

DECISION No. 422/2003/QĐ-BTM OF APRIL 11, 2003 PROMULGATING THE REGULATION ON INVESTMENT IN BUILDING PETROLEUM DEPOTS NATIONWIDE

THE MINISTER OF TRADE

Pursuant to the Government's Decree No. 95/CP of December 4, 1993 defining the functions, tasks, powers and organizational structure of the Ministry of Trade;

Pursuant to the Regulation on Investment and Construction Management, promulgated together with the Government's Decree No. 52/1999/ND-CP of July 8, 1999, Decree No. 12/2000/ND-CP of May 5, 2000 and Decree No. 07/2003/ND-CP of January 30, 2003 amending and supplementing a number of articles of the Regulation on Investment and Construction Management, promulgated together with Decree No. 52/1999/ND-CP;

Pursuant to the Prime Minister's Decision No. 93/2002/QĐ-TTg of July 16, 2002 approving the Planning on development of the national system of petroleum depots till 2010;

At the proposal of the director of the Planning and Statistics Department - Chairman of the Board of Management of Planning Projects, the Ministry of Trade,

DECIDES:

Article 1.- To promulgate together with this Decision the Regulation on investment in building petroleum depots nationwide.

Article 2.- The Ministry of Trade and other concerned ministries and branches as well as petroleum-trading enterprises nationwide shall have to implement this Decision.

Article 3.- This Decision takes implementation effect 15 days after its signing; all previous regulations contrary to this Regulation are hereby annulled.

For the Minister of Trade
Vice Minister
LE DANH VINH

REGULATION ON INVESTMENT IN BUILDING PETROLEUM DEPOTS NATIONWIDE

(Promulgated together with Decision No. 422/2003/QĐ-BTM of April 11, 2003 of the Minister of Trade)

Chapter I

GENERAL PROVISIONS

Article 1.- Contents and objectives of management

This Regulation establishes the State management principles, criteria and requirements which investors must comply with when they prepare for investment in building petroleum depots in the Vietnamese territory. This Regulation aims to establish order and discipline in the building of petroleum depots, ensuring the requirement of efficiently exploiting the construction land fund nationwide, socio-economic efficiency and investment efficiency in line with the general development plans of the nation, branches and localities in the spirit of the Prime Minister's Decision No. 93/2002/QĐ-TTg of July 16, 2002 approving the Planning on development of the national system of petroleum depots till 2010 (hereinafter referred to as the general planning) and the Plans on development of the system of petroleum depots in different regions nationwide (hereinafter referred to as the regional plans), and ensuring the effective management of activities of investment in building petroleum depots, suitable to the developments in the process of perfecting the national system of petroleum depots.

Article 2.- Interpretation of terms

In this Regulation, the following words and phrases are construed as follows:

- 1. Petroleum tanks** are construction works to store petroleum, which comply with the State's regulations on technical standards, fire and explosion prevention and fight safety, environmental sanitation...
- 2. Petroleum depots** are areas where exist many petroleum tanks; if a depot has only one petroleum tank, such petroleum tank is also considered a petroleum depot.
- 3. Terminal depots** are depots capable of receiving petroleum directly from ships carrying imported petroleum or from oil refineries.
- 4. Rear depots** are depots which receive petroleum from terminal depots or other depots.
- 5. Expanded investment** means the implementation of supplementary construction projects at existing petroleum depots so as to raise the depots storing capacity.
- 6. New investment** means the implementation of projects on building petroleum depots in (new) areas where exist no petroleum depots or building new petroleum depots in replacement of old ones.
- 7. Petroleum-trading enterprises** are enterprises which satisfy all the prescribed conditions and are granted by competent State bodies petroleum-trading licenses.
- 8. Investors** are enterprises which formulate investment projects on building petroleum depots, and are established under the State Enterprise

Law or the Enterprise Law, and possess petroleum-trading licenses.

9. *Provincial/municipal Trade Service* is the common name of the provincial/municipal Trade Services, the provincial/municipal Trade and Tourism Services and the provincial/municipal Tourism and Trade Services, which perform the State management over trade in the localities where the enterprises build petroleum depots.

10. *The Councils for evaluation of investment projects on building petroleum depots in the localities (referred to as the Project Evaluation Councils for short)* are councils set up under decisions of the provincial/municipal People's Committees at the proposals of the provincial/municipal Trade Services, composed of competent representatives of the provincial/municipal Services of Trade; Planning and Investment; Science, Technology and Environment; Land Administration; Construction; and Planning and Architecture (if any), the fire prevention and fight police and other concerned State management agencies in the localities (if necessary). The directors of the provincial/municipal Trade Services shall act as chairmen of these councils.

11. *Evaluation documents* are documents assessing the extent of compatibility of the investment projects with the requirements on the size, location as well as construction demands in the systems of petroleum depots in the regions or localities where the investors will invest in building such investment projects.

12. *Investment-approving and -permitting documents* are documents permitting the investors to proceed with the subsequent procedures for undertaking the construction of petroleum depots (such as procedures of application for land allocation; for granting of certificates of assurance of fire and explosion prevention and fight safety, certificates of environmental protection; approval of designs').

Article 3.- Subjects of regulation

Investment projects on building terminal depots, investment projects on building rear depots (including entrepôts and distribution depots); expanded investment projects and new investment projects.

This Regulation shall not govern investment projects on building: bonded warehouses, the armed forces' petroleum depots in service of separate tasks; warehouses built only to serve the needs of separate consumer households; warehouses, petrol and oil tanks of filling stations; warehouses for storing lubricating oils, liquefied gas, liquid asphalt and other petro-chemical products other than principal petroleum.

Article 4.- Scope of application

Petroleum-trading enterprises within the national trading system, management agencies involved in the process of carrying out procedures for expanded investment or new investment in petroleum depots in service of business and national reserves; enterprises investing in building petroleum depots for lease.

Article 5.- General principles for management of the Plannings

1. Investors shall be allowed to carry out investment procedures for investment projects falling under the scope of regulation of this Regulation only after they receive investment-approving and -permitting documents of the Ministry of Trade or provincial/municipal Trade Services.

2. Where two or more enterprises concurrently apply for permission to invest in building petroleum depots in the same locality, the priority order in the investment evaluation, approval and permission shall be as follows:

a/ Investment form: (1) expanded investment, (2) new investment.

b/ Investor: (1) Major enterprises; (2) other enterprises: (2a) enterprises headquartered in the locality; (2b) enterprises headquartered elsewhere.

3. On the basis of the size, financial capability, prestige (quality of products and services), tasks and possibility to fulfill the function of stabilizing the market of the enterprises applying for investment permission, the competent authorities shall determine the need, size and reasonable investment level of each investment project on the basis of comparing the approved plannings in the regions in each period and requirements stemming from reality.

4. The investment projects on petroleum depots must, apart from complying with the provisions of this Regulation, be implemented in accordance with the provisions of the Regulation on Investment and Construction Management, promulgated together with the Government's Decree No. 52/1999/ND-CP of July 8, 1999, articles of the Government's Decree No. 12/2000/ND-CP of May 5, 2000 and Decree No. 07/2003/ND-CP of January 30, 2003 and other relevant legal documents currently in force.

Chapter II

CONDITIONS, DOSSIERS FOR INVESTMENT EVALUATION, APPROVAL AND PERMISSION

Article 6.- Conditions for investment in building terminal depots

1. Meeting the demands of developing and supplementing the storing capacity of the regional and national systems of petroleum depots in each period; being compatible with the socio-economic development planning of each region or locality, with the master plan on development of urban centers till 2010 and 2020.

2. Satisfying the following criteria:

a/ Having a storing capacity of 10,000 m³ or more;

b/ Having special-purpose ports where ships of a tonnage of 10,000 DWT or more can anchor and pump petroleum into depots;

c/ Having the task of ensuring the source of petroleum for a particular region or for redistribution to other regions across the country.

d/ Satisfying the current criteria and norms for building petroleum depots as well as national standards on safety and environment.

3. Being eligible enterprises which are permitted under decisions of the Prime Minister to directly import petroleum.

The priority order in the investment evaluation, approval and permission with regard to investment forms and subjects applying for permission to build terminal depots shall comply with Clauses 2 and 3, Article 5 of this Regulation.

Article 7.- Conditions for investment in building rear depots

1. Meeting the demands of developing and supplementing the storing capacity of the regional and national systems of petroleum depots in each period; being compatible with the socio-economic development planning of each region or locality, with the master plan on development of urban centers till 2010 and 2020.

2. Satisfying the following criteria:

a/ Being capable of receiving petroleum from terminal depots, other depots or domestic oil refineries, receiving and delivering petroleum by river/sea and/or pipeline, land or rail so as to meet consumption demands in certain geographical areas.

b/ Satisfying the current criteria and norms for building petroleum depots as well as national standards on safety and environment.

The priority order in the investment evaluation, approval and permission with regard to investment forms and subjects applying for licenses to build rear depots shall comply with Clauses 2 and 3, Article 5 of this Regulation.

Article 8.- Dossiers of application for investment evaluation, approval and permission

1. For cases where land is already available for building:

a/ The written application for permission to invest in terminal petroleum depots and/or in rear petroleum depots.

b/ The business registration paper.

c/ The competent authority's paper permitting the enterprise to act as major importer of petroleum.

d/ The managing agency's written approval (if the investor is a State enterprise).

e/ The pre-feasibility project or investment report (depending on the investment level).

f/ The land use right use certificate.

g/ Agreements on the location, fire prevention and fight, and environment.

2. For cases where land is not yet available for construction:

a/ The written application for permission to invest in terminal petroleum depots and/or in rear petroleum depots.

b/ The business registration paper.

c/ The competent authority's paper permitting the enterprise to act as major importer of petroleum.

d/ The managing agency's written approval (if the investor is a State enterprise).

e/ The eco-technical study report of the investment project.

3. The investors shall send to the provincial/municipal Trade Services 9 dossier sets, each comprising the documents specified in Clause 1 or 2 of this Article.

Article 9.- For cases of investment in raising the storing capacity of depots by 2,000 m³ or more, the procedures prescribed in Article 8 of this Regulation must be also carried out.

Chapter III

RESPONSIBILITIES AND POWERS OF THE MINISTRY OF TRADE AND PROVINCIAL/MUNICIPAL TRADE SERVICES

Article 10.- Responsibilities and powers of the Ministry of Trade

1. To notify the provincial/municipal Trade Services of the general planning, the regional planning and related adjustment documents (if any) so that the latter can disseminate them to enterprises and perform the research and evaluation work in a uniform manner.

2. To assume the prime responsibility and coordinate with the concerned State management agencies at the central level in continuing to consider and evaluate the investors' dossiers and documents of application for permission to invest in building petroleum depots and the reports on the evaluation results of the local councils for evaluation of investment projects on petroleum depots.

3. Within 30 days after receiving the documents of the provincial/municipal Trade Services as prescribed at Point b, Clause 2, Article 11, to issue documents permitting or not permitting the investors to carry out the procedures for investment in building petroleum depots, except for cases mentioned at Point a, Clause 2, Article 11 of this Regulation. In case of refusal, the Ministry of Trade must clearly state the reasons therefor and guide the enterprises how to comply with law.

Article 11.- Responsibilities and powers of the provincial/municipal Trade Services

1. To set up the Project Evaluation Councils according to the provisions in Clause 11, Article 2, in order to evaluate the dossiers and determine the extent of compliance with the current standards on construction (technical aspects, fire and explosion prevention and fight safety, environment and sites of construction of petroleum depots').

2. Post-evaluation procedures:

a/ For cases where the investment projects are to build petroleum depots of a capacity of under 2,000 m³ and in line with the general planning and the regional planning (in terms of both size and location), within 30 days after receiving the investors' documents, under the authorization of the Ministry of Trade, to issue documents permitting or not permitting the investors to carry out the procedures for investment in building depots after reaching agreement with the Project Evaluation Councils. In case of refusal, the provincial/municipal Trade Services must clearly state the reasons therefor and guide the enterprises how to comply with law.

b/ For cases where the investment projects are to build other petroleum depots (other than the cases stated at Point a, Clause 2 of this Article), within 30 days after receiving the investors' documents specified in Clause 1, Article 9 of this Regulation, to transfer to the Ministry of Trade the investors' documents and the evaluation documents of the Project Evaluation Councils, and at the same time to notify in writing the investors of

the evaluation results.

c/ To report in writing to the Ministry of Trade on the cases stated at Point a, Clause 2 of this Article.

Article 12.- Withdrawal of investment-evaluating, -approving and -permitting documents and extension documents

The investment-approving and -permitting documents are valid for 12 months after the date of their issuance. Past this time limit, if the investors fail to start their projects, such documents shall automatically cease to be valid and be withdrawn by the issuing agencies.

If seeing that it is difficult to start their projects within 12 months, one month before the investment-approving and -permitting documents expire, the investors must send their written requests for investment extension to the agencies which have issued the investment-approving and -permitting documents, clearly stating the reasons for their failure to implement the projects as well as solutions in the time ahead. Investment extension documents shall be issued only once and valid for no more than 12 months. Past this time limit, if the investors still fail to start their projects, the investment extension documents shall automatically cease to be valid and be withdrawn by the issuing agencies.

Past the extension time limit, if the investors still wish to make investment, they must compile new dossiers for investment evaluation, approval and permission as prescribed in Article 8 of this Regulation.

Article 13.- Reporting regime

Annually and upon the completion of construction and pre-acceptance test of the works, the investors shall have to report to the provincial/municipal Trade Services and the Ministry of Trade on the process of implementation of their projects (the projects' location, size, implementation progress and completion deadline).

Within the first 10 days of every quarter, the provincial/municipal Trade Services shall send to the Ministry of Trade the reports on the implementation situation in the preceding quarter, including the evaluation work and the issuance of documents permitting the investment in building petroleum depots in their respective localities.

Chapter IV

INSPECTION AND HANDLING OF VIOLATIONS

Article 14.- Inspection

The Ministry of Trade shall coordinate with the concerned management agencies (the Ministry of Science and Technology, the Ministry of Natural Resources and Environment, the Ministry of Public Security, the Ministry of Construction) in inspecting the implementation of the provisions of this Regulation nationwide and taking timely specific measures to handle (or to report to the Prime Minister, when necessary) cases of violation of the provisions of this Regulation.

The provincial/municipal Trade Services shall coordinate with the concerned agencies in the localities in inspecting the implementation of the provisions of this Regulation and taking timely specific measures to handle cases of violation of the provisions of this Regulation or report to the Ministry of Trade when necessary..

Article 15.- Handling of violations

1. The investors shall bear legal and material responsibility to the managing agencies and before law for violations of the provisions of this Regulation. If they make investment without the evaluation and approval documents of the Ministry of Trade or provincial/municipal Trade Services, they shall be suspended from building and subject to handling measures as prescribed by law.

2. If agencies, enterprises and individuals falling under the scope of regulation of this Regulation fail to fully discharge their responsibilities prescribed by this Regulation, they shall, depending on the nature and seriousness of their violations, be administratively handled or examined for penal liability and, if causing material damage, have to pay material compensations according to the law provisions.

Chapter V

IMPLEMENTATION PROVISIONS

Article 16.- The Ministry of Trade, the provincial/municipal Trade Services, the petroleum-trading enterprises within the national commercial system, as well as the management agencies involved in the process of carrying out the procedures for investment in building petroleum depots in service of business and national reserves shall have to organize the implementation of this Regulation.

The Ministry of Trade shall have to popularize, guide and oversee the implementation of the provisions of this Regulation nationwide.

Article 17.- This Regulation takes effect 15 days after its signing. All amendments and supplements to the contents of this Regulation shall be decided by the Minister of Trade.

The investment projects on building petroleum depots of those types stated in Article 3, which are implemented after the effective date of this Regulation, shall have to carry out or refill in the procedures specified in Article 8 of this Regulation.-

THE MINISTRY OF TRADE
VICE MINISTER
(Đã ký)

Le Danh Vinh