



GOVERNMENT GAZETTE

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Government Notice

MINISTRY OF MINES AND ENERGY

No. 48

1991

PETROLEUM PRODUCTS AND ENERGY ACT, 1990 (ACT 13 OF 1990): REGULATIONS RELATING TO THE PURCHASE, SALE, SUPPLY, ACQUISITION, POSSESSION, DISPOSAL, STORAGE, TRANSPORTATION, RECOVERY AND RE-REFINEMENT OF USED MINERAL OIL

Under section 2(1) of the Petroleum Products and Energy Act, 1990 (Act 13 of 1990), I hereby make the regulations set out in the Schedule.

A. TOIVO YA TOIVO
MINISTER OF MINES
AND ENERGY

Windhoek, 8 April 1991

SCHEDULE

Definitions.

1. In these regulations any word or expression to which a meaning has been assigned by section 1 of the Petroleum Products and Energy Act, 1990, shall have that meaning and, unless inconsistent with the context -

“Act” shall mean the Petroleum Products and Energy Act, 1990 (Act 13 of 1990);

“additive” shall mean a chemical or chemical compound which may be added to new oil to improve its performance characteristics;

“bulk consumer” shall mean a local authority as contemplated in section 111 of the Namibian Constitution, a *bona fide* farmer, a cartage or transport contractor and any other person who, during any period of six consecutive calendar months, purchases on an average more than 20 litres of new oil per calendar month;

“crude oil” shall mean a naturally occurring mineral oil consisting essentially of a mixture of petroleum hydrocarbons;

“distributor” shall mean any person, other than a reseller, who manufactures or distributes new oil and who in the course of or as part of his business sells it to any other person;

“foreign matter” shall mean any solid or fluid matter foreign to or usually not an element of new oil, excluding any additive;

“new oil” shall mean mineral oil which has been refined from either crude oil or used mineral oil and which may contain any additive, but which has not been used subsequent to such refining;

“permit” shall mean a permit issued by the Permanent Secretary to any person in terms of regulation 10;

“re-refined oil” shall mean new oil obtained from the re-refining of used mineral oil by a re-refiner;

“re-refiner” shall mean any person who re-refines used mineral oil, whether for commercial purposes or not, and to whom a registration certificate has been issued in terms of regulation 9(1), or who in terms of regulation 9(4) is deemed to be carrying on such business;

“reseller” shall mean a person who obtains new oil from a distributor for sale in the course of or as part of a business carried on by him;

“sales premises” shall mean any place from where new oil or re-refined oil may be sold or offered for sale to resellers or consumers;

“used mineral oil” shall mean all mineral oil withdrawn from its original use and contaminated by foreign matter through such use.

Application

2. These regulations shall apply only to persons who purchase, sell, supply, acquire, possess, store, transport, recover, re-refine or dispose of used mineral oil in Namibia.

Prohibition on disposal, contamination and use, possession, storage and transport in certain containers, of used mineral oil

3. No person may, unless such act is authorised in terms of or under a provision of these regulations, in respect of used mineral oil in his possession -

- (a) discard, destroy or otherwise dispose of such oil;
- (b) intentionally or negligently further contaminate such oil with any foreign matter to a greater extent than it has already been contaminated through normal usage;
- (c) possess or store or transport such oil in any container other than a container which is suitable for preventing destruction, loss or waste thereof;
- (d) use such used mineral oil for any purpose other than -
 - (i) the treatment of animals;
 - (ii) the lubrication of machines or implements; or
 - (iii) the prevention of rust.

Possession of used mineral oil

4. (1) (a) No person other than -
- (i) a re-refiner;
 - (ii) a distributor;
 - (iii) subject to paragraph (b), a reseller;
 - (iv) subject to paragraph (b), a bulk consumer; and
 - (v) a person while transporting used mineral oil to a re-refiner, a distributor or a reseller,

may, in any case other than a case contemplated in subregulation (2), subject to the provisions of regulation 5, have a larger quantity than 20 litres of used mineral oil in his or her possession for a

continuous period exceeding 30 days, or for such longer period authorised by a permit issued in terms of these regulations in respect of such possession.

- (b) In any case other than a case contemplated in subregulation (2), subject to the provisions of regulation 5, no reseller may have a larger quantity than 5 000 litres, and no bulk consumer may have a larger quantity than 2 000 litres of used mineral oil in his or her possession for a continuous period exceeding 30 days, or for such longer period, authorised by a permit issued in terms of these regulations in respect of such possession.

(2) A person to whom a permit has been issued in respect of the possession by him or her of used mineral oil for an extended period referred to in regulation 4(1), and in terms of which such person is also authorised to possess a specified maximum quantity of used mineral oil in excess of 20 litres, 2 000 litres or 5 000 litres, as the case may be, may at no time be in possession of a larger quantity of used mineral oil than such authorised maximum quantity.

Supply of used mineral oil to re-refiners, distributors or resellers

5. (1) (a) Any person in possession of used mineral oil in excess of the quantity allowed to him or her in terms of regulation 4(1), shall supply such used mineral oil in accordance with the provisions of these regulations to a re-refiner or a distributor or a reseller, or, if such supplier is a reseller, to a re-refiner or distributor, not later than the 30 days after he or she obtained possession thereof or on the final day of the extended period referred to in regulation 4(1), as the case may be, or if such day is a Sunday or public holiday, on the day immediately following such Sunday or public holiday.
- (b) The provisions of paragraph (a) with regard to the supplying of used mineral oil not later than 30 days after the date on which the person concerned has obtained possession thereof, shall also apply to any person referred to in regulation 4(2) with regard to the possession by him or her of any quantity of used mineral oil which exceeds the specified quantity set out in the permit in question.
- (2) (a) No re-refiner, distributor, or, subject to paragraph (b), no re-seller, as the case may be, may refuse to accept such supply of used mineral oil during normal trading hours by any person referred to in subregulation (1).
- (b) No reseller may refuse to accept from any individual supplier a quantity of used mineral oil offered to him or her which does not exceed 20 litres at any one time unless such reseller is at the time of such offer to him or her in possession of a quantity of used mineral oil in excess of the quantity that he or she is permitted to possess in terms of or under any provision of these regulations.

Supply of used mineral oil

6. (1) The supplying of used mineral oil to a reseller, a re-refiner or a distributor, as contemplated in regulation 5, shall take place on the sales premises of such reseller, re-refiner or distributor, as the case may be, and shall be effected, if the supplier wishes to sell such mineral oil, at a price and subject to such other conditions of sale as the parties may agree upon: Provided that if the parties in any such case cannot come to an agreement in regard to the price or any other conditions of sale, the Minister shall determine the price or other conditions, as the case may be, in respect of the sale in question.

(2) The provisions of subregulation (1) shall not prevent the supply of used mineral oil to a re-refiner in terms of an agreement whereby such re-refiner re-refines the mineral oil concerned for compensation and thereafter delivers it to the supplier concerned.

7. The provisions of regulation 5(2) and regulation 6 shall also apply *mutatis mutandis* to the supply of used mineral oil by any person to any reseller, re-refiner or distributor, notwithstanding that such person is at the time of such supply not obliged to supply that used mineral oil in terms of any provision of these regulations.

Prohibition of certain agreements

8. No person may conclude any agreement -

- (a) other than an agreement for the supply of used mineral oil contemplated in regulation 6(1) and an agreement contemplated in regulation 6(2), in terms whereof a party to the agreement is obliged to supply any used mineral oil to the other party to the agreement or his or her nominee; or
- (b) including an agreement for the supply of used mineral oil as contemplated in regulation 6(1), whereby a party to the agreement who supplies any used mineral oil to another party thereto, is obliged to purchase any other petroleum product from this latter party, or from any person nominated by him or her,

and any agreement which contains any such condition shall be void.

Registration of re-refiners and the certificate of registration

9. (1) No person shall, subject to the provisions of subregulation (4), operate a plant for the re-refining of used mineral oil, whether for commercial purposes or not, unless he or she has supplied the Permanent Secretary with written particulars of the following:

- (a) The location of the premises where the operation will be conducted;
- (b) the end product which will be produced by the operation; and

(c) the purposes for which the end product will be used,

and unless he or she complies with the conditions of a certificate of registration as a re-refiner, which has been issued to him or her by the Permanent Secretary in terms of the provisions of these regulations.

(2) Any person wishing to obtain a certificate of registration shall apply to the Permanent Secretary in writing, furnishing the Permanent Secretary with the particulars referred to in subregulation (1).

(3) The Permanent Secretary shall consider any such application and may in his or her discretion issue or refuse a certificate of registration to the applicant.

(4) A certificate of registration shall be issued in such form as the Permanent Secretary may from time to time determine and subject to the following conditions and also to such additional conditions as the Permanent Secretary may in his or her discretion in any specific case determine and stipulate on such certificate:

- (a) An application for renewal or extension of the certificate shall reach the Permanent Secretary at least 30 days before the expiry date thereof, as stated on the certificate;
 - (b) the certificate shall not be transferable or alienable to any other person without the written approval of the Permanent Secretary first having been obtained, which approval shall be endorsed on the certificate by the Permanent Secretary; and
 - (c) the certificate may at any time be withdrawn by the Permanent Secretary, without prior notice to the certificate holder, should -
 - (i) the holder contravene any provision or condition thereof or fail to comply therewith;
 - (ii) the withdrawal be obligatory in terms of the provisions of the Act; or
 - (iii) the holder thereof contravene or fail to comply with any provision of the Act regarding used mineral oil, or any regulation made or notice issued in terms thereof.
- (5) (a) Registration fees of R100 shall be payable to the Permanent Secretary at the time a certificate of registration is issued to the applicant thereof.
- (b) Such fees shall be payable in full for the applicable calendar year, even if the certificate of registration is issued during the course of such year.

(6) Any person who, at the date of commencement of these regulations operates an installation to re-refine used mineral oil, shall, within 60 days after the said date, supply the particulars referred to in subregulation (1) to the Permanent Secretary and shall, as from the date on which he or she handed or dispatched the said particulars to the Permanent Secretary and until a certificate of registration has been issued to him or her or been refused, be deemed to operate such installation under the authority of a certificate of registration.

Permits

10. (1) Any person wishing to obtain authorisation to perform any act in connection with used mineral oil prohibited in terms of these regulations, or to perform any such act in a manner other than that provided for in these regulations, shall apply to the Permanent Secretary to obtain a permit in accordance with the provisions of these regulations.

(2) Any application for a permit or for the renewal of a permit, shall be submitted on the application form prescribed in Annexure A and any applicant shall, when so required, furnish the Permanent Secretary with the following particulars in support of his application:

- (a) Any documentary proof required; and
- (b) any additional information or statement.

(3) The Permanent Secretary shall consider any such application and may, in his or her discretion -

- (a) issue or refuse a permit to the applicant;
- (b) record on a permit being issued any or all of the following matters, namely:
 - (i) The currency of such permit;
 - (ii) the premises upon which or the place in which the acts with regard to used mineral oil authorised by the permit may be performed;
 - (iii) the manner in which the used mineral oil in respect of which the permit is issued, may be dealt with.

(4) A permit shall be issued in the form which the Permanent Secretary may from time to time determine and subject to the following conditions and also to such additional conditions as the Permanent Secretary may in his or her discretion in any specific case determine and stipulate on such permit:

- (a) An application for renewal or extension of the permit shall reach the Permanent Secretary not later than 90 days before the expiry date thereof, as stated in the permit;

- (b) the permit shall not be transferable or alienable to any other person without the written approval of the Permanent Secretary first having been obtained, which approval shall be endorsed on the said permit by the Permanent Secretary; and
- (c) the permit may at any time be withdrawn by the Permanent Secretary, without prior notice to the permit holder, should -
 - (i) the holder thereof contravene any provision or condition thereof or fail to comply therewith;
 - (ii) such withdrawal be obligatory in terms of the provisions of the Act; or
 - (iii) the holder thereof contravene or fail to comply with any provision of the Act regarding used mineral oil, or any regulation made or notice issued in terms thereof.

(5) Any permit valid at the date of commencement of these regulations which have been issued under the regulations repealed by regulation 15, shall be deemed to have been issued under this regulation.

Submission of statistics

11. Every re-refiner and any person who is a permit holder in terms of these regulations, shall furnish the Permanent Secretary not later than 28 February of each year with a statement in the form of Annexure B, with particulars with regard to the quantity of used mineral oil purchased, sold, obtained, refined or used by him or her, as the case may be, during the preceding year.

Compliance with other statutory provisions

12. Any certificate or permit issued in terms of these regulations shall not absolve the holder thereof from compliance with the requirements of any other law relating to the handling, storage, disposal, possession or usage of new mineral oil on any premises.

Submission of information

13. No person shall furnish false information or make any false statement knowing such information or statement to be false in connection with any document which he or she submits in terms of these regulations.

Presumption

14. Whenever, in the event of a prosecution in terms of regulation 4(1) or regulation 5(1)(a) of any person to whom a permit for any extended period contemplated in paragraphs (a) and (b) of regulation 4(1) has not been issued, or in the event of a prosecution in terms of regulation 5(1) in respect of any person contemplated in paragraph (b) of that regulation, it is proved

that such person has at any time been in possession of an unauthorised quantity of used mineral oil, it shall be presumed that such person has been in possession of such quantity of used mineral oil at that time for a period exceeding 30 days, unless -

- (a) he or she proves the contrary; or
- (b) he or she proves that he or she has taken steps within a period of 30 days before that time -
 - (i) to obtain authorisation in terms of these regulations to possess the quantity of used mineral oil in question for a period exceeding 30 days; or
 - (ii) to supply the quantity of used mineral oil in question to a distributor, re-refiner or reseller in terms of these regulations.

Repeal

15. The Regulations relating to the Purchase, Sale, Supply, Acquisition, Possession, Disposal, Storage, Transportation, Recovery and Re-refinement of Used Mineral Oil promulgated by Government Notice R.797 of 1980 and any amendments thereof are hereby repealed.
