# PROVIDING FOR THE GUIDELINES IN THE CONDUCT OF INSPECTION USING MOBILE MONITORING AND TESTING LABORATORY

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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:

- Name/address of the supplier/s

- Invoice of the last two deliveries

- Copy of the Certificate of Quality of the last two deliveries, if any.

- Record of last inventory prior to OIMB inspection


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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:

- 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.

- 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


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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:

> x x x
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> b.
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> 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 (P10,000.00) 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:

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> c.
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> 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
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> d.
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> Refusal to allow inspection by the DOE or other concerned government agency shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00). 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.
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> x x x

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

x x x

A fine of Two Hundred Thousand Pesos (P200,000.00) shall be imposed against a person who is found to have


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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 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 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.

(SGD) CARLOS JERICHO L. PETILLA
Secretary


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