



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DO2D11-08-0008 *W*

**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:

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.

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.
- 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 scrapping, 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 requalifier 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;

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.



- 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.

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 through 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.2.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 21st day of August 2011.



JOSE RENE D. ALMENDRAS

Secretary



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