

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