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CONDITIONS PRECEDENT TO ADJUDICATION OF ALL SMOKE-BELCHING APPREHENSIONS

LTO MEMORANDUM, October 17, 2005

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Pursuant to Section 2 Rule XLIX of the Implementing Rules and Regulations (IRR) of R.A. 8749, (The Philippine Clean Air Act, hereinto referred as "ACT), the DENR recognizes "the rules and regulations issued by (this Office) in the prevention and/or abatement of pollution not consistent with this ACT" as being supplementary to those rules and regulations issued by it through the Environmental Management Bureau (EMB).

In support of the ACT-recognized principle that "polluters must pay", the latest LTO Memorandum Circular (dated June 21, 2005) served to reiterate the provisions of Rule XXXV Sections 4 and 5 of the IRR in the "Apprehension and Impounding of Vehicles Exceeding Emission Limits" as well as the "Appellate Procedure".

The ACT has never provided for a twenty-four (24) hour-period of "contestability" within which to question, challenge or overturn smoke-belching apprehensions duly made by LTO enforcers and other deputized agents. It provided however appellate procedures "in the event that the driver of the apprehended vehicle contests the fine imposed and/or the violation of emission standards." The Traffic Adjudication Service is thereby tasked also to give the apprehended driver the opportunity to be heard.

Hence, the following conditions must prevail before the Traffic Adjudication Service shall take cognizance of an appeal or protest of smoke belching apprehensions and/or the fines imposed thereon:

a) The motor vehicle must be impounded and kept in the custody of the LTO or deputized agency, specially when the emission testing results show that there is an exceedance of the standards;

b) Under no circumstance shall an appeal be entertained if the driver of the apprehended vehicle refuses to have his vehicle impounded when the emission testing results show exceedance of the standards at the time of apprehension.

c) The apprehended vehicle has not previously been found violating the standards three (3) or more times within the least 365-day period;

d) The apprehended motorist specifically signifies, at the time of apprehension, his intention to contest the findings of violation of emission standards;

e) Re-testing must be done in the presence of both apprehending officer (and his assigned opacimeter/emission testing equipment operator) and the apprehended motorist, under the conduct and observation of a hearing officer and/or through the LTO/DENR or designated enforcement unit(s);

f) Failure of enforcers to observe testing and apprehension procedures; and

g) Lack of Certification of Conformity to Standards of emission test equipment by the DENR (through the EMB).

Above considerations shall ensure the impartial evaluation and preservation of evidence (integrity in the condition of the apprehended vehicle) in meriting a review of the apprehension procedures or a waiver of the payment of

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fines and penalties.

All hearings shall be summary in nature. The technical rules of evidence obtaining in courts of law shall not bind the Traffic Adjudication Service except when supplementary in character and only when applicable. An appeal or protest shall be decided within three (3) days from its submission for resolution. The Decision shall become final and executory if no further appeal is taken therefrom to the Secretary within fifteen (15) days from Notice thereof.

FOR STRICT COMPLIANCE.

Adopted: 17 Oct. 2005

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