to any party when public interest so requires.

RULE 16

DECISIONS AND MOTIONS FOR RECONSIDERATION

SECTION 1. *Contents of Decisions* – The decisions of the Department shall be signed by the Secretary and shall be clear, concise and include a brief statement of the (a) facts of the case; (b) issue (s) involved; (c) finding of facts; (d) applicable law or rules; (e) conclusion and reasons therefor, and (f) the dispositive portion. They shall be filed with the hearing officer/s who shall, within three (3) days from receipt thereof, cause true copies thereof to be served upon the counsel of the parties, or in the absence of any counsel of record, on the parties themselves.

SECTION 2. *Decisions* – The Department shall render a final decision, order, ruling or resolution in accordance with the following rules:

- (a) In Summary Proceedings. – When summary proceedings have been conducted, the Department shall, within ten (10) calendar days after the case has been submitted for resolution, render a decision, order, been submitted for resolution, render a decision, order, ruling or resolution on the matter.
- (b) In Contested Proceedings. – In contested proceedings where a formal hearing has been conducted, the Department shall render a decision, order, ruling or resolution within thirty (30) calendar days after the case has been submitted

for decision.

- (c) Grant of Other Relief. – In all decisions, orders, rulings or resolutions, the Department may grant such other relief or impose such terms as it may deem necessary in order to promote public interest.

SECTION 3. *Motions for Reconsideration* – Motions for reconsideration of any order, resolution or decision of the Department shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished within the reglementary period, the adverse party and provided further, that only one (1) such motion from the same party shall be entertained. No pleading shall be allowed other than the motion for reconsideration and opposition thereto. The filing of a motion for reconsideration shall interrupt the running of the period for filing an appeal with the Office of the President.

RULE 17 **APPEAL**

SECTION 1. *Appeal.* – Any party may appeal the order, ruling, or decision of the Department to the Office of the President. However, interlocutory orders cannot be the subject of an appeal.

SECTION 2. *Procedure on Appealed Cases.* – In case of an appeal under the preceding section, the following rules shall apply:

- (a) An appeal from an order, decision or ruling of the Department shall be perfected by filing with the Department a notice of appeal and with the Office of the President, within a period of fifteen (15) calendar days from notice of such order, ruling or decision; copy of the notice of appeal must be furnished all

parties to the case;

- (b) Before an appeal will be filed it must be shown that a motion for reconsideration from the order, ruling or decision has been filed with the Department and the same has been denied.
- (c) Upon the filing of the notice of appeal, the appellant shall pay with the Department an appeal fee of Ten Thousand Pesos (P 10,000.00), whereupon, the Department shall act on the notice of appeal and shall transmit the certificate of payment of the appeal fee to the Office of the President.
- (d) Appellant's position paper shall contain the following data/matters:
 - 1) Exact date of the appealed order, ruling, decision;
 - 2) Exact date when the appealed order, ruling or decision was received by him;
 - 3) Information regarding compliance with the requirements for appeal under these rules;
 - 4) Brief statement of the case and the facts;
 - 5) Reasons or grounds for appeal;
 - 6) Arguments in support of the appeal;
 - 7) Relief sought.

The Secretary may require the filing of additional pleadings to provide additional information.

- (e) Any party filing the required pleading or documents and other pleadings pertinent to the appealed case shall furnish the adverse party/ies, including the Department, copies thereof.

SECTION 3. *Effect of Appeal.* – An appeal shall stay the award, order or decision of the Department unless otherwise provided by law, or the appellate agency directs execution

pending appeal, as it may deem just, considering the nature and circumstances of the case.

SECTION 4. *Appeal from the Order of the Secretary.* – The order of the Secretary in appealed cases shall be appealable within fifteen (15) calendar days from receipt thereof to the Office of the President of the Philippines.

SECTION 5. *Execution of Order, Ruling or Decision of the Department.* – The order, ruling, decision, or resolution of the Department shall become executory fifteen (15) calendar days after the expiration of the period of appeal if no appeal is taken.

SECTION 6. *Entry of Judgment.* – The judgment of the Department shall be entered upon finality, or fifteen (15) calendar days after the expiration of the period to appeal, if no appeal is taken.

RULE 18
EFFECTIVITY

These rules shall take effect fifteen (15) days after publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, July 31, 2002.

VICENTE S. PÉREZ, JR.
Secretary

Chapter XI

REPUBLIC ACT NO. 8293*

June 6, 1997

AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

PART I

THE INTELLECTUAL PROPERTY OFFICE

SECTION 1. *Title.* - This Act shall be known as the “Intellectual Property Code of the Philippines.”

SECTION 2. *Declaration of State Policy.* - The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to

liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

SECTION 3. *International Conventions and Reciprocity.* - Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)

SECTION 4. *Definitions.* -

4.1. The term “intellectual property rights” consists of:

- a) Copyright and Related Rights;
- b) Trademarks and Service Marks;
- c) Geographic Indications;
- d) Industrial Designs;

*as amended by R.A. No. 9502 and R.A. No. 10372

- e) Patents;
- f) Layout-Designs (Topographies) of Integrated Circuits; and
- g) Protection of Undisclosed Information (n, TRIPS).

4.2 The term “technology transfer arrangements” refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market.

4.3 The term “Office” refers to the Intellectual Property Office created by this Act.

4.4 The term “IPO Gazette” refers to the gazette published by the Office under this Act. (n)

SECTION 5. *Functions of the Intellectual Property Office (IPO).* - 5.1. To administer and implement the State policies declared in this Act, there is hereby created the Intellectual Property Office (IPO) which shall have the following functions:

- a) Examine applications for grant of letters patent for inventions and register utility models and industrial designs;
- b) Examine applications for the registration of marks, geographic indication, integrated circuits;
- c) Register technology transfer arrangements and settle disputes involving technology transfer payments covered by the provisions of Part II, Chapter IX on Voluntary Licensing and develop and implement strategies to promote and facilitate

technology transfer;

- d) Promote the use of patent information as a tool for technology development;
- e) Publish regularly in its own publication the patents, marks, utility models and industrial designs, issued and approved, and the technology transfer arrangements registered;
- f) Administratively adjudicate contested proceedings affecting intellectual property rights; and
- g) Coordinate with other government agencies and the private sector efforts to formulate and implement plans and policies to strengthen the protection of intellectual property rights in the country.

5.2 The Office shall have custody of all records, books, drawings, specifications, documents, and other papers and things relating to intellectual property rights applications filed with the Office. (n)

SECTION 6. *The Organizational Structure of the IPO.* - 6.1. The Office shall be headed by a Director General who shall be assisted by two (2) Deputies Director General.

6.2 The Office shall be divided into seven (7) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

- a) The Bureau of Patents;
- b) The Bureau of Trademarks;
- c) The Bureau of Legal Affairs;
- d) The Documentation, Information and Technology Transfer Bureau;
- e) The Management Information System and EDP Bureau; and
- f) The Administrative, Financial and Personnel Services Bureau.

- g) The Bureau of Copyright and Other Related Rights

6.3 The Director General, Deputies Director General, Directors and Assistant Directors shall be appointed by the President, and the other officers and employees of the Office by the Secretary of Trade and Industry, conformably with and under the Civil Service Law. (n)

SECTION 7. *The Director General and Deputies Director General.* - 7.1. Functions. - The Director General shall exercise the following powers and functions:

- a) Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: Provided, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry;
- b) Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal

Affairs, the Director of Patents, the Director of Trademarks, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, the Director of Trademarks and the Director of Copyright and Other Related Rights shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and

- c) Undertake enforcement functions supported by concerned agencies such as the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Optical Media Board and the Local Government Units, among others;
- d) Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this Act based on report, information or complaint received by the officer, and
- e) Such other functions in furtherance of protecting IP rights and objectives of this Act.

7.2 Qualifications. - The Director General and the Deputies Director General must be natural born citizens of the Philippines, at least thirty-five (35) years of age on the day of their appointment, holders of a college degree, and of proven competence, integrity, probity and independence: Provided, That the Director General and at least one (1) Deputy Director General shall be members

of the Philippine Bar who have engaged in the practice of law for at least ten (10) years: Provided further, That in the selection of the Director General and the Deputies Director General, consideration shall be given to such qualifications as would result, as far as practicable, in the balanced representation in the Directorate General of the various fields of intellectual property.

7.3 Term of Office. - The Director General and the Deputies Director General shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment only once: Provided, That the first Director General shall have a first term of seven (7) years. Appointment to any vacancy shall be only for the unexpired term of the predecessor.

7.4 The Office of the Director General. - The Office of the Director General shall consist of the Director General and the Deputies Director General, their immediate staff and such Offices and Services that the Director General will set up to support directly the Office of the Director General. (n)

SECTION 8. *The Bureau of Patents.* - The Bureau of Patents shall have the following functions:

- 8.1 Search and examination of patent applications and the grant of patents;
- 8.2 Registration of utility models, industrial designs, and integrated circuits; and
- 8.3 Conduct studies and researches in the field of patents in order to assist the Director General in formulating policies on the administration and examination of patents. (n)

SECTION 9. *The Bureau of Trademarks.* - The Bureau of Trademarks shall have the following functions:

- 9.1 Search and examination of the applications for the registration of marks, geographic indications and other marks of ownership and the issuance of the certificates of registration; and
- 9.2 Conduct studies and researches in the field of trademarks in order to assist the Director General in formulating policies on the administration and examination of trademarks. (n)

SECTION 9A. *The Bureau of Copyright and Other Related Rights.* - The Bureau of Copyright and Other Related Rights shall have the following functions:

- 9A.1 Exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author's right to public performance or other communication of his works.
- 9A.2 Accept, review and decide on applications for the accreditation of collective management organizations or similar entities.
- 9A.3 Conduct studies and researches in the field of copyright and related rights; and
- 9A.4 Provide other copyright and related rights service and charge reasonable fees therefor.

SECTION 10. *The Bureau of Legal Affairs.* - The Bureau of Legal Affairs shall have the following functions:

- 10.1 Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;

10.2 (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights: Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000): Provided further, That availment of the provisional remedies may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings. (n)

(b) After formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

(i) The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

(ii) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(1) An assurance to comply with the provisions of the intellectual property law violated;

(2) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;

(3) An assurance to recall, replace, repair, or refund the money value of defective goods

distributed in commerce; and

(4) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking;

(iii) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;

(iv) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

(v) The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five thousand pesos (P5,000) nor more than One hundred fifty thousand pesos (P150,000). In addition, an additional fine of not more than One thousand pesos (P1,000) shall be imposed for each day of continuing violation;

(vi) The cancellation of any permit, license, authority, or registration which may have been granted by

the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one (1) year;

(vii) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;

(viii) The assessment of damages;

(ix) Censure; and

(x) Other analogous penalties or sanctions. (Secs. 6, 7, 8, and 9, Executive Order No. 913 [1983]a)

10.3 The Director General may by Regulations establish the procedure to govern the implementation of this Section. (n)

SECTION 11. *The Documentation, Information and Technology Transfer Bureau.* - The Documentation, Information and Technology Transfer Bureau shall have the following functions:

11.1 Support the search and examination activities of the Office through the following activities:

(a) Maintain and upkeep classification systems whether they be national or international such as the International Patent Classification (IPC) system;

(b) Provide advisory services for the determination of search patterns;

(c) Maintain search files and search rooms and reference libraries; and

(d) Adapt and package industrial property information.

11.2 Establish networks or intermediaries or regional representatives;

11.3 Educate the public and build awareness on intellectual property through the conduct of seminars and lectures, and other similar activities;

11.4 Establish working relations with research and development institutions as well as with local and international intellectual property professional groups and the like;

11.5 Perform state-of-the-art searches;

11.6 Promote the use of patent information as an effective tool to facilitate the development of technology in the country;

11.7 Provide technical, advisory, and other services relating to the licensing and promotion of technology, and carry out an efficient and effective program for technology transfer; and

11.8 Register technology transfer arrangements, and settle disputes involving technology transfer payments. (n)

SECTION 12. *The Management Information Services and EDP Bureau.* - The Management Information Services and EDP Bureau shall:

12.1 Conduct automation planning, research and development, testing of systems, contracts with firms, contracting, purchase and maintenance of equipment, design and maintenance of systems, user consultation, and the like; and

12.2 Provide management information support and service to the Office. (n)

SECTION 13. *The Administrative, Financial and Human Resource Development Service*

Bureau. - 13.1. The Administrative Service shall:

- (a) Provide services relative to procurement and allocation of supplies and equipment, transportation, messengerial work, cashiering, payment of salaries and other Office's obligations, office maintenance, proper safety and security, and other utility services; and comply with government regulatory requirements in the areas of performance appraisal, compensation and benefits, employment records and reports;
- (b) Receive all applications filed with the Office and collect fees therefor, and
- (c) Publish patent applications and grants, trademark applications, and registration of marks, industrial designs, utility models, geographic indication, and lay-out-designs of integrated circuits registrations.

13.2 The Patent and Trademark Administration Services shall perform the following functions among others:

- (a) Maintain registers of assignments, mergings, licenses, and bibliographic on patents and trademarks;
- (b) Collect maintenance fees, issue certified copies of documents in its custody and perform similar other activities; and
- (c) Hold in custody all the applications filed with the office, and all patent grants, certificate of registrations issued by the office, and the like.

13.3 The Financial Service shall formulate and manage a financial program to ensure availability and proper utilization of funds; provide for an effective monitoring system of the

financial operations of the Office; and

13.4 The Human Resource Development Service shall design and implement human resource development plans and programs for the personnel of the Office; provide for present and future manpower needs of the organization; maintain high morale and favorable employee attitudes towards the organization through the continuing design and implementation of employee development programs. (n)

SECTION 14. *Use of Intellectual Property Rights Fees by the IPO.* - 14.1. For a more effective and expeditious implementation of this Act,

the Director General shall be authorized to retain, without need of a separate approval from any government agency, and subject only to the existing accounting and auditing rules and regulations, all the fees, fines, royalties and other charges, collected by the Office under this Act and the other laws that the Office will be mandated to administer, for use in its operations, like upgrading of its facilities, equipment outlay, human resource development, and the acquisition of the appropriate office space, among others, to improve the delivery of its services to the public. This amount, which shall be in addition to the Office's annual budget, shall be deposited and maintained in a separate account or fund, which may be used or disbursed directly by the Director General.

14.2 After five (5) years from the coming into force of this Act, the Director General shall, subject to the approval of the Secretary of Trade and Industry, determine if the fees and charges mentioned in Subsection 14.1 hereof that the Office shall collect are sufficient to meet its budgetary requirements. If so, it shall retain all the fees and charges it shall collect under the same conditions indicated in said Subsection 14.1 but shall forthwith, cease to receive any funds from the annual

budget of the National Government; if not, the provisions of said Subsection 14.1 shall continue to apply until such time when the Director General, subject to the approval of the Secretary of Trade and Industry, certifies that the above-stated fees and charges the Office shall collect are enough to fund its operations. (n)

SECTION 15. *Special Technical and Scientific Assistance.* - The Director General is empowered to obtain the assistance of technical, scientific or other qualified officers and employees of other departments, bureaus, offices, agencies and instrumentalities of the Government, including corporations owned, controlled or operated by the Government, when deemed necessary in the consideration of any matter submitted to the Office relative to the enforcement of the provisions of this Act. (Sec. 3, R.A. No. 165a)

SECTION 16. *Seal of Office.* - The Office shall have a seal, the form and design of which shall be approved by the Director General. (Sec. 4, R.A. No. 165a)

SECTION 17. *Publication of Laws and Regulations.* - The Director General shall cause to be printed and make available for distribution, pamphlet copies of this Act, other pertinent laws, executive orders and information circulars relating to matters within the jurisdiction of the Office. (Sec. 5, R.A. No. 165a)

SECTION 18. *The IPO Gazette.* - All matters required to be published under this Act shall be published in the Office's own publication to be known as the IPO Gazette. (n)

SECTION 19. *Disqualification of Officers and Employees of the Office.* - All officers and employees of the Office shall not apply or act as an attorney or patent agent of an application for a grant of patent, for the registration of a utility model, industrial design or mark nor acquire, except by hereditary succession, any

patent or utility model, design registration, or mark or any right, title or interest therein during their employment and for one (1) year thereafter. (Sec. 77, R.A. No. 165a)

PART II

THE LAW ON PATENTS

CHAPTER I

GENERAL PROVISIONS

SECTION 20. *Definition of Terms Used in Part II, The Law on Patents.* - As used in Part II, the following terms shall have the following meanings:

- 20.1 "Bureau" means the Bureau of Patents;
- 20.2 "Director" means the Director of Patents;
- 20.3 "Regulations" means the Rules of Practice in Patent Cases formulated by the Director of Patents and promulgated by the Director General;
- 20.4 "Examiner" means the patent examiner;
- 20.5 "Patent application" or "application" means an application for a patent for an invention except in Chapters XII and XIII, where "application" means an application for a utility model and an industrial design, respectively; and
- 20.6 "Priority date" means the date of filing of the foreign application for the same invention referred to in Section 31 of this Act. (n)

CHAPTER II

PATENTABILITY

SECTION 21. *Patentable Inventions.* - Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable

shall be Patentable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing. (Sec. 7, R.A. No. 165a)

SECTION 22. *Non-Patentable Inventions.* - The following shall be excluded from patent protection:

- 22.1 Discoveries, scientific theories and mathematical methods, and in the case of drugs and medicines the mere discovery of a new form or new property of a known substance which does not result in the enhancement of the known efficacy of that substance of the mere discovery of any new property or new use for a known substance, or the mere use of a known process unless such known process results in a few product that employs at least one new reactant. For the purpose of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, complexes, combinations and other derivatives of a known substance unless they differ significantly in properties with regard to efficacy;
- 22.2 Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;
- 22.3 Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body. This provision shall not apply to products and composition for use in any of these methods;
- 22.4 Plant varieties or animal breeds or essentially biological process for the production of plants or animals. This provision shall not apply to micro-organisms and non-biological and microbiological processes.

Provisions under this subsection shall not preclude Congress to consider the enactment of a law providing sui generis protection of plant varieties and animal breeds and a system of community intellectual rights protection:

- 22.5 Aesthetic creations; and
- 22.6 Anything which is contrary to public order or morality. (Sec. 8, R.A. No. 165a)

SECTION 23. *Novelty.* . - An invention shall not be considered new if it forms part of a prior art. (Sec. 9, R.A. No. 165a)

SECTION 24. *Prior Art.* - Prior art shall consist of:

- 24.1 Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention; and
- 24.2 The whole contents of an application for a patent, utility model, or industrial design registration, published in accordance with this Act, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application: Provided, That the application which has validly claimed the filing date of an earlier application under Section 31 of this Act, shall be prior art with effect as of the filing date of such earlier application: Provided further, That the applicant or the inventor identified in both applications are not one and the same. (Sec. 9, R.A. No. 165a)

SECTION 25. *Non-Prejudicial Disclosure.* . -

- 25.1 The disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application

shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by:

- (a) The inventor;
- (b) A patent office and the information was contained (a) in another application filed by the inventor and should not have been disclosed by the office, or (b) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor; or
- (c) A third party which obtained the information directly or indirectly from the inventor.

25.2 For the purposes of Subsection 25.1, “inventor” also means any person who, at the filing date of application, had the right to the patent. (n)

SECTION 26. *Inventive Step.* -

- 26.1 An invention involves an inventive step if, having regard to prior art, it is not obvious to a person skilled in the art at the time of the filing date or priority date of the application claiming the invention. (n)
- 26.2 In the case of drugs and medicines, there is no inventive step if the invention results from the mere discovery of a new form or new property of a known substance which does not result in the enhancement of the known efficacy of that substance, or the new discovery of any new property or new use for a known substance, or the mere use of a known process unless such known process results in a new product that employs at least one new reactant

SECTION 27. *Industrial Applicability.* - An invention that can be produced and used in any industry shall be industrially applicable. (n)

CHAPTER III

RIGHT TO A PATENT

SECTION 28. *Right to a Patent.* - The right to a patent belongs to the inventor, his heirs, or assigns. When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly. (Sec. 10, R.A. No. 165a)

SECTION 29. *First to File Rule.* - If two (2) or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who filed an application for such invention, or where two or more applications are filed for the same invention, to the applicant who has the earliest filing date or, the earliest priority date. (3rd sentence, Sec. 10, R.A. No. 165a.)

SECTION 30. *Inventions Created Pursuant to a Commission.* -

- 30.1 The person who commissions the work shall own the patent, unless otherwise provided in the contract.
- 30.2 In case the employee made the invention in the course of his employment contract, the patent shall belong to:
 - (a) The employee, if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
 - (b) The employer, if the invention is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary. (n)

SECTION 31. *Right of Priority.* . - An application for patent filed by any person who has previously applied for the same invention in another country which by treaty, convention, or law affords similar privileges to Filipino citizens, shall be considered as filed as of the date of filing the foreign application: Provided, That: (a) the local application expressly claims priority; (b) it is filed within twelve (12) months from the date the earliest foreign application was filed; and (c) a certified copy of the foreign application together with an English translation is filed within six (6) months from the date of filing in the Philippines. (Sec. 15, R.A. No. 165a)

CHAPTER IV **PATENT APPLICATION**

SECTION 32. *The Application.* - 32.1. The patent application shall be in Filipino or English and shall contain the following:

- (a) A request for the grant of a patent;
- (b) A description of the invention;
- (c) Drawings necessary for the understanding of the invention;
- (d) One or more claims; and
- (e) An abstract.

32.2 No patent may be granted unless the application identifies the inventor. If the applicant is not the inventor, the Office may require him to submit said authority. (Sec. 13, R.A. No. 165a)

SECTION 33. *Appointment of Agent or Representative.* - An applicant who is not a resident of the Philippines must appoint and maintain a resident agent or representative in the Philippines upon whom notice or process for judicial or administrative procedure relating to the application for patent or the patent may be served. (Sec. 11, R.A. No. 165a)

SECTION 34. *The Request.* - The request shall

contain a petition for the grant of the patent, the name and other data of the applicant, the inventor and the agent and the title of the invention. (n)

SECTION 35. *Disclosure and Description of the Invention.* -

35.1 Disclosure. - The application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Where the application concerns a microbiological process or the product thereof and involves the use of a micro-organism which cannot be sufficiently disclosed in the application in such a way as to enable the invention to be carried out by a person skilled in the art, and such material is not available to the public, the application shall be supplemented by a deposit of such material with an international depository institution.

35.2 Description. - The Regulations shall prescribe the contents of the description and the order of presentation. (Sec. 14, R.A. No. 165a)

SECTION 36. *The Claims.* -

36.1. The application shall contain one (1) or more claims which shall define the matter for which protection is sought. Each claim shall be clear and concise, and shall be supported by the description.

36.2 The Regulations shall prescribe the manner of the presentation of claims. (n)

SECTION 37. *The Abstract.* - The abstract shall consist of a concise summary of the disclosure of the invention as contained in the description, claims and drawings in preferably not more than one hundred fifty (150) words. It must be drafted in a way which allows the

clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention. The abstract shall merely serve for technical information. (n)

SECTION 38. *Unity of Invention.* -

38.1 The application shall relate to one invention only or to a group of inventions forming a single general inventive concept.

38.2 If several independent inventions which do not form a single general inventive concept are claimed in one application, the Director may require that the application be restricted to a single invention. A later application filed for an invention divided out shall be considered as having been filed on the same day as the first application: Provided, That the later application is filed within four (4) months after the requirement to divide becomes final or within such additional time, not exceeding four (4) months, as may be granted: Provided further, That each divisional application shall not go beyond the disclosure in the initial application.

38.3 The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention shall not be a ground to cancel the patent. (Sec. 17, R.A. No. 165a)

SECTION 39. *Information Concerning Corresponding Foreign Application for Patents.* - The applicant shall, at the request of the Director, furnish him with the date and number of any application for a patent filed by him abroad, hereafter referred to as the “foreign application,” relating to the same or essentially the same invention as that claimed in the application filed with the Office and other documents relating to the foreign application. (n)

CHAPTER V
PROCEDURE FOR GRANT OF PATENT

SECTION 40. *Filing Date Requirements.* -

40.1 The filing date of a patent application shall be the date of receipt by the Office of at least the following elements:

- (a) An express or implicit indication that a Philippine patent is sought;
- (b) Information identifying the applicant; and
- (c) Description of the invention and one (1) or more claims in Filipino or English.

40.2 If any of these elements is not submitted within the period set by the Regulations, the application shall be considered withdrawn. (n)

SECTION 41. *According a Filing Date.* - The Office shall examine whether the patent application satisfies the requirements for the grant of date of filing as provided in Section 40 hereof. If the date of filing cannot be accorded, the applicant shall be given an opportunity to correct the deficiencies in accordance with the implementing Regulations. If the application does not contain all the elements indicated in Section 40, the filing date should be that date when all the elements are received. If the deficiencies are not remedied within the prescribed time limit, the application shall be considered withdrawn. (n)

SECTION 42. *Formality Examination.* -

42.1 After the patent application has been accorded a filing date and the required fees have been paid on time in accordance with the Regulations, the applicant shall comply with the formal requirements specified by Section 32 and the Regulations within the prescribed period, otherwise

the application shall be considered withdrawn.

- 42.2 The Regulations shall determine the procedure for the re-examination and revival of an application as well as the appeal to the Director of Patents from any final action by the examiner. (Sec. 16, R.A. No. 165a)

SECTION 43. *Classification and Search.* - An application that has complied with the formal requirements shall be classified and a search conducted to determine the prior art. (n)

SECTION 44. *Publication of Patent Application.* -

- 44.1 The patent application shall be published in the IPO Gazette together with a search document established by or on behalf of the Office citing any documents that reflect prior art, after the expiration of eighteen (18) months from the filing date or priority date.
- 44.2 After publication of a patent application, any interested party may inspect the application documents filed with the Office.
- 44.3 The Director General subject to the approval of the Secretary of Trade and Industry, may prohibit or restrict the publication of an application, if in his opinion, to do so would be prejudicial to the national security and interests of the Republic of the Philippines. (n)

SECTION 45. *Confidentiality Before Publication.* - A patent application, which has not yet been published, and all related documents, shall not be made available for inspection without the consent of the applicant. (n)

SECTION 46. *Rights Conferred by a Patent Application After Publication.* - The applicant shall have all the rights of a patentee under

Section 76 against any person who, without his authorization, exercised any of the rights conferred under Section 71 of this Act in relation to the invention claimed in the published patent application, as if a patent had been granted for that invention: *Provided*, That the said person had:

- 46.1 Actual knowledge that the invention that he was using was the subject matter of a published application; or
- 46.2 Received written notice that the invention that he was using was the subject matter of a published application being identified in the said notice by its serial number: *Provided*, That the action may not be filed until after the grant of a patent on the published application and within four (4) years from the commission of the acts complained of. (n)

SECTION 47. *Observation by Third Parties.* - Following the publication of the patent application, any person may present observations in writing concerning the patentability of the invention. Such observations shall be communicated to the applicant who may comment on them. The Office shall acknowledge and put such observations and comment in the file of the application to which it relates. (n)

SECTION 48. *Request for Substantive Examination.* - 48.1. The application shall be deemed withdrawn unless within six (6) months from the date of publication under Section 41, a written request to determine whether a patent application meets the requirements of Sections 21 to 27 and Sections 32 to 39 and the fees have been paid on time.

- 48.2 Withdrawal of the request for examination shall be irrevocable and shall not authorize the refund of any fee. (n)

SECTION 49. *Amendment of Application.* - An applicant may amend the patent application during examination: Provided, That such amendment shall not include new matter outside the scope of the disclosure contained in the application as filed. (n)

SECTION 50. *Grant of Patent.* - 50.1. If the application meets the requirements of this Act, the Office shall grant the patent: Provided, That all the fees are paid on time.

50.2 If the required fees for grant and printing are not paid in due time, the application shall be deemed to be withdrawn.

50.3 A patent shall take effect on the date of the publication of the grant of the patent in the IPO Gazette. (Sec. 18, R.A. No. 165a)

SECTION 51. *Refusal of the Application.* -

51.1 The final order of refusal of the examiner to grant the patent shall be appealable to the Director in accordance with this Act.

51.2 The Regulations shall provide for the procedure by which an appeal from the order of refusal from the Director shall be undertaken. (n)

SECTION 52. *Publication Upon Grant of Patent.* -

52.1 The grant of the patent together with other related information shall be published in the IPO Gazette within the time prescribed by the Regulations.

52.2 Any interested party may inspect the complete description, claims, and drawings of the patent on file with the Office. (Sec. 18, R.A. No. 165a)

SECTION 53. *Contents of Patent.* - The patent shall be issued in the name of the Republic

of the Philippines under the seal of the Office and shall be signed by the Director, and registered together with the description, claims, and drawings, if any, in books and records of the Office. (Secs. 19 and 20, R.A. No. 165a)

SECTION 54. *Term of Patent.* - The term of a patent shall be twenty (20) years from the filing date of the application. (Sec. 21, R.A. No. 165a)

SECTION 55. *Annual Fees.* -

55.1 To maintain the patent application or patent, an annual fee shall be paid upon the expiration of four (4) years from the date the application was published pursuant to Section 44 hereof, and on each subsequent anniversary of such date. Payment may be made within three (3) months before the due date. The obligation to pay the annual fees shall terminate should the application be withdrawn, refused, or cancelled.

55.2 If the annual fee is not paid, the patent application shall be deemed withdrawn or the patent considered as lapsed from the day following the expiration of the period within which the annual fees were due. A notice that the application is deemed withdrawn or the lapse of a patent for non-payment of any annual fee shall be published in the IPO Gazette and the lapse shall be recorded in the Register of the Office.

55.3 A grace period of six (6) months shall be granted for the payment of the annual fee, upon payment of the prescribed surcharge for delayed payment. (Sec. 22, R.A. No. 165a)

SECTION 56. *Surrender of Patent.* -

56.1. The owner of the patent, with the consent of all persons having grants or licenses or other right, title or interest

in and to the patent and the invention covered thereby, which have been recorded in the Office, may surrender his patent or any claim or claims forming part thereof to the Office for cancellation.

56.2 A person may give notice to the Office of his opposition to the surrender of a patent under this section, and if he does so, the Bureau shall notify the proprietor of the patent and determine the question.

56.3 If the Office is satisfied that the patent may properly be surrendered, he may accept the offer and, as from the day when notice of his acceptance is published in the IPO Gazette, the patent shall cease to have effect, but no action for infringement shall lie and no right compensation shall accrue for any use of the patented invention before that day for the services of the government. (Sec. 24, R.A. No. 165a)

SECTION 57. *Correction of Mistakes of the Office.* - The Director shall have the power to correct, without fee, any mistake in a patent incurred through the fault of the Office when clearly disclosed in the records thereof, to make the patent conform to the records. (Sec. 25, R.A. No. 165)

SECTION 58. *Correction of Mistake in the Application.* - On request of any interested person and payment of the prescribed fee, the Director is authorized to correct any mistake in a patent of a formal and clerical nature, not incurred through the fault of the Office. (Sec. 26, R.A. No. 165a)

SECTION 59. *Changes in Patents.* -

59.1. The owner of a patent shall have the right to request the Bureau to make the changes in the patent in order to:

- (a) Limit the extent of the protection conferred by it;

- (b) Correct obvious mistakes or to correct clerical errors; and

- (c) Correct mistakes or errors, other than those referred to in letter (b), made in good faith: Provided, That where the change would result in a broadening of the extent of protection conferred by the patent, no request may be made after the expiration of two (2) years from the grant of a patent and the change shall not affect the rights of any third party which has relied on the patent, as published.

59.2 No change in the patent shall be permitted under this section, where the change would result in the disclosure contained in the patent going beyond the disclosure contained in the application filed.

59.3 If, and to the extent to which the Office changes the patent according to this section, it shall publish the same. (n)

SECTION 60. *Form and Publication of Amendment.* - An amendment or correction of a patent shall be accomplished by a certificate of such amendment or correction, authenticated by the seal of the Office and signed by the Director, which certificate shall be attached to the patent. Notice of such amendment or correction shall be published in the IPO Gazette and copies of the patent kept or furnished by the Office shall include a copy of the certificate of amendment or correction. (Sec. 27, R.A. No. 165)

CHAPTER VI

CANCELLATION OF PATENTS AND SUBSTITUTION OF PATENTEE

SECTION 61. *Cancellation of Patents.* -

61.1 Any interested person may, upon payment of the required fee, petition to cancel the patent or any claim

thereof, or parts of the claim, on any of the following grounds:

- (a) That what is claimed as the invention is not new or Patentable;
- (b) That the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by any person skilled in the art; or
- (c) That the patent is contrary to public order or morality.

61.2 Where the grounds for cancellation relate to some of the claims or parts of the claim, cancellation may be effected to such extent only. (Secs. 28 and 29, R.A. No. 165a)

SECTION 62. *Requirement of the Petition.*

- The petition for cancellation shall be in writing, verified by the petitioner or by any person in his behalf who knows the facts, specify the grounds upon which it is based, include a statement of the facts to be relied upon, and filed with the Office. Copies of printed publications or of patents of other countries, and other supporting documents mentioned in the petition shall be attached thereto, together with the translation thereof in English, if not in the English language. (Sec. 30, R.A. No. 165)

SECTION 63. *Notice of Hearing.* - Upon filing of a petition for cancellation, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patentee and all persons having grants or licenses, or any other right, title or interest in and to the patent and the invention covered thereby, as appears of record in the Office, and of notice of the date of hearing thereon on such persons and the petitioner. Notice of the filing of the petition shall be published in the IPO Gazette. (Sec. 31, R.A. No. 165a)

SECTION 64. *Committee of Three.* - In cases

involving highly technical issues, on motion of any party, the Director of Legal Affairs may order that the petition be heard and decided by a committee composed of the Director of Legal Affairs as chairman and two (2) members who have the experience or expertise in the field of technology to which the patent sought to be cancelled relates. The decision of the committee shall be appealable to the Director General. (n)

SECTION 65. *Cancellation of the Patent.* -

65.1. If the Committee finds that a case for cancellation has been proved, it shall order the patent or any specified claim or claims thereof cancelled.

65.2 If the Committee finds that, taking into consideration the amendment made by the patentee during the cancellation proceedings, the patent and the invention to which it relates meet the requirement of this Act, it may decide to maintain the patent as amended: Provided, That the fee for printing of a new patent is paid within the time limit prescribed in the Regulations.

65.3 If the fee for the printing of a new patent is not paid in due time, the patent should be revoked.

65.4 If the patent is amended under Subsection 65.2 hereof, the Bureau shall, at the same time as it publishes the mention of the cancellation decision, publish the abstract, representative claims and drawings indicating clearly what the amendments consist of. (n)

SECTION 66. *Effect of Cancellation of Patent or Claim.* -

The rights conferred by the patent or any specified claim or claims cancelled shall terminate. Notice of the cancellation shall be published in the IPO Gazette. Unless restrained by the Director General, the decision or order to cancel by Director of Legal Affairs shall be immediately executory even pending appeal. (Sec. 32, R.A. No. 165a)

CHAPTER VII
REMEDIES OF A PERSON
WITH A RIGHT TO A PATENT

SECTION 67. *Patent Application by Persons Not Having the Right to a Patent.* . -

67.1 If a person referred to in Section 29 other than the applicant, is declared by final court order or decision as having the right to the patent, such person may, within three (3) months after the decision has become final:

- (a) Prosecute the application as his own application in place of the applicant;
- (b) File a new patent application in respect of the same invention;
- (c) Request that the application be refused; or
- (d) Seek cancellation of the patent, if one has already been issued.

67.2 The provisions of Subsection 38.2 shall apply mutatis mutandis to a new application filed under Subsection 67.1(b). (n)

SECTION 68. *Remedies of the True and Actual Inventor.* - If a person, who was deprived of the patent without his consent or through fraud is declared by final court order or decision to be the true and actual inventor, the court shall order for his substitution as patentee, or at the option of the true inventor, cancel the patent, and award actual and other damages in his favor if warranted by the circumstances. (Sec. 33, R.A. No. 165a)

SECTION 69. *Publication of the Court Order.* - The court shall furnish the Office a copy of the order or decision referred to in Sections 67 and 68, which shall be published in the IPO Gazette within three (3) months from the date such order or decision became final

and executory, and shall be recorded in the register of the Office. (n)

SECTION 70. *Time to File Action in Court.* - The actions indicated in Sections 67 and 68 shall be filed within one (1) year from the date of publication made in accordance with Sections 44 and 51, respectively. (n)

CHAPTER VIII
RIGHTS OF PATENTEES AND
INFRINGEMENT OF PATENTS

SECTION 71. *Rights Conferred by Patent.* -

71.1 A patent shall confer on its owner the following exclusive rights:

- (a) Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- (b) Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2 Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same. (Sec. 37, R.A. No. 165a)

SECTION 72. *Limitations of Patent Rights.* - The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

72.1 Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: *Provided*, That, with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to used the invention: *Provided, further*, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party;

72.2 Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: *Provided*, That it does not significantly prejudice the economic interests of the owner of the patent;

72.3 Where the act consists of making or using exclusively for the purpose of experimental use of the invention for scientific purposes or educational purposes and such other activities directly related to such scientific or educational experimental use;

72.4 In the case of drugs and medicines, where the act includes testing, using, making or selling the invention including any data related thereto, solely for purposes reasonably related to the development and submission of information and issuance of approvals by government regulatory agencies required under any law of the Philippines or of another country that regulates the manufacture construction, use or sale of any product: *Provided*, That, in order to protect the data submitted by the original patent holder from unfair commercial use provided in Article 39.3

of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the Intellectual Property Office, in consultation with the appropriate government agencies, shall issue the appropriate rules and regulations necessary therein not later than one hundred twenty (120) days after the enactment of this law;

72.5 Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared; and

72.6 Where the invention is used in any ship, vessel, aircraft, or land vehicle of any other country entering the territory of the Philippines temporarily or accidentally: *Provided*, That such invention is used exclusively for the needs of the ship, vessel, aircraft, or land vehicle and not used for the manufacturing of anything to be sold within the Philippines. (Secs. 38 and 39, R.A. No. 165a)

SECTION 73. Prior User. -

73.1 Notwithstanding Section 72 hereof, any prior user, who, in good faith was using the invention or has undertaken serious preparations to use the invention in his enterprise or business, before the filing date or priority date of the application on which a patent is granted, shall have the right to continue the use thereof as envisaged in such preparations within the territory where the patent produces its effect.

73.2 The right of the prior user may only be transferred or assigned together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made. (Sec. 40, R.A. No. 165a)

SECTION 74. *Use of Invention by Government.*

74.1 A Government agency or third person authorized by the Government may exploit the invention even without agreement of the patent owner where:

- (a) The public interest, in particular, national security, nutrition, health or the development of other sectors, as determined by the appropriate agency of the government, so requires; or
- (b) A judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or his licensee is anti-competitive.
- (c) In the of drugs and medicine, there is a national emergency or other circumstance of extreme urgency requiring the use of the invention; or
- (d) In the case of drugs and medicines, there is public non-commercial use of the patent by the patentee, without satisfactory reason; or
- (e) In the case of drugs and medicines, the demand for the patented article in the Philippines is not being met to an adequate extent and on reasonable terms, as determined by the Secretary of the Department of Health.

74.2 Unless otherwise provided herein, the use by the Government, or third person authorized by the Government shall be subject, where applicable, to the following provisions;

- (a) In situations of a national emergency or other circumstances of extreme urgency as provided

under Section 74.1 (c), the right holder shall be notified as soon as reasonably practicable;

- (b) In the case of public non-commercial use of the patent by the patentee, without satisfactory reason, as provided under Section 74.1 (d), the right holder shall be informed promptly; Provided, That, the Government or third person authorized by the Government, without making a patent search, knows or has demonstrable ground to know that a valid patent is or will be used by or for the Government;
- (c) If the demand for the patented article in the Philippines is not being met to an adequate extent and on reasonable terms as provided under Section 74.1 (e), the right holder shall be informed promptly;
- (d) The scope and duration of such use shall be limited to the purpose for which it was authorized;
- (e) Such use shall be non-exclusive;
- (f) The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization; and
- (g) The existence of a national emergency or other circumstances of extreme urgency, referred to under Section 74.1 (c), shall be subject to the determination of the President of the Philippines for the purpose of determining the need for such use or other exploitation, which shall be immediately executory.

74.3 All cases arising from the implementation of this provision shall be cognizable by courts with appropriate jurisdiction provided by law.

No court, except the Supreme Court of the Philippines, shall issue any temporary restraining order or preliminary injunction or such other provisional remedies that will prevent its immediate execution.

74.4 The Intellectual Property Office (IPO), in consultation with the appropriate government agencies, shall issue the appropriate implementing rules and regulations for the use or exploitation of patented inventions as contemplated in this section within one hundred twenty (120) days after the effectivity of this law.

SECTION 75. *Extent of Protection and Interpretation of Claims.* -

75.1 The extent of protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings.

75.2 For the purpose of determining the extent of protection conferred by the patent, due account shall be taken of elements which are equivalent to the elements expressed in the claims, so that a claim shall be considered to cover not only all the elements as expressed therein, but also equivalents. (n)

SECTION 76. *Civil Action for Infringement.* -

76.1 The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization

of the patentee constitutes patent infringement: *Provided*, That, this shall not apply to instances covered by Section 72.1 and 72.4 (Limitations and Patent Rights); Section 74 (Use of Invention by Government; Section 93.6 (Compulsory Licensing); and Section 93-A (Procedures on Issuance of a Special Compulsory License under the TRIPS Agreement) of this Code.

76.2 Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before a court of competent jurisdiction, to recover from the infringer such damages sustained thereby, plus attorney's fees and other expenses of litigation, and to secure an injunction for the protection of his rights.

76.3 If the damages are inadequate or cannot be readily ascertained with reasonable certainty, the court may award by way of damages a sum equivalent to reasonable royalty.

76.4 The court may, according to the circumstances of the case, award damages in a sum above the amount found as actual damages sustained: *Provided*, That the award does not exceed three (3) times the amount of such actual damages.

76.5 The court may, in its discretion, order that the infringing goods, materials and implements predominantly used in the infringement be disposed of outside the channels of commerce or destroyed, without compensation.

76.6 Anyone who actively induces the infringement of a patent or provides the infringer with a component of a patented product or of a product produced because of a patented

process knowing it to be especially adopted for infringing the patented invention and not suitable for substantial non-infringing use shall be liable as a contributory infringer and shall be jointly and severally liable with the infringer. (Sec. 42, R.A. No. 165a)

SECTION 77. *Infringement Action by a Foreign National.* - Any foreign national or juridical entity who meets the requirements of Section 3 and not engaged in business in the Philippines, to which a patent has been granted or assigned under this Act, may bring an action for infringement of patent, whether or not it is licensed to do business in the Philippines under existing law. (Sec. 41-A, R.A. No. 165a)

SECTION 78. *Process Patents; Burden of Proof.* - If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the court shall adopt measures to protect, as far as practicable, his manufacturing and business secrets. (n)

SECTION 79. *Limitation of Action for Damages.* - No damages can be recovered for acts of infringement committed more than four (4) years before the institution of the action for infringement. (Sec. 43, R.A. No. 165)

SECTION 80. *Damages, Requirement of Notice.* - Damages cannot be recovered for acts of infringement committed before the infringer had known, or had reasonable grounds to know of the patent. It is presumed that the infringer had known of the patent if on the patented product, or on the container

or package in which the article is supplied to the public, or on the advertising material relating to the patented product or process, are placed the words "Philippine Patent" with the number of the patent. (Sec. 44, R.A. No. 165a)

SECTION 81. *Defenses in Action for Infringement.* - In an action for infringement, the defendant, in addition to other defenses available to him, may show the invalidity of the patent, or any claim thereof, on any of the grounds on which a petition of cancellation can be brought under Section 61 hereof. (Sec. 45, R.A. No. 165)

SECTION 82. *Patent Found Invalid May be Cancelled.* - In an action for infringement, if the court shall find the patent or any claim to be invalid, it shall cancel the same, and the Director of Legal Affairs upon receipt of the final judgment of cancellation by the court, shall record that fact in the register of the Office and shall publish a notice to that effect in the IPO Gazette. (Sec. 46, R.A. No. 165a)

SECTION 83. *Assessor in Infringement Action.* -

83.1 Two (2) or more assessors may be appointed by the court. The assessors shall be possessed of the necessary scientific and technical knowledge required by the subject matter in litigation. Either party may challenge the fitness of any assessor proposed for appointment.

83.2 Each assessor shall receive a compensation in an amount to be fixed by the court and advanced by the complaining party, which shall be awarded as part of his costs should he prevail in the action. (Sec. 47, R.A. No. 165a)

SECTION 84. *Criminal Action for Repetition of Infringement.* - If infringement is repeated by the infringer or by anyone in connivance

with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three (3) years and/or a fine of not less than One hundred thousand pesos (P100,000) but not more than Three hundred thousand pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribe in three (3) years from date of the commission of the crime. (Sec. 48, R.A. No. 165a)

CHAPTER IX
VOLUNTARY LICENSING

SECTION 85. *Voluntary License Contract.* - To encourage the transfer and dissemination of technology, prevent or control practices and conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition and trade, all technology transfer arrangements shall comply with the provisions of this Chapter. (n)

SECTION 86. *Jurisdiction to Settle Disputes on Royalties.* - The Director of the Documentation, Information and Technology Transfer Bureau shall exercise quasi-judicial jurisdiction in the settlement of disputes between parties to a technology transfer arrangement arising from technology transfer payments, including the fixing of appropriate amount or rate of royalty. (n)

SECTION 87. *Prohibited Clauses.* - Except in cases under Section 91, the following provisions shall be deemed *prima facie* to have an adverse effect on competition and trade:

87.1 Those which impose upon the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials, and other

technologies, or of permanently employing personnel indicated by the licensor;

87.2 Those pursuant to which the licensor reserves the right to fix the sale or resale prices of the products manufactured on the basis of the license;

87.3 Those that contain restrictions regarding the volume and structure of production;

87.4 Those that prohibit the use of competitive technologies in a non-exclusive technology transfer agreement;

87.5 Those that establish a full or partial purchase option in favor of the licensor;

87.6 Those that obligate the licensee to transfer for free to the licensor the inventions or improvements that may be obtained through the use of the licensed technology;

87.7 Those that require payment of royalties to the owners of patents for patents which are not used;

87.8 Those that prohibit the licensee to export the licensed product unless justified for the protection of the legitimate interest of the licensor such as exports to countries where exclusive licenses to manufacture and/or distribute the licensed product(s) have already been granted;

87.9 Those which restrict the use of the technology supplied after the expiration of the technology transfer arrangement, except in cases of early termination of the technology transfer arrangement due to reason(s) attributable to the licensee;

87.10 Those which require payments for patents and other industrial property rights after their expiration, termination arrangement;

87.11 Those which require that the technology recipient shall not contest the validity of any of the patents of the technology supplier;

87.12 Those which restrict the research and development activities of the licensee designed to absorb and adapt the transferred technology to local conditions or to initiate research and development programs in connection with new products, processes or equipment;

87.13 Those which prevent the licensee from adapting the imported technology to local conditions, or introducing innovation to it, as long as it does not impair the quality standards prescribed by the licensor;

87.14 Those which exempt the licensor for liability for non-fulfilment of his responsibilities under the technology transfer arrangement and/or liability arising from third party suits brought about by the use of the licensed product or the licensed technology; and

87.15 Other clauses with equivalent effects. (Sec. 33-C (2), R.A 165a)

SECTION 88. *Mandatory Provisions.* - The following provisions shall be included in voluntary license contracts:

88.1 That the laws of the Philippines shall govern the interpretation of the same and in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office;

88.2 Continued access to improvements in techniques and processes related to the technology shall be made available during the period of the technology transfer arrangement;

88.3 In the event the technology transfer arrangement shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country; and

88.4 The Philippine taxes on all payments relating to the technology transfer arrangement shall be borne by the licensor. (n)

SECTION 89. *Rights of Licensor.* - In the absence of any provision to the contrary in the technology transfer arrangement, the grant of a license shall not prevent the licensor from granting further licenses to third person nor from exploiting the subject matter of the technology transfer arrangement himself. (Sec. 33-B, R.A. 165a)

SECTION 90. *Rights of Licensee.* - The licensee shall be entitled to exploit the subject matter of the technology transfer arrangement during the whole term of the technology transfer arrangement. (Sec. 33-C (1), R.A. 165a)

SECTION 91. *Exceptional Cases.* - In exceptional or meritorious cases where substantial benefits will accrue to the economy, such as high technology content, increase in foreign exchange earnings, employment generation, regional dispersal of industries and/or substitution with or use of local raw materials, or in the case of Board of Investments, registered companies with

pioneer status, exemption from any of the above requirements may be allowed by the Documentation, Information and Technology Transfer Bureau after evaluation thereof on a case by case basis. (n)

SECTION 92. *Non-Registration with the Documentation, Information and Technology Transfer Bureau.* - Technology transfer arrangements that conform with the provisions of Sections 86 and 87 need not be registered with the Documentation, Information and Technology Transfer Bureau. Non-conformance with any of the provisions of Sections 87 and 88, however, shall automatically render the technology transfer arrangement unenforceable, unless said technology transfer arrangement is approved and registered with the Documentation, Information and Technology Transfer Bureau under the provisions of Section 91 on exceptional cases. (n)

CHAPTER X

COMPULSORY LICENSING

SECTION 93. *Grounds for Compulsory Licensing.* - The Director of General of the Intellectual Property Office may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention, under any of the following circumstances:

- 93.1 National emergency or other circumstances of extreme urgency;
- 93.2 Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the appropriate agency of the Government, so requires; or
- 93.3 Where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive; or

93.4 In case of public non-commercial use of the patent by the patentee, without satisfactory reason;

93.5 If the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason: Provided, That the importation of the patented article shall constitute working or using the patent. (Secs. 34, 34-A, 34-B, R.A. No. 165a)

93.6 Where the demand for patented drugs and medicines is not being met to an adequate extent and on reasonable terms, as determined by the Secretary of the Department of Health.

SECTION 93-A. *Procedures on Issuance of a Special Compulsory License under the TRIPS Agreement -*

93-A.1 The Director General of the Intellectual Property Office, upon the written recommendation of the Secretary of the Department of Health, shall, upon filing of a petition, grant a special compulsory license for the importation of patented drugs and medicines. The special compulsory license for the importation contemplated under this provision shall be an additional special alternative procedure to ensure access to quality affordable medicines and shall be primarily for domestic consumption: *Provided*, That, adequate remuneration shall be paid to the patent owner either by the exporting or importing country. The compulsory license shall also contain a provision directing the grantee the license to exercise reasonable measures to prevent the re-exportation of the products imported under this provision.

The grant of a special compulsory license under this provision shall be an exception to Sections 100.4 and 100.6 of Republic Act No. 8293 and shall be immediately executory.

No court, except the Supreme Court of the Philippines, shall issue any temporary restraining order or preliminary injunction or such other provisional remedies that will prevent the grant of the special compulsory license.

93-A.2 A compulsory license shall also be available for the manufacture and export of drugs and medicines to any country having insufficient or no manufacturing capacity in the pharmaceutical sector to address public health problems: *Provided*, That, a compulsory license has been granted by such country or such country has, by notification or otherwise, allowed importation into its jurisdiction of the patented drugs and medicines from the Philippines in compliance with the TRIPS Agreement.

93-A.3 The right to grant a special compulsory license under this section shall not limit or prejudice the rights, obligations and flexibilities provided under the TRIPS Agreement and under Philippine laws, particularly Section 72.1 and Section 74 of the Intellectual Property Code, as amended under this Act. It is also without prejudice to the extent to which drugs and medicines produced under a compulsory license can be exported as allowed in the TRIPS Agreement and applicable laws.

SECTION 94. *Period for Filing a Petition for a Compulsory License.* -

94.1 A compulsory license may not be applied for on the ground stated in Subsection 93.5 before the expiration of a period of four (4) years from the date of filing of the application or three (3) years from the date of the patent whichever period expires last.

94.2 A compulsory license which is applied for on any of the grounds stated in Subsections 93.2, 93.3, 93.4 and 93.6 and Section 97 may be applied for at any time after the grant of the patent. (Sec. 34(1), R.A. No. 165)

SECTION 95. *Requirement to Obtain a License on Reasonable Commercial Terms.* -

95.1 The license will only be granted after the petitioner has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions but such efforts have not been successful within a reasonable period of time.

95.2 The requirement under Subsection 95.1 shall not apply in the following cases:

- (a) Where the petition for compulsory license seeks to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (b) In situations of national emergency or other circumstances of extreme urgency;
- (c) In cases of public non-commercial use; and
- (d) In cases where the demand for the patented drugs and medicines in the Philippines is not being met to an adequate extent and on reasonable terms, as determined by the Secretary of the Department of Health.

95.3 In situations of national emergency or other circumstances of extreme urgency, the right holder shall be notified as soon as reasonably practicable.

95.4 In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly. (n)

95.5 Where the demand for the patented drugs and medicines in the Philippines is not being met to an adequate extent and on reasonable terms as determined by the Secretary of the Department of Health, the right holder shall be informed promptly.

SECTION 96. *Compulsory Licensing of Patents Involving Semi-Conductor Technology.* - In the case of compulsory licensing of patents involving semi-conductor technology, the license may only be granted in case of public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. (n)

SECTION 97. *Compulsory License Based on Interdependence of Patents.* - If the invention protected by a patent, hereafter referred to as the “second patent,” within the country cannot be worked without infringing another patent, hereafter referred to as the “first patent,” granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

97.1 The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

97.2 The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

97.3 The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

97.4 The terms and conditions of Sections 95, 96 and 98 to 100 of this Act. (Sec. 34-C, R.A. No. 165a)

SECTION 98. *Form and Contents of Petition.* - The petition for compulsory licensing must be in writing, verified by the petitioner and accompanied by payment of the required filing fee. It shall contain the name and address of the petitioner as well as those of the respondents, the number and date of issue of the patent in connection with which compulsory license is sought, the name of the patentee, the title of the invention, the statutory grounds upon which compulsory license is sought, the ultimate facts constituting the petitioner’s cause of action, and the relief prayed for. (Sec. 34-D, R.A. No. 165)

SECTION 99. *Notice of Hearing.* - 99.1. Upon filing of a petition, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patent owner and all persons having grants or licenses, or any other right, title or interest in and to the patent and invention covered thereby as appears of record in the Office, and of notice of the date of hearing thereon, on such persons and petitioner. The resident agent or representative appointed in accordance with Section 33 hereof, shall be bound to accept service of notice of the filing of the petition within the meaning of this Section.

99.2 In every case, the notice shall be published by the said Office in a newspaper of general circulation, once a week for three (3) consecutive

weeks and once in the IPO Gazette at applicant's expense. (Sec. 34-E, R.A. No. 165)

SECTION 100. *Terms and Conditions of Compulsory License.* - The basic terms and conditions including the rate of royalties of a compulsory license shall be fixed by the Director of Legal Affairs subject to the following conditions:

100.1 The scope and duration of such license shall be limited to the purpose for which it was authorized;

100.2 The license shall be non-exclusive;

100.3 The license shall be non-assignable, except with that part of the enterprise or business with which the invention is being exploited;

100.4 Use of the subject matter of the license shall be devoted predominantly for the supply of the Philippine market: Provided, That this limitation shall not apply where the grant of the license is based on the ground that the patentee's manner of exploiting the patent is determined by judicial or administrative process, to be anti-competitive.

100.5 The license may be terminated upon proper showing that circumstances which led to its grant have ceased to exist and are unlikely to recur: Provided, That adequate protection shall be afforded to the legitimate interest of the licensee; and

100.6 The patentee shall be paid adequate remuneration taking into account the economic value of the grant or authorization, except that in cases where the license was granted to remedy a practice which was determined after judicial or administrative process, to be anti-competitive, the need to correct

the anti-competitive practice may be taken into account in fixing the amount of remuneration. (Sec. 35-B, R.A. No. 165a)

SECTION 101. *Amendment, Cancellation, Surrender of Compulsory License.* -

101.1 Upon the request of the patentee or the licensee, the Director of Legal Affairs may amend the decision granting the compulsory license, upon proper showing of new facts or circumstances justifying such amendment.

101.2 Upon the request of the patentee, the said Director may cancel the compulsory license:

(a) If the ground for the grant of the compulsory license no longer exists and is unlikely to recur;

(b) If the licensee has neither begun to supply the domestic market nor made serious preparation therefor;

(c) If the licensee has not complied with the prescribed terms of the license;

101.3 The licensee may surrender the license by a written declaration submitted to the Office.

101.4 The said Director shall cause the amendment, surrender, or cancellation in the Register, notify the patentee, and/or the licensee, and cause notice thereof to be published in the IPO Gazette. (Sec. 35-D, R.A. No. 165a)

SECTION 102. *Licensee's Exemption from Liability.* - Any person who works a patented product, substance and/or process under a license granted under this Chapter, shall be free from any liability for infringement: Provided however, That in the case of voluntary licensing, no collusion with the licensor is proven. This is without prejudice to

the right of the rightful owner of the patent to recover from the licensor whatever he may have received as royalties under the license. (Sec. 35-E, R.A. No. 165a)

CHAPTER XI

ASSIGNMENT AND TRANSMISSION OF RIGHTS

SECTION 103. *Transmission of Rights.* -

103.1 Patents or applications for patents and invention to which they relate, shall be protected in the same way as the rights of other property under the Civil Code.

103.2 Inventions and any right, title or interest in and to patents and inventions covered thereby, may be assigned or transmitted by inheritance or bequest or may be the subject of a license contract. (Sec. 50, R.A. No. 165a)

SECTION 104. *Assignment of Inventions.* - An assignment may be of the entire right, title or interest in and to the patent and the invention covered thereby, or of an undivided share of the entire patent and invention, in which event the parties become joint owners thereof. An assignment may be limited to a specified territory. (Sec. 51, R.A. No. 165)

SECTION 105. *Form of Assignment.* - The assignment must be in writing, acknowledged before a notary public or other officer authorized to administer oath or perform notarial acts, and certified under the hand and official seal of the notary or such other officer. (Sec. 52, R.A. No. 165)

SECTION 106. *Recording.* - 106.1. The Office shall record assignments, licenses and other instruments relating to the transmission of any right, title or interest in and to inventions, and patents or application for patents or inventions to which they relate, which are presented in due form to the Office for registration, in books and records kept for the purpose. The original documents together

with a signed duplicate thereof shall be filed, and the contents thereof should be kept confidential. If the original is not available, an authenticated copy thereof in duplicate may be filed. Upon recording, the Office shall retain the duplicate, return the original or the authenticated copy to the party who filed the same and notice of the recording shall be published in the IPO Gazette.

106.2 Such instruments shall be void as against any subsequent purchaser or mortgagee for valuable consideration and without notice, unless, it is so recorded in the Office, within three (3) months from the date of said instrument, or prior to the subsequent purchase or mortgage. (Sec. 53, R.A. No. 165a)

SECTION 107. *Rights of Joint Owners.* - If two (2) or more persons jointly own a patent and the invention covered thereby, either by the issuance of the patent in their joint favor or by reason of the assignment of an undivided share in the patent and invention or by reason of the succession in title to such share, each of the joint owners shall be entitled to personally make, use, sell, or import the invention for his own profit: Provided, however, That neither of the joint owners shall be entitled to grant licenses or to assign his right, title or interest or part thereof without the consent of the other owner or owners, or without proportionally dividing the proceeds with such other owner or owners. (Sec. 54, R.A. No. 165)

CHAPTER XII

REGISTRATION OF UTILITY MODELS

SECTION 108. *Applicability of Provisions Relating to Patents.* - 108.1. Subject to Section 109, the provisions governing patents shall apply, mutatis mutandis, to the registration of utility models.

108.2 Where the right to a patent conflicts with the right to a utility model

registration in the case referred to in Section 29, the said provision shall apply as if the word “patent” were replaced by the words “patent or utility model registration”. (Sec. 55, R.A. No. 165a)

SECTION 109. *Special Provisions Relating to Utility Models.* - 109.1.

- (a) An invention qualifies for registration as a utility model if it is new and industrially applicable.
- (b) Section 21, “Patentable Inventions”, shall apply except the reference to inventive step as a condition of protection.

109.2 Sections 43 to 49 shall not apply in the case of applications for registration of a utility model.

109.3 A utility model registration shall expire, without any possibility of renewal, at the end of the seventh year after the date of the filing of the application.

109.4 In proceedings under Sections 61 to 64, the utility model registration shall be canceled on the following grounds:

- (a) That the claimed invention does not qualify for registration as a utility model and does not meet the requirements of registrability, in particular having regard to Subsection 109.1 and Sections 22, 23, 24 and 27;
- (b) That the description and the claims do not comply with the prescribed requirements;
- (c) That any drawing which is necessary for the understanding of the invention has not been furnished;
- (d) That the owner of the utility model registration is not the inventor or

his successor in title. (Secs. 55, 56, and 57, R.A. No. 165a)

SECTION 110. *Conversion of Patent Applications or Applications for Utility Model Registration.* -

110.1 At any time before the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his application into an application for registration of a utility model, which shall be accorded the filing date of the initial application. An application may be converted only once.

110.2 At any time before the grant or refusal of a utility model registration, an applicant for a utility model registration may, upon payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the initial application. (Sec. 58, R.A. No. 165a)

SECTION 111. *Prohibition against Filing of Parallel Applications.* - An applicant may not file two (2) applications for the same subject, one for utility model registration and the other for the grant of a patent whether simultaneously or consecutively. (Sec. 59, R.A. No. 165a)

CHAPTER XIII **INDUSTRIAL DESIGN**

SECTION 112. *Definition of Industrial Design.* - An industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors: Provided, That such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft. (Sec. 55, R.A. No. 165a)

SECTION 113. *Substantive Conditions for Protection.* -

113.1 Only industrial designs that are new or original shall benefit from protection under this Act.

113.2 Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected. (n)

SECTION 114. *Contents of the Application.* -

114.1 Every application for registration of an industrial design shall contain:

- (a) A request for registration of the industrial design;
- (b) Information identifying the applicant;
- (c) An indication of the kind of article of manufacture or handicraft to which the design shall be applied;
- (d) A representation of the article of manufacture or handicraft by way of drawings, photographs or other adequate graphic representation of the design as applied to the article of manufacture or handicraft which clearly and fully discloses those features for which design protection is claimed; and
- (e) The name and address of the creator, or where the applicant is not the creator, a statement indicating the origin of the right to the industrial design registration.

114.2 The application may be accompanied by a specimen of the article embodying the industrial design and shall be subject to the payment of the prescribed fee.(n)

SECTION 115. *Several Industrial Designs in One Application.* - Two (2) or more industrial designs may be the subject of the same application: Provided, That they relate to

the same sub-class of the International Classification or to the same set or composition of articles. (n)

SECTION 116. *Examination.* - 116.1. The Office shall accord as the filing date the date of receipt of the application containing indications allowing the identity of the applicant to be established and a representation of the article embodying the industrial design or a pictorial representation thereof.

116.2 If the application does not meet these requirements the filing date should be that date when all the elements specified in Section 105 are filed or the mistakes corrected. Otherwise if the requirements are not complied within the prescribed period, the application shall be considered withdrawn.

116.3 After the application has been accorded a filing date and the required fees paid on time, the applicant shall comply with the requirements of Section 114 within the prescribed period, otherwise the application shall be considered withdrawn.

116.4 The Office shall examine whether the industrial design complies with requirements of Section 112 and Subsections 113.2 and 113.3. (n)

SECTION 117. *Registration.* - 117.1. Where the Office finds that the conditions referred to in Section 113 are fulfilled, it shall order that registration be effected in the industrial design register and cause the issuance of an industrial design certificate of registration, otherwise, it shall refuse the application.

117.2 The form and contents of an industrial design certificate shall be established by the Regulations: Provided, That the name and address of the creator shall be mentioned in every case.

117.3 Registration shall be published in the form and within the period fixed by the Regulations.

117.4 The Office shall record in the register any change in the identity of the proprietor of the industrial design or his representative, if proof thereof is furnished to it. A fee shall be paid, with the request to record the change in the identity of the proprietor. If the fee is not paid, the request shall be deemed not to have been filed. In such case, the former proprietor and the former representative shall remain subject to the rights and obligations as provided in this Act.

117.5 Anyone may inspect the Register and the files of registered industrial designs including the files of cancellation proceedings. (n)

SECTION 118. *The Term of Industrial Design Registration.* - 118.1 The registration of an industrial design shall be for a period of five (5) years from the filing date of the application.

118.2 The registration of an industrial design may be renewed for not more than two (2) consecutive periods of five (5) years each, by paying the renewal fee.

118.3 The renewal fee shall be paid within twelve (12) months preceding the expiration of the period of registration. However, a grace period of six (6) months shall be granted for payment of the fees after such expiration, upon payment of a surcharge

118.4 The Regulations shall fix the amount of renewal fee, the surcharge and other requirements regarding the recording of renewals of registration.

SECTION 119. *Application of Other Sections and Chapters.* -

119.1 The following provisions relating to patents shall apply mutatis mutandis to an industrial design registration:

Section 21	- Novelty;
Section 24	- Prior art: Provided, That the disclosure is contained in printed documents or in any tangible form;
Section 25	- Non-prejudicial Disclosure;
Section 27	- Inventions Created Pursuant to a Commission;
Section 28	- Right to a Patent;
Section 29	- First to File Rule;
Section 31	- Right of Priority: Provided, That the application for industrial design shall be filed within six (6) months from the earliest filing date of the corresponding foreign application;
Section 33	- Appointment of Agent or Representative;
Section 51	- Refusal of the Application;
Sections 56 to 60	- Surrender, Correction of and Changes in Patent;
CHAPTER VII	- Remedies of a Person with a Right to Patent;
CHAPTER VIII	- Rights of Patentees and Infringement of Patents; and
CHAPTER XI	- Assignment and Transmission of Rights.

119.2 If the essential elements of an industrial design which is the subject of an application have been obtained from the creation of another person without his consent, protection under this Chapter cannot be invoked against the injured party. (n)

SECTION 120. *Cancellation of Design Registration.* -

120.1 At any time during the term of the industrial design registration, any person upon payment of the required fee, may petition the Director of Legal Affairs to cancel the industrial design on any of the following grounds:

- (a) If the subject matter of the industrial design is not registrable within the terms of Sections 112 and 113;
- (b) If the subject matter is not new; or

- (c) If the subject matter of the industrial design extends beyond the content of the application as originally filed.

120.2 Where the grounds for cancellation relate to a part of the industrial design, cancellation may be effected to such extent only. The restriction may be effected in the form of an alteration of the effected features of the design. (n)

PART III

THE LAW ON TRADEMARKS, SERVICE MARKS AND TRADE NAMES

SECTION 121. Definitions. - As used in Part III, the following terms have the following meanings:

121.1 “Mark” means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, R.A. No. 166a)

121.2 “Collective mark” means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark; (Sec. 40, R.A. No. 166a)

121.3 “Trade name” means the name or designation identifying or distinguishing an enterprise; (Sec. 38, R.A. No. 166a)

121.4 “Bureau” means the Bureau of Trademarks;

121.5 “Director” means the Director of Trademarks;

121.6 “Regulations” means the Rules of Practice in Trademarks and Service Marks formulated by the Director of Trademarks and approved by the Director General; and

121.7 “Examiner” means the trademark examiner. (Sec. 38, R.A. No. 166a)

SECTION 122. How Marks are Acquired. - The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R A. No. 166a)

SECTION 123. Registrability. -

123.1 A mark cannot be registered if it:

- (a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
- (b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;
- (c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;
- (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
 - (i) The same goods or services, or

- (ii) Closely related goods or services, or
 - (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;
- (f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;
- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;
- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;
- (k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;
- (l) Consists of color alone, unless defined by a given form; or
- (m) Is contrary to public order or morality.
- 123.2 As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially

exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

123.3 The nature of the goods to which the mark is applied will not constitute an obstacle to registration. (Sec. 4, R.A. No. 166a)

SECTION 124. Requirements of Application. -

124.1 The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

- (a) A request for registration;
- (b) The name and address of the applicant;
- (c) The name of a State of which the applicant is a national or where he has domicile; and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;
- (d) Where the applicant is a juridical entity, the law under which it is organized and existing;
- (e) The appointment of an agent or representative, if the applicant is not domiciled in the Philippines;
- (f) Where the applicant claims the priority of an earlier application, an indication of:
 - i) The name of the State with whose national office the earlier application was filed or if filed with an office other than a national office, the name of that office,
 - ii) The date on which the earlier application was filed, and

iii) Where available, the application number of the earlier application;

(g) Where the applicant claims color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;

(h) Where the mark is a three-dimensional mark, a statement to that effect;

(i) One or more reproductions of the mark, as prescribed in the Regulations;

(j) A transliteration or translation of the mark or of some parts of the mark, as prescribed in the Regulations;

(k) The names of the goods or services for which the registration is sought, grouped according to the classes of the Nice Classification, together with the number of the class of the said Classification to which each group of goods or services belongs; and

(l) A signature by, or other self-identification of, the applicant or his representative.

124.2 The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

124.3 One (1) application may relate to several goods and/or services, whether they belong to one (1) class or to several classes of the Nice Classification.

124.4 If during the examination of the application, the Office finds factual basis to reasonably doubt the veracity of any indication or element in the application, it may require the applicant to submit sufficient evidence to remove the doubt. (Sec. 5, R.A. No. 166a)

SECTION 125. Representation; Address for Service. - If the applicant is not domiciled or has no real and effective commercial establishment in the Philippines, he shall designate by a written document filed in the Office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark. Such notices or services may be served upon the person so designated by leaving a copy thereof at the address specified in the last designation filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director. (Sec. 3, R.A. No. 166a)

SECTION 126. Disclaimers. - The Office may allow or require the applicant to disclaim an unregistrable component of an otherwise registrable mark but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor shall disclaimer prejudice or affect the applicant's or owner's right on another application of later date if the disclaimed matter became distinctive of the applicant's or owner's goods, business or services. (Sec. 13, R.A. No. 166a)

SECTION 127. Filing Date. - 127.1. Requirements. - The filing date of an application shall be the date on which the Office received the following indications and elements in English or Filipino:

- (a) An express or implicit indication that the registration of a mark is sought;
- (b) The identity of the applicant;
- (c) Indications sufficient to contact the applicant or his representative, if any;
- (d) A reproduction of the mark whose registration is sought; and
- (e) The list of the goods or services for which the registration is sought.

127.2 No filing date shall be accorded until the required fee is paid. (n)

SECTION 128. Single Registration for Goods and/or Services. - Where goods and/or services belonging to several classes of the Nice Classification have been included in one (1) application, such an application shall result in one registration. (n)

SECTION 129. Division of Application. - Any application referring to several goods or services, hereafter referred to as the "initial application," may be divided by the applicant into two (2) or more applications, hereafter referred to as the "divisional applications," by distributing among the latter the goods or services referred to in the initial application. The divisional applications shall preserve the filing date of the initial application or the benefit of the right of priority. (n)

SECTION 130. Signature and Other Means of Self-Identification. - 130.1. Where a signature is required, the Office shall accept:

- (a) A hand-written signature; or
- (b) The use of other forms of signature, such as a printed or stamped signature, or the use of a seal instead of a hand-written signature: Provided, That where a seal is used, it should be accompanied by an

indication in letters of the name of the signatory.

130.2 The Office shall accept communications to it by telecopier, or by electronic means subject to the conditions or requirements that will be prescribed by the Regulations. When communications are made by telefacsimile, the reproduction of the signature, or the reproduction of the seal together with, where required, the indication in letters of the name of the natural person whose seal is used, appears. The original communications must be received by the Office within thirty (30) days from date of receipt of the telefacsimile.

130.3 No attestation, notarization, authentication, legalization or other certification of any signature or other means of self-identification referred to in the preceding paragraphs, will be required, except, where the signature concerns the surrender of a registration. (n)

SECTION 131. *Priority Right.* -

131.1 An application for registration of a mark filed in the Philippines by a person referred to in Section 3, and who previously duly filed an application for registration of the same mark in one of those countries, shall be considered as filed as of the day the application was first filed in the foreign country.

131.2 No registration of a mark in the Philippines by a person described in this section shall be granted until such mark has been registered in the country of origin of the applicant.

131.3 Nothing in this section shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which

his mark was registered in this country: Provided, That, notwithstanding the foregoing, the owner of a well-known mark as defined in Section 123.1(e) of this Act, that is not registered in the Philippines, may, against an identical or confusingly similar mark, oppose its registration, or petition the cancellation of its registration or sue for unfair competition, without prejudice to availing himself of other remedies provided for under the law.

131.4 In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country: Provided, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority. (Sec. 37, R.A. No. 166a)

SECTION 132. *Application Number and Filing Date.* -

132.1 The Office shall examine whether the application satisfies the requirements for the grant of a filing date as provided in Section 127 and Regulations relating thereto. If the application does not satisfy the filing requirements, the Office shall notify the applicant who shall within a period fixed by the Regulations complete or correct the application as required, otherwise, the application shall be considered withdrawn.

132.2 Once an application meets the filing requirements of Section 127, it shall be numbered in the sequential order, and the applicant shall be informed of the

application number and the filing date of the application will be deemed to have been abandoned. (n)

SECTION 133. *Examination and Publication.* -

133.1 Once the application meets the filing requirements of Section 127, the Office shall examine whether the application meets the requirements of Section 124 and the mark as defined in Section 121 is registrable under Section 123.

133.2 Where the Office finds that the conditions referred to in Subsection 133.1 are fulfilled, it shall upon payment of the prescribed fee, forthwith cause the application, as filed, to be published in the prescribed manner.

133.3 If after the examination, the applicant is not entitled to registration for any reason, the Office shall advise the applicant thereof and the reasons therefor. The applicant shall have a period of four (4) months in which to reply or amend his application, which shall then be re-examined. The Regulations shall determine the procedure for the re-examination or revival of an application as well as the appeal to the Director of Trademarks from any final action by the Examiner.

133.4 An abandoned application may be revived as a pending application within three (3) months from the date of abandonment, upon good cause shown and the payment of the required fee.

133.5 The final decision of refusal of the Director of Trademarks shall be appealable to the Director General in accordance with the procedure fixed by the Regulations. (Sec. 7, R.A. No. 166a)

SECTION 134. *Opposition.* - Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition. (Sec. 8, R.A. No. 165a)

SECTION 135. *Notice and Hearing.* - Upon the filing of an opposition, the Office shall serve notice of the filing on the applicant, and of the date of the hearing thereof upon the applicant and the oppositor and all other persons having any right, title or interest in the mark covered by the application, as appear of record in the Office. (Sec. 9, R.A. No. 165)

SECTION 136. *Issuance and Publication of Certificate.* - When the period for filing the opposition has expired, or when the Director of Legal Affairs shall have denied the opposition, the Office upon payment of the required fee, shall issue the certificate of registration. Upon issuance of a certificate of registration, notice thereof making reference to the publication of the application shall be published in the IPO Gazette. (Sec. 10, R.A. No. 165)

SECTION 137. *Registration of Mark and Issuance of a Certificate to the Owner or his Assignee.* -

137.1 The Office shall maintain a Register in which shall be registered marks, numbered in the order of their registration, and all transactions in respect of each mark, required to be recorded by virtue of this law.

137.2 The registration of a mark shall include a reproduction of the mark and shall mention: its number; the name and address of the registered owner and, if the registered owner's address is outside the country, his address for service within the country; the dates of application and registration; if priority is claimed, an indication of this fact, and the number, date and country of the application, basis of the priority claims; the list of goods or services in respect of which registration has been granted, with the indication of the corresponding class or classes; and such other data as the Regulations may prescribe from time to time.

137.3 A certificate of registration of a mark may be issued to the assignee of the applicant: Provided, That the assignment is recorded in the Office. In case of a change of ownership, the Office shall at the written request signed by the owner, or his representative, or by the new owner, or his representative and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

137.4 The Office shall record any change of address, or address for service, which shall be notified to it by the registered owner.

137.5 In the absence of any provision to the contrary in this Act, communications to be made to the registered owner by virtue of this Act shall be sent to him

at his last recorded address and, at the same, at his last recorded address for service. (Sec. 19, R.A. No. 166a)

SECTION 138. *Certificates of Registration.* - A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 20, R.A. No. 165)

SECTION 139. *Publication of Registered Marks; Inspection of Register.* - 139.1. The Office shall publish, in the form and within the period fixed by the Regulations, the marks registered, in the order of their registration, reproducing all the particulars referred to in Subsection 137.2.

139.2 Marks registered at the Office may be inspected free of charge and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in respect of any registered mark. (n)

SECTION 140. *Cancellation upon Application by Registrant; Amendment or Disclaimer of Registration.* - Upon application of the registrant, the Office may permit any registration to be surrendered for cancellation, and upon cancellation the appropriate entry shall be made in the records of the Office. Upon application of the registrant and payment of the prescribed fee, the Office for good cause may permit any registration to be amended or to be disclaimed in part: Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Office upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof (Sec. 14, R.A. No. 166)

SECTION 141. *Sealed and Certified Copies as Evidence.* - Copies of any records, books, papers, or drawings belonging to the Office relating to marks, and copies of registrations, when authenticated by the seal of the Office and certified by the Director of the Administrative, Financial and Human Resource Development Service Bureau or in his name by an employee of the Office duly authorized by said Director, shall be evidence in all cases wherein the originals would be evidence; and any person who applies and pays the prescribed fee shall secure such copies. (n)

SECTION 142. *Correction of Mistakes Made by the Office.* - Whenever a material mistake in a registration incurred through the fault of the Office is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake shall be issued without charge, recorded and a printed copy thereof shall be attached to each printed copy of the registration. Such corrected registration shall thereafter have the same effect as the original certificate; or in the discretion of the Director of the Administrative, Financial and Human Resource Development Service Bureau a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the Regulations and the registration to which they are attached shall have the same force and effect as if such certificates and their issuance had been authorized by this Act. (n)

SECTION 143. *Correction of Mistakes Made by Applicant.* - Whenever a mistake is made in a registration and such mistake occurred in good faith through the fault of the applicant, the Office may issue a certificate upon the payment of the prescribed fee: Provided, That the correction does not involve any change in the registration that requires republication of the mark. (n)

SECTION 144. *Classification of Goods and Services.* - 144.1. Each registration, and any

publication of the Office which concerns an application or registration effected by the Office shall indicate the goods or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs, presented in the order of the classes of the said Classification.

144.2 Goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification. (Sec. 6, R.A. No. 166a)

SECTION 145. *Duration.* - A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. (Sec. 12, R.A. No. 166a)

SECTION 146. *Renewal.* -

146.1 A certificate of registration may be renewed for periods of ten (10) years at its expiration upon payment of the prescribed fee and upon filing of a request. The request shall contain the following indications:

- (a) An indication that renewal is sought;
- (b) The name and address of the registrant or his successor-in-interest, hereafter referred to as the "right holder";
- (c) The registration number of the registration concerned;

- (d) The filing date of the application which resulted in the registration concerned to be renewed;
- (e) Where the right holder has a representative, the name and address of that representative;
- (f) The names of the recorded goods or services for which the renewal is requested or the names of the recorded goods or services for which the renewal is not requested, grouped according to the classes of the Nice Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification; and
- (g) A signature by the right holder or his representative.

146.2 Such request shall be in Filipino or English and may be made at any time within six (6) months before the expiration of the period for which the registration was issued or renewed, or it may be made within six (6) months after such expiration on payment of the additional fee herein prescribed.

146.3 If the Office refuses to renew the registration, it shall notify the registrant of his refusal and the reasons therefor.

146.4 An applicant for renewal not domiciled in the Philippines shall be subject to and comply with the requirements of this Act. (Sec. 15, R.A. No. 166a)

SECTION 147. Rights Conferred. -

147.1 Except in cases of importation of drugs and medicines allowed under Section 72.1 of this Act and of off-patent drugs and medicines, the owner of a registered mark shall have the exclusive right to prevent all third parties not

having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

There shall be no infringement of trademarks or tradenames of imported or sold patented drugs and medicines allowed under Section 72.1 of this Act, as well as imported or sold off-patent drugs and medicines: *Provided*, That sold drugs and medicines bear the registered marks that have not been tampered, unlawfully modified, or infringed upon, under Section 155 of this Code.

147.2 The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: *Provided*, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: *Provided further*, That the interests of the owner of the registered mark are likely to be damaged by such use. (n)

SECTION 148. Use of Indications by Third Parties for Purposes Other than those for which the Mark is Used. - Registration of the mark shall not confer on the registered owner the right to preclude third parties from using bona fide their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, or time of production or of supply, of their goods

or services: Provided, That such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services. (n)

SECTION 149. *Assignment and Transfer of Application and Registration.* - 149.1. An application for registration of a mark, or its registration, may be assigned or transferred with or without the transfer of the business using the mark. (n)

149.2 Such assignment or transfer shall, however, be null and void if it is liable to mislead the public, particularly as regards the nature, source, manufacturing process, characteristics, or suitability for their purpose, of the goods or services to which the mark is applied.

149.3 The assignment of the application for registration of a mark, or of its registration, shall be in writing and require the signatures of the contracting parties. Transfers by mergers or other forms of succession may be made by any document supporting such transfer.

149.4 Assignments and transfers of registrations of marks shall be recorded at the Office on payment of the prescribed fee; assignment and transfers of applications for registration shall, on payment of the same fee, be provisionally recorded, and the mark, when registered, shall be in the name of the assignee or transferee.

149.5 Assignments and transfers shall have no effect against third parties until they are recorded at the Office. (Sec. 31, R.A. No. 166a)

SECTION 150. *License Contracts.* - 150.1. Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor

of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control, or if such quality control is not effectively carried out, the license contract shall not be valid.

150.2 A license contract shall be submitted to the Office which shall keep its contents confidential but shall record it and publish a reference thereto. A license contract shall have no effect against third parties until such recording is effected. The Regulations shall fix the procedure for the recording of the license contract. (n)

SECTION 151. *Cancellation.* -

151.1 A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- (a) Within five (5) years from the date of the registration of the mark under this Act.
- (b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be

filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. (n)

- (c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.

151.2 Notwithstanding the foregoing provisions, the court or the administrative agency vested with jurisdiction to hear and adjudicate any action to enforce the rights to a registered mark shall likewise exercise jurisdiction to determine whether the registration of said mark may be cancelled in accordance with this Act. The filing of a suit to enforce the registered mark with the proper court or agency shall exclude any other court or agency from assuming jurisdiction over a subsequently filed petition to cancel the same mark. On the other hand, the earlier filing of petition to cancel the mark with the Bureau of Legal Affairs shall not constitute a prejudicial question that must be resolved before an action to enforce the rights to same registered mark may be decided. (Sec. 17, R.A. No. 166a)

SECTION 152. *Non-use of a Mark When Excused.* -

152.1 Non-use of a mark may be excused if caused by circumstances arising independently of the will of the trademark owner. Lack of funds shall not excuse non-use of a mark.

152.2 The use of the mark in a form different from the form in which it is registered, which does not alter its distinctive character, shall not be ground for cancellation or removal of the mark and shall not diminish the protection granted to the mark.

152.3 The use of a mark in connection with one or more of the goods or services belonging to the class in respect of which the mark is registered shall prevent its cancellation or removal in respect of all other goods or services of the same class.

152.4 The use of a mark by a company related with the registrant or applicant shall inure to the latter's benefit, and such use shall not affect the validity of such mark or of its registration: Provided, That such mark is not used in such manner as to deceive the public. If use of a mark by a person is controlled by the registrant or applicant with respect to the nature and quality of the goods or services, such use shall inure to the benefit of the registrant or applicant. (n)

SECTION 153. *Requirements of Petition; Notice and Hearing.* - Insofar as applicable, the petition for cancellation shall be in the same form as that provided in Section 134 hereof, and notice and hearing shall be as provided in Section 135 hereof.

SECTION 154. *Cancellation of Registration.* - If the Bureau of Legal Affairs finds that a case for cancellation has been made out, it shall order the cancellation of the registration. When the order or judgment becomes final, any right conferred by such registration upon

the registrant or any person in interest of record shall terminate. Notice of cancellation shall be published in the IPO Gazette. (Sec. 19, R.A. No. 166a)

SECTION 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1 Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2 Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material. (Sec. 22, R.A. No 166a)

SECTION 156. Actions, and Damages and Injunction for Infringement. -

156.1 The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party. (Sec. 23, first par., R.A. No. 166a)

156.2 On application of the complainant, the court may impound during the pendency of the action, sales invoices and other documents evidencing sales. (n)

156.3 In cases where actual intent to mislead the public or to defraud the complainant is shown, in the discretion of the court, the damages may be doubled. (Sec. 23, first par., R.A. No. 166)

156.4 The complainant, upon proper showing, may also be granted injunction. (Sec. 23, second par., R.A. No. 166a)

SECTION 157. Power of Court to Order Infringing Material Destroyed. -

157.1 In any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the court may order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid

any harm caused to the right holder, or destroyed; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed.

157.2 In regard to counterfeit goods, the simple removal of the trademark affixed shall not be sufficient other than in exceptional cases which shall be determined by the Regulations, to permit the release of the goods into the channels of commerce. (Sec. 24, R.A. No. 166a)

SECTION 158. *Damages; Requirement of Notice.* - In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives notice that his mark is registered by displaying with the mark the words "Registered Mark" or the letter R within a circle or if the defendant had otherwise actual notice of the registration. (Sec. 21, R.A. No. 166a)

SECTION 159. *Limitations to Actions for Infringement.* - Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

159.1 Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned

together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

159.2 Where an infringer who is engaged solely in the business of printing the mark or other infringing materials for others is an innocent infringer, the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing.

159.3 Where the infringement complained of is contained in or is part of paid advertisement in a newspaper, magazine, or other similar periodical or in an electronic communication, the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers: Provided, That such injunctive relief shall not be available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter where restraining the dissemination of such infringing matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication is customarily conducted in accordance with the sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with

respect to such infringing matter. (n)

159.4 There shall be no infringement of trademarks or tradenames of imported or sold drugs and medicines allowed under Section 72.1 of this Act, as well as imported or sold off-patent drugs and medicines: *Provided*, That said drugs and medicines bear the registered marks that have not been tampered, unlawfully modified, or infringed upon as defined under Section 155 of this Code.

SECTION 160. *Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action.* - Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R.A. No. 166a)

SECTION 161. *Authority to Determine Right to Registration.* - In any action involving a registered mark, the court may determine the right to registration, order the cancellation of a registration, in whole or in part, and otherwise rectify the register with respect to the registration of any party to the action in the exercise of this. Judgment and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Bureau, and shall be controlled thereby. (Sec. 25, R.A. No. 166a)

SECTION 162. *Action for False or Fraudulent Declaration.* - Any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof (Sec. 26, R.A. No. 166)

SECTION 163. *Jurisdiction of Court.* - All actions under Sections 150, 155, 164, and 166 to 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws. (Sec. 27, R.A. No. 166)

SECTION 164. *Notice of Filing Suit Given to the Director.* - It shall be the duty of the clerks of such courts within one (1) month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this Act, to notify the Director in writing setting forth: the names and addresses of the litigants and designating the number of the registration or registrations and within one (1) month after the judgment is entered or an appeal is taken, the clerk of court shall give notice thereof to the Office, and the latter shall endorse the same upon the filewrapper of the said registration or registrations and incorporate the same as a part of the contents of said filewrapper. (n)

SECTION 165. *Trade Names or Business Names.* -

165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2 (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

165.3 The remedies provided for in Sections 153 to 156 and Sections 166 and 167 shall apply mutatis mutandis.

165.4 Any change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name. The provisions of Subsections 149.2 to 149.4 shall apply mutatis mutandis.

SECTION 166. *Goods Bearing Infringing Marks or Trade Names.* - No article of imported merchandise which shall copy or simulate the name of any domestic product, or manufacturer, or dealer, or which shall copy or simulate a mark registered in accordance with the provisions of this Act, or shall bear a mark or trade name calculated to induce the public to believe that the article is manufactured in the Philippines, or that it is manufactured in any foreign country or locality other than the country or locality where it is in fact manufactured, shall be admitted to entry at any customhouse of the Philippines. In order to aid the officers of the customs service in enforcing this prohibition, any person who is entitled to the benefits of this Act, may require that his name and residence, and the name of the locality in which his goods are manufactured, a copy of the certificate of registration of his mark or trade name, to be recorded in books which shall be kept for this purpose in the Bureau of Customs, under such regulations as the Collector of Customs with the approval of the Secretary of Finance shall prescribe, and may furnish to the said Bureau facsimiles of his name, the name of the locality in which his goods are manufactured, or his registered mark or trade name, and thereupon the Collector of Customs shall cause one (1) or more copies of the same to be transmitted to each collector or to other proper officer of the Bureau of Customs. (Sec. 35, R.A. No. 166)

SECTION 167. *Collective Marks.* -

167.1 Subject to Subsections 167.2 and 167.3, Sections 122 to 164 and 166 shall apply to collective marks, except that references therein to “mark” shall be read as “collective mark”.

167.2 (a) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the agreement, if any, governing the use of the collective mark.

(b) The registered owner of a collective mark shall notify the Director of any changes made in respect of the agreement referred to in paragraph (a).

167.3 In addition to the grounds provided in Section 149, the Court shall cancel the registration of a collective mark if the person requesting the cancellation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the agreements referred to in Subsection 166.2 or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

167.4 The registration of a collective mark, or an application therefor shall not be the subject of a license contract. (Sec. 40, R.A. No. 166a)

SECTION 168. *Unfair Competition, Rights, Regulation and Remedies.* -

168.1 A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2 Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3 In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

- (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;
- (b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

- (c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4 The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*. (Sec. 29, R.A. No. 166a)

SECTION 169. *False Designations of Origin; False Description or Representation.* -

169.1 Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

- (a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or
- (b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or is likely to be damaged by such act.

169.2 Any goods marked or labelled in contravention of the provisions of this Section shall not be imported into the

Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (Sec. 30, R.A. No. 166a)

SECTION 170. *Penalties.* - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code)

PART IV THE LAW ON COPYRIGHT

CHAPTER I PRELIMINARY PROVISIONS

SECTION 171. *Definitions.* - For the purpose of this Act, the following terms have the following meaning:

171.1 “Author” is the natural person who has created the work;

171.2 A “collective work” is a work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified;

171.3 “Communication to the public” or “communicate to the public” means any communication to the public, including broadcasting, rebroadcasting,

transmitting by code, broadcasting and transmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

171.4 A “computer” is an electronic or similar device having information-processing capabilities, and a “computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, of causing the computer to perform or achieve a particular task or result;

171.5 “Public lending” is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution the services of which are available to the public, such as public library or archive;

171.6 “Public performance”, in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family’s closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection 171.3;

171.7 “Published works” means works, which, with the consent of the authors, are made available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them: Provided, That availability of such copies has been such, as to satisfy the reasonable requirements of the public, having regard to the nature of the work;

171.8 “Rental” is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;

171.9 “Reproduction” is the making of one (1) or more copies, temporary or permanent, in whole or in part of a work or a sound recording in any manner or form without prejudice to the provisions of Section 185 of this Act (Sec. 41 (E), P.D. No. 49 a);

171.10 A “work of applied art” is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

171.11 A “work of the Government of the Philippines” is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as a part of his regularly prescribed official duties.

171.12 ‘Technological measure’ means any technology, device or component that, in the normal course of operation restricts acts in respect of a work, performance or sound recording, which are not authorized by the authors, performers or producers of sound recordings concerned or permitted by law;

171.13 ‘Rights management information’ means information which identifies the work, sound recording or performance, the author of the work, producer of the sound recording or performer of the performance; the owner of any right in the work, sound recording or performance; or information about the terms and conditions of the use of the work, sound recording or performance; and any number or code that represent such information, when any of these items is attached to a copy of the work, sound recording or fixation of performance or appears in conjunction with the communication to the public of a work, sound recording or performance.

CHAPTER II

ORIGINAL WORKS

SECTION 172. *Literary and Artistic Works.* -

172.1 Literary and artistic works, hereinafter referred to as “works”, are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;

- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;
- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary, scholarly, scientific and artistic works.

172.2 Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. (Sec. 2, P.D. No. 49a)

CHAPTER III DERIVATIVE WORKS

SECTION 173. *Derivative Works.* -

173.1 The following derivative works shall also be protected by copyright:

- (a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
- (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P.D. No. 49)

173.2 The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as new works: Provided however, That such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works. (Sec. 8, P.D. 49; Art. 10, TRIPS)

SECTION 174. *Published Edition of Work.* - In addition to the right to publish granted by the author, his heirs, or assigns, the publisher shall have a copyright consisting merely of the right of reproduction of the typographical arrangement of the published edition of the work. (n)

CHAPTER IV WORKS NOT PROTECTED

SECTION 175. *Unprotected Subject Matter.* - Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system,

method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof (n)

SECTION 176. *Works of the Government.* -

- 176.1 No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. (Sec. 9, first par., P.D. No. 49)
- 176.2 The author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works. (n)
- 176.3 Notwithstanding the foregoing provisions, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the Government in a public document of any work in which copyright is subsisting be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the

consent of the copyright owner. (Sec. 9, third par., P.D. No. 49)

**CHAPTER V
COPYRIGHT OR ECONOMIC RIGHTS**

SECTION 177. *Copyright or Economic Rights.*

- Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- 177.1 Reproduction of the work or substantial portion of the work;
- 177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- 177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- 177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)
- 177.5 Public display of the original or a copy of the work;
- 177.6 Public performance of the work; and
- 177.7 Other communication to the public of the work. (Sec. 5, P. D. No. 49a)

**CHAPTER VI
OWNERSHIP OF COPYRIGHT**

SECTION 178. *Rules on Copyright Ownership.*

- Copyright ownership shall be governed by the following rules:

178.1 Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;

178.2 In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;

178.3 In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

178.4 In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

178.5 In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the

composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producer shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and

178.6 In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code. (Sec. 6, P.D. No. 49a)

SECTION 179. *Anonymous and Pseudonymous Works.* - For purposes of this Act, the publishers shall be deemed to represent the authors of articles and other writings published without the names of the authors or under pseudonyms, unless the contrary appears, or the pseudonyms or adopted name leaves no doubt as to the author's identity, or if the author of the anonymous works discloses his identity. (Sec. 7, P.D. 49)

CHAPTER VII TRANSFER OR ASSIGNMENT OF COPYRIGHT

SECTION 180. *Rights of Assignee or Licensee.* -

180.1 The copyright may be assigned or licensed in whole or in part. Within the scope of the assignment or license, the assignee or licensed is entitled to all the rights and remedies which the assignor or licensor had with respect to the copyright.

180.2 The copyright is not deemed assigned or licensed inter vivos in whole or in part unless there is a written indication of such intention.

180.3 The submission of a literary, photographic or artistic work to a

newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners. (Sec. 15, P.D. No. 49a)

180.4 Any exclusivity in the economic rights in a work may be exclusively licensed. Within the scope of the exclusive license, the licensee is entitled to all the rights and remedies which the licensor had with respects to the copyright.

180.5 The copyright owner has the right to regular statements of accounts from the assignee or the licensee with regard to the assigned or licensed work.

SECTION 181. *Copyright and Material Object.* - The copyright is distinct from the property in the material object subject to it. Consequently, the transfer, assignment or licensing of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer, assignment or licensing of the copyright. (Sec. 16, P.D. No. 49)

SECTION 182. *Filing of Assignment or License.* - An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette. (Sec. 19, P.D. No. 49a)

SECTION 183. *Designation of Society.* - The owners of copyright and related rights or their heirs may designate a society of artists,

writers, composers and other right holders to collectively manage their economic or moral rights on their behalf. For the said societies to enforce the rights of their members, they shall first secure the necessary accreditation from the Intellectual Property Office. (Sec. 32, P.D. No. 49a)

CHAPTER VIII

LIMITATIONS ON COPYRIGHT

SECTION 184. *Limitations on Copyright.* -

184.1 Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

- (a) The recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; (Sec. 10(1), P.D. No. 49)
- (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned; (Sec. 11, third par., P.D. No. 49)
- (c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated; (Sec. 11, P.D. No. 49)

- (d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (Sec. 12, P.D. No. 49)
 - (e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;
 - (f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
 - (g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
 - (h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;
 - (i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations; (n)
 - (j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That either the work has been published, or, that the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and
 - (k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.
 - (l) The reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually and reading-impaired persons. *Provided*, That such copies and distribution shall be made on a non-profit basis and shall indicate the copyright owner and the date of the original publication.
- 184.2 The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interests.

SECTION 185. *Fair Use of a Copyrighted Work.*

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185.1 The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use under the criteria established by this section, to the extent that such decompilation is done for the purpose of obtaining the information necessary to achieve such interoperability. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

- (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2 The fact that a work is unpublished shall made upon consideration of all the above factors.

SECTION 186. *Work of Architecture.* - Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably

derived from the original: Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which that copyright relates. (n)

SECTION 187. *Reproduction of Published Work.* -

187.1 Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2 The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in the form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in graphic form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (n)

SECTION 188. *Reprographic Reproduction by Libraries.* -

188.1 Notwithstanding the provisions of Subsection 177.1, any library or archive whose activities are not for profit may, without the authorization of the author of copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate, by reprographic reproduction:

- (a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- (b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them, when this is considered expedient, to persons requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- (c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2 Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock: Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered

necessary for the collection of the library but which is out of stock. (Sec. 13, P.D. 49a)

SECTION 189. *Reproduction of Computer Program.* -

189.1 Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2 No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3 This provision shall be without prejudice to the application of Section 185 whenever appropriate. (n)

SECTION 190. *Importation and Exportation of Infringing Materials.* —

Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation or exportation of infringing articles prohibited under Part IV of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported or before they are exported. (Sec. 30, P.D. No. 49)

CHAPTER IX DEPOSIT AND NOTICE

SECTION 191. *Deposit and Notice of Deposit with the National Library and the Supreme Court Library.* — At any time during the subsistence of the copyright, the owner of the copyright or of any exclusive right in the work may, for the purpose of completing the records of the National Library and the Supreme Court Library, register and deposit with them, be personal delivery or by registered mail two (2) complete copies or reproductions of the work in such form as the directors of said libraries may prescribe in accordance with regulations; *Provided*, That only works in the field of law shall be deposited with the Supreme Court Library. Such registration and deposit is not a condition of copyright protection.

SECTION 192. *Notice of Copyright.* - Each copy of a work published or offered for sale may contain a notice bearing the name of the copyright owner, and the year of its first publication, and, in copies produced after the creator's death, the year of such death. (Sec. 27, P.D. No. 49a)

CHAPTER X MORAL RIGHTS

SECTION 193. *Scope of Moral Rights.* - The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such

right, have the right:

193.1 To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;

193.2 To make any alterations of his work prior to, or to withhold it from publication;

193.3 To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and

193.4 To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work. (Sec. 34, P.D. No. 49)

SECTION 194. *Breach of Contract.* - An author cannot be compelled to perform his contract to create a work or for the publication of his work already in existence. However, he may be held liable for damages for breach of such contract. (Sec. 35, P.D. No. 49)

SECTION 195. *Waiver of Moral Rights.* - An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:

195.1 To use the name of the author, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or

195.2 To use the name of the author with respect to a work he did not create. (Sec. 36, P.D. No. 49)

SECTION 196. *Contribution to Collective Work.* - When an author contributes to a collective work, his right to have his contribution attributed to him is deemed waived unless he expressly reserves it. (Sec. 37, P.D. No. 49)

SECTION 197. *Editing, Arranging and Adaptation of Work.* - In the absence of a contrary stipulation at the time an author licenses or permits another to use his work, the necessary editing, arranging or adaptation of such work, for publication, broadcast, use in a motion picture, dramatization, or mechanical or electrical reproduction in accordance with the reasonable and customary standards or requirements of the medium in which the work is to be used, shall not be deemed to contravene the author's rights secured by this chapter. Nor shall complete destruction of a work unconditionally transferred by the author be deemed to violate such rights. (Sec. 38, P.D. No. 49)

SECTION 198. *Term of Moral Rights.* -

198.1 The right of an author under Section 193.1 shall last during the lifetime of the author and in perpetuity after his death and while the rights under Section 193.2, 193.3 and 193.4 shall be coterminous with the economic rights, the moral rights shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in a written instrument which shall be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of the National Library.

198.2 For purposes of this Section, "Person" shall mean any individual, partnership, corporation, association, or society. The Director of the National Library may prescribe reasonable fees to be charged for his services in the

application of provisions of this Section. (Sec. 39, P.D. No. 49)

SECTION 199. *Enforcement Remedies.* -

Violation of any of the rights conferred by this Chapter shall entitle those charged with their enforcement to the same rights and remedies available to a copyright owner. In addition, damages which may be availed of under the Civil Code may also be recovered. Any damage recovered after the creator's death shall be held in trust for and remitted to his heirs, and in default of the heirs, shall belong to the government. (Sec. 40, P D No. 49)

CHAPTER XI RIGHTS TO PROCEEDS IN SUBSEQUENT TRANSFERS

SECTION 200. *Sale or Lease of Work.* - In every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5%). This right shall exist during the lifetime of the author and for fifty (50) years after his death. (Sec. 31, P.D. No. 49)

SECTION 201. *Works Not Covered.* - The provisions of this Chapter shall not apply to prints, etchings, engravings, works of applied art, or works of similar kind wherein the author primarily derives gain from the proceeds of reproductions. (Sec. 33, P.D. No. 49)

CHAPTER XII RIGHTS OF PERFORMERS, PRODUCERS OF SOUNDS RECORDINGS AND BROADCASTING ORGANIZATIONS

SECTION 202. *Definitions.* - For the purpose of this Act, the following terms shall have the following meanings:

202.1 “Performers” are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work;

202.2 “Sound recording” means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

202.3 An “audiovisual work or fixation” is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

202.4 “Fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

202.5 “Producer of a sound recording” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

202.6 “Publication of a fixed performance or a sound recording” means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: Provided, That copies are offered to the public in reasonable quality;

202.7 “Broadcasting” means the transmission by wireless means for the public reception of sounds or of images or of representations thereof;

such transmission by satellite is also “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

202.8 “Broadcasting organization” shall include a natural person or a juridical entity duly authorized to engage in broadcasting; and

202.9 “Communication to the public of a performance or a sound recording” means the transmission to the public, by any medium, otherwise than by broadcasting, of sounds of a performance or the representations of sounds fixed in a sound recording. For purposes of Section 209, “communication to the public” includes making the sounds or representations of sounds fixed in a sound recording audible to the public.

SECTION 203. *Scope of Performers’ Rights.*

- Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1 As regards their performances, the right of authorizing:

(a) The broadcasting and other communication to the public of their performance; and

(b) The fixation of their unfixed performance.

203.2 The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, audio visual works or fixations through sale or rental of other terms of transfer of ownership;

203.3 Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and

copies of their performance fixed in the sound recordings or audio visual works or fixations through sale or rental or other forms of transfer of ownership;

203.4 The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings or audio visual works or fixations, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5 The right of authorizing the making available to the public of their performances fixed in sound recordings or audio visual works or fixations, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them. (Sec. 42, P.D. No. 49a)

SECTION 204. *Moral Rights of Performers.* -

204.1 Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings or audio visual works or fixations, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

204.2 The rights granted to a performer in accordance with Subsection 203.1 shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed. (Sec. 43, P.D. No. 49)

SECTION 205. *Limitation on Right.* -

205.1 Subject to the provisions of Section

206, once the performer has authorized the broadcasting or fixation of his performance, the provisions of Sections 203 shall have no further application.

205.2 The provisions of Section 184 and Section 185 shall apply *mutatis mutandis* to performers. (n)

SECTION 206. *Additional Remuneration for Subsequent Communications or Broadcasts.*

- Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performer shall be entitled to an additional remuneration equivalent to at least five percent (5%) of the original compensation he or she received for the first communication or broadcast. (n)

SECTION 207. *Contract Terms.* - Nothing in this Chapter shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of any use of their performance. (n)

CHAPTER XIII

PRODUCERS OF SOUND RECORDINGS

SECTION 208. *Scope of Right.* - Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

208.1 The right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form; the placing of these reproductions in the market and the right of rental or lending;

208.2 The right to authorize the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and

208.3 The right to authorize the commercial rental to the public of the original and copies of their sound recordings, even after distribution by them by or pursuant to authorization by the producer. (Sec. 46, P.D. No. 49a)

208.4 The right to authorize the making available to the public of their sound recordings in such a way that members of the public may access the sound recording from a place and at a time individually chosen or selected by them, as well as other transmissions of a sound recording with like effect.

SECTION 209. *Communication to the Public.* - If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed with the intention of making and enhancing profit, a single equitable remuneration for the performer or performers, and the producer of the sound recording shall be paid by the user to both the performers and the producer, who, in the absence of any agreement shall share equally. (Sec. 47, P.D. No. 49a)

SECTION 210. *Limitation of Right.* - Sections 184 and 185 shall apply mutatis mutandis to the producer of sound recordings. (Sec. 48, P.D. No. 49a)

CHAPTER XIV BROADCASTING ORGANIZATIONS

SECTION 211. *Scope of Right.* - Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1 The rebroadcasting of their broadcasts;

211.2 The recording in any manner, including the making of films or the use of video tape, of their broadcasts for

the purpose of communication to the public of television broadcasts of the same; and

211.3 The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P.D. No. 49)

CHAPTER XV LIMITATIONS ON PROTECTION

SECTION 212. *Limitations on Rights.* - The provisions of Chapter VIII shall apply mutatis mutandis to the rights of performers, products of sound recordings and broadcasting organizations.

CHAPTER XVI TERM OF PROTECTION

SECTION 213. *Term of Protection.* -

213.1 Subject to the provisions of Subsections 213.2 to 213.5, the copyright in works under Sections 172 and 173 shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works. (Sec. 21, first sentence, P.D. No. 49a)

213.2 In case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his death. (Sec. 21, second sentence, P.D. No. 49)

213.3 In case of anonymous or pseudonymous works, the copyright shall be protected for fifty (50) years from the date on which the work was first lawfully published: Provided, That where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the provisions of Subsections 213.1. and 213.2 shall apply, as the case may be: Provided, further, That such works if

not published before shall be protected for fifty (50) years counted from the making of the work. (Sec. 23, P.D. No. 49)

213.4 In case of works of applied art the protection shall be for a period of twenty-five (25) years from the date of making. (Sec. 24(B), P.D. No. 49a)

213.5 In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making. (Sec. 24(C), P.D. 49a)

213.6 In case of audio-visual works including those produced by process analogous to photography or any process for making audio-visual recordings, the term shall be fifty (50) years from date of publication and, if unpublished, from the date of making. (Sec. 24(C), P.D. No. 49a)

SECTION 214. *Calculation of Term.* - The term of protection subsequent to the death of the author provided in the preceding Section shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the first day of January of the year following the event which gave rise to them. (Sec. 25, P.D. No. 49)

SECTION 215. *Term of Protection for Performers, Producers and Broadcasting Organizations.* -

215.1 The rights granted to performers and producers of sound recordings under this law shall expire:

- (a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and
- (b) For sound or image and sound recordings and for performances

incorporated therein, fifty (50) years from the end of the year in which the recording took place.

215.2 In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law. (Sec. 55, P.D. No. 49a)

CHAPTER XVII

INFRINGEMENT

SECTION 216. *Infringement.* - A person infringes a right protected under this Act when one;

- (a) Directly commits an infringement;
- (b) Benefits from the infringing activity of another person who commits an infringement of the person benefitting has been given notice of the infringing activity and has the right and ability to control the activities of the other person;
- (c) With knowledge of infringing activity induces, causes or materially contributes to the infringing conduct of another.

216.1 *Remedies for Infringement.* -

Any person infringing a right protected under this law shall be liable:

- (a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.
- (b) To pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the

infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty. *Provided*, That, the amount of damages to be awarded shall be devoted against only person who;

- (i) Circumvents effective technological measures; or
- (ii) Having reasonable grounds to know that it will induce enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performances or distribute import for distribution, broadcast, or communicate to the public works or copies of works without authority knowing that electronic rights management information has been removed or altered without authority.
- (c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.
- (d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.
- (e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court

may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

The copyright owner may elect, at any time before final judgment is rendered, to recover instead of actual damages and profits, an award of statutory damages for all infringements involved in an action in a sum equivalent to the filing fee of the infringement action but not less than Fifty thousand pesos (Php50,000.00). In awarding statutory damages, the court may consider the following factors:

- “(1) the nature and purpose of the infringing act;
- “(2) the flagrancy of the infringement;
- “(3) Whether the defendant acted in bad faith;
- “(4) the need for deterrence;
- “(5) Any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement; and
- “(6) Any benefit shown to have accrued to the defendant by reason of the infringement.

“In case the infringer was not aware and had no reason to believe that his acts constitute an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not more than Ten Thousand pesos (Php10,000.00): *Provided*, That, the amount of damages to be awarded shall be doubled against any person who:

- “(i) Circumvents effective technological measures; or
- “(ii) Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement,

remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without authority, knowing that electronic rights management information has been removed or altered without authority.

216.2 In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings, in accordance with the rules on search and seizure, involving violations of intellectual property rights issued by the Supreme Court. The foregoing shall not preclude an independent suit for relief by the injured party by way of damages, injunction, accounts or other otherwise, (Sec. 28, P.D. No. 49a)

SECTION 217. *Criminal Penalties.* -

217.1 Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

- (a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.
- (b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- (c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from five hundred

thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.

- (d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2 In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement; *Provided*, That, the respective maximum penalty stated in Section 217.1 (a), (b), and (c) herein for the first, second, third and subsequent offense, shall be imposed when the infringement is committed by;

- (a) The circumvention of effective technological measures.
- (b) The removal or alteration of any electronic rights management information from a copy of a work, sound recording or fixation of a performance by a person, knowingly and without authority; or
- (c) The distribution, importation for distribution, broadcast or communication to the public of works or copies of works, by a person without authority, knowing that electronic rights management information has been removed or altered without authority.

217.3 Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

- (a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;
- (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- (c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P.D. No. 49a)

SECTION 218. *Affidavit Evidence.* -

218.1 In an action under this Chapter, an affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject matter and stating that:

- (a) At the time specified therein, copyright subsisted in the work or other subject matter;
- (b) He or the person named therein is the owner of the copyright; and
- (c) The copy of the work or other subject matter annexed thereto is a true copy thereof.

The affidavit shall be admitted in evidence in any proceedings under this Chapter and shall be prima facie proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

218.2 In an action under this Chapter:

- (a) Copyright shall be presumed to subsist in the work or other

subject matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject matter; and

- (b) Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.

- (c) Where the defendant, without good faith, puts in issue the questions of whether copyright subsists in a work or other subject matter to which the action relates, or the ownership of copyright in such work or subject matter, thereby occasioning unnecessary costs or delay in the proceedings, the court may direct that any costs to the defendant in respect of the action shall not be allowed by him and that any costs occasioned by the defendant to other parties shall be paid by him to such other parties. (n)

SECTION 219. *Presumption of Authorship.* -

219.1 The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

219.2 The person or body corporate whose name appears on a audio-visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work. (n)

SECTION 220. *International Registration of Works.* - A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved except:

220.1 Where the statement cannot be valid under this Act or any other law concerning intellectual property.

220.2 Where the statement is contradicted by another statement recorded in the international register. (n)

SECTION 220A. *Disclosure of Information.* - Where any article or its packaging or an implement for making it is seized or detained under a valid search and seizure under this Act is, or reasonably suspected to be, by an authorized enforcement officer, in violation of this Act, the said office shall, wherever reasonably practicable, notify the owner of the copyright in question or his authorized agent of the seizure of detention, as the case may be.

CHAPTER XVIII

SCOPE OF APPLICATION

SECTION 221. *Points of Attachment for Works under Sections 172 and 173.* -

221.1 The protection afforded by this Act to copyrightable works under Sections 172 and 173 shall apply to:

- (a) Works of authors who are nationals of, or have their habitual residence in, the Philippines;
- (b) Audio-visual works the producer of which has his headquarters or habitual residence in the Philippines;
- (c) Works of architecture erected in the Philippines or other artistic

works incorporated in a building or other structure located in the Philippines;

- (d) Works first published in the Philippines; and
- (e) Works first published in another country but also published in the Philippines within thirty days, irrespective of the nationality or residence of the authors.

221.2 The provisions of this Act shall also apply to works that are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

SECTION 222. *Points of Attachment for Performers.* - The provisions of this Act on the protection of performers shall apply to:

222.1 Performers who are nationals of the Philippines;

222.2 Performers who are not nationals of the Philippines but whose performances:

- (a) Take place in the Philippines; or
- (b) Are incorporated in sound recordings that are protected under this Act; or
- (c) Which has not been fixed in sound recording but are carried by broadcast qualifying for protection under this Act. (n)

SECTION 223. *Points of Attachment for Sound Recordings.* - The provisions of this Act on the protection of sound recordings shall apply to:

223.1 Sound recordings the producers of which are nationals of the Philippines; and

223.2 Sound recordings that were first published in the Philippines. (n)

SECTION 224. *Points of Attachment for Broadcasts.* -

224.1 The provisions of this Act on the protection of broadcasts shall apply to:

- (a) Broadcasts of broadcasting organizations the headquarters of which are situated in the Philippines; and
- (b) Broadcasts transmitted from transmitters situated in the Philippines.

224.2 The provisions of this Act shall also apply to performers who, and to producers of sound recordings and broadcasting organizations which, are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

CHAPTER XIX

INSTITUTION OF ACTIONS

SECTION 225. *Jurisdiction.* - Without prejudice to the provisions of Subsection 7.1(c), actions under this Act shall be cognizable by the courts with appropriate jurisdiction under existing law. (Sec. 57, P.D. No. 49a)

SECTION 226. *Damages.* - No damages may be recovered under this Act after the lapse of four (4) years from the time the cause of action arose. (Sec. 58, P.D. No. 49)

CHAPTER XX

MISCELLANEOUS PROVISIONS

SECTION 227. *Ownership of Deposit and Instruments.* - All copies deposited and instruments in writing filed with the National Library and the Supreme Court Library in accordance with the provisions of this Act shall become the property of the Government. (Sec. 60, P.D. No. 49)

SECTION 228. *Public Records.* - The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The Director of the National Library is empowered to issue such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act. (Sec. 61, P.D. No. 49)

SECTION 229. *Copyright Division; Fees.* - The Copyright Section of the National Library shall be classified as a Division upon the effectivity of this Act. The National Library shall have the power to collect, for the discharge of its services under this Act, such fees as may be promulgated by it from time to time subject to the approval of the Department Head. (Sec. 62, P.D. 49a)

PART V

FINAL PROVISIONS

SECTION 230. *Adoption of Intellectual Property (IP) Policies.* - Schools and university shall adopt intellectual property policies that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees, and adopting locally-established industry practice fair use guidelines. These policies may be developed in relation to licensing agreements entered into by the learning institution with a collective licensing organization.

SECTION 231. *Equitable Principles to Govern Proceedings.* - In all inter partes proceedings in the Office under this Act, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied. (Sec. 9-A, R.A. No. 165)

SECTION 232. *Reverse Reciprocity of Foreign Laws.* - Any condition, restriction, limitation, diminution, requirement, penalty

or any similar burden imposed by the law of a foreign country on a Philippine national seeking protection of intellectual property rights in that country, shall reciprocally be enforceable upon nationals of said country, within Philippine jurisdiction. (n)

SECTION 233. *Appeals.* -

233.1 Appeals from decisions of regular courts shall be governed by the Rules of Court. Unless restrained by a higher court, the judgment of the trial court shall be executory even pending appeal under such terms and conditions as the court may prescribe.

233.2 Unless expressly provided in this Act or other statutes, appeals from decisions of administrative officials shall be provided in the Regulations. (n)

SECTION 234. *Organization of the Office; Exemption from the Salary Standardization Law and the Attrition Law.* -

234.1 The Office shall be organized within one (1) year after the approval of this Act. It shall not be subject to the provisions of Republic Act No. 7430.

234.2 The Office shall institute its own compensation structure: Provided, That the Office shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758. (n)

SECTION 235. *Abolition of the Bureau of Patents, Trademarks, and Technology Transfer.* - The Bureau of Patents, Trademarks, and Technology Transfer under the Department of Trade and Industry is hereby abolished. All unexpended funds and fees, fines, royalties and other charges collected for the calendar year, properties, equipment and records of the Bureau of Patents, Trademarks and Technology Transfer, and such personnel as may be necessary are

hereby transferred to the Office. Personnel not absorbed or transferred to the Office shall enjoy the retirement benefits granted under existing law, otherwise, they shall be paid the equivalent of one month basic salary for every year of service, or the equivalent nearest fractions thereof favorable to them on the basis of the highest salary received.(n)

SECTION 236. *Applications Pending on Effective Date of Act.* -

236.1 All applications for patents pending in the Bureau of Patents, Trademarks and Technology Transfer shall be proceeded with and patents thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued to be enforced, to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof: Provided, That applications for utility models or industrial designs pending at the effective date of this Act, shall be proceeded with in accordance with the provisions of this Act, unless the applicants elect to prosecute said applications in accordance with the Acts under which they were filed.

236.2 All applications for registration of marks or trade names pending in the Bureau of Patents, Trademarks and Technology Transfer at the effective date of this Act may be amended, if practicable to bring them under the provisions of this Act. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent for

this purpose only, notwithstanding the foregoing general repeal thereof (n)

SECTION 237. *Preservation of Existing Rights.*

- Nothing herein shall adversely affect the rights on the enforcement of rights in patents, utility models, industrial designs, marks and works, acquired in good faith prior to the effective date of this Act. (n)

SECTION 238. *Notification on Berne Appendix.*

- The Philippines shall by proper compliance with the requirements set forth under the Appendix of the Berne Convention (Paris Act, 1971) avail itself of the special provisions regarding developing countries, including provisions for licenses grantable by competent authority under the Appendix. (n)

SECTION 239. *Appropriations.*

- The funds needed to carry out the provisions of this Act shall be charged to the appropriations of the Bureau of Patents, Trademarks, and Technology Transfer under the current General Appropriations Act and the fees, fines, royalties and other charges collected by the Bureau for the calendar year pursuant to Sections 14.1 and 234 of this Act. Thereafter such sums as may be necessary for its continued implementations shall be included in the annual General Appropriations Act. (n)

SECTION 240. *Repeals.*

240.1 All Acts and parts of Acts inconsistent herewith, more particularly Republic Act No. 165, as amended; Republic Act

No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed.

240.2 Marks registered under Republic Act No. 166 shall remain in force but shall be deemed to have been granted under this Act and shall be due for renewal within the period provided for under this Act and, upon renewal shall be reclassified in accordance with the International Classification. Trade names and marks registered in the Supplemental Register under Republic Act No. 166 shall remain in force but shall no longer be subject to renewal.

240.3 The provisions of this Act shall apply to works in which copyright protection obtained prior to the effectivity of this Act is subsisting: Provided, That the application of this Act shall not result in the diminution of such protection. (n)

SECTION 241. *Separability.*

- If any provision of this Act or the application of such provision to any circumstances is held invalid, the remainder of the Act shall not be affected thereby. (n)

SECTION 242. *Effectivity.*

- This Act shall take effect on 1 January 1998. (n)

Approved: **June 6, 1997**

For further information, please contact:

**DEPARTMENT OF ENERGY
LEGAL SERVICES**

Energy Center, Rizal Drive cor. 34th St.
Bonifacio Global City

www.doe.gov.ph

ATTY. ARTHUS T. TENAZAS

Director
Tel. No. 840 2273

ATTY. ISIDRO V. ALMENTEROS

Chief, General Legal Services Division
Tel. No. 840 2142

ATTY. GABRIEL B. CORPUZ

Chief, Downstream Conventional Energy Legal Services Division
Tel. No. 840 2242

ATTY. BEN JULIUS G. GAGNI

Chief, Upstream Conventional Energy Legal Services Division
Tel. No. 840 2132

ATTY. MYRA FIERA F. ROA

Chief, Power Legal Services Division
Tel. No. 541 5517

ATTY. DON G. VILLANUEVA

Chief, Renewable Energy Legal Services Division
Tel. No. 892 4619