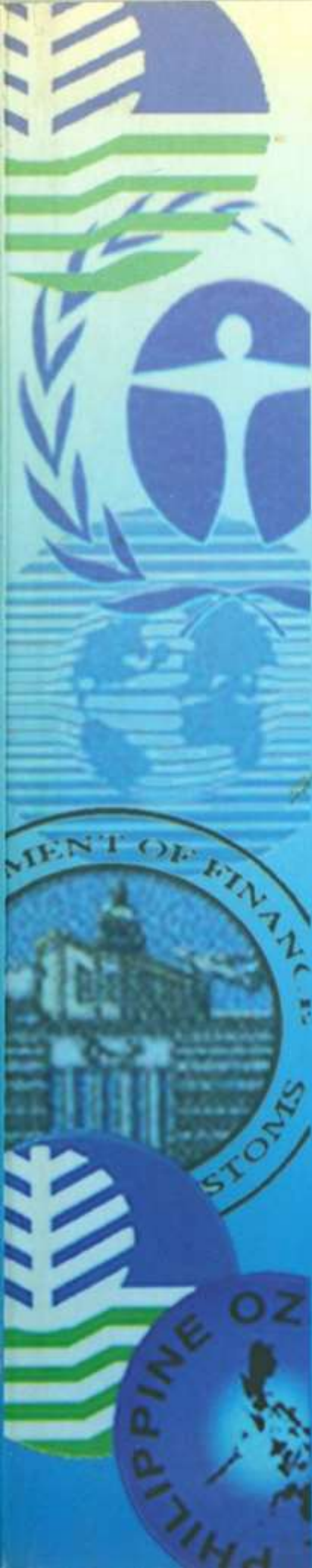


COUNTRY HANDBOOK



**NATIONAL REGULATIONS
AND IMPORT LICENSING SYSTEM
FOR THE PHASE-OUT OF
OZONE DEPLETING SUBSTANCES
IN THE PHILIPPINES**





Republic of the Philippines
Department of Environment and Natural Resources

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MESSAGE

Upon discovery that CFCs and other man-made chemicals are depleting the ozone layer, the international community negotiated the *Vienna Convention for the Protection of the Ozone Layer* and the *Montreal Protocol on Substances That Deplete the Ozone Layer*. These agreements aim to reduce and finally phase out the use of ozone-depleting substances (ODS).

Despite successful implementation, the Montreal Protocol continues to be undermined by the illegal trade of ODS. Thus, a licensing system was introduced in 1997 to monitor the importation and exportation of ODS in developing countries.

As Party to the Protocol, the Philippines established an import licensing system as early as 1993. Since then, several government agencies have issued their respective rules and regulations on ODS that necessitated a consolidation of policies.

This country handbook entitled "National Regulations and Import Licensing System for the Phase-Out of Ozone Depleting Substances in the Philippines" will serve as ready reference for parties involved in the enforcement of the law on ODS, importers of these chemicals and anyone who wishes to be informed. This comprehensive document contains the roles of institutions, the legal framework and processes and forms that are needed in enforcement. I, therefore, call this as a "one-stop handbook." I hope that it will constantly be referred to by all concerned to bring about a significant positive effect towards the recovery of the ozone layer.


ELISEA G. GOZUN
Secretary



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA

MESSAGE

I welcome the publication of the Country Handbook on "NATIONAL REGULATIONS AND IMPORT LICENSING SYSTEM FOR THE PHASE-OUT OF OZONE DEPLETING SUBSTANCES". This will certainly help provide a better and deeper understanding of the policy, legislative and regulatory framework for the Philippines' compliance with the Montreal Protocol on Substances Depleting the Ozone Layer. There is no question, therefore, that this handbook will be of great value to the Bureau of Customs (BoC) and the Department of Environment and Natural Resources (DENR) as the lead licensing agencies under the Montreal Protocol.

I note with pride that the book, prepared by the BoC-DENR Liaison Committee, is a product of the continuing partnership of BoC and DENR. I hope to see this partnership grow stronger and become more fruitful and rewarding in the years to come. I have no doubt that the book itself will make for easier cooperation between the two government entities.

The Bureau's duty is not just to collect customs taxes and duties. Neither it is just to enforce the tariff and customs laws. The Bureau is as much bound to implement the Philippine Government's international commitments, as well as to safeguard the general public and the environment by preventing the entry through our ports of harmful materials and substances, such as the ozone depleting substances (ODS).

I urge all those involved in the implementation of the Montreal Protocol, including ODS traders and users, to closely pore over this handbook so that they can more effectively contribute to the global campaign for the orderly phase-out of ODS.

ANTONIO M. BERNARDO
Commissioner

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Atty. Aurora Rosario A. Oreta
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List of Abbreviations

ACOS	Automated Customs Operations System
ASHRAE	American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc.
AUTRDC	Adamson University Technology Research and Development Center
BFAD	Bureau of Food and Drugs
BoC	Bureau of Customs
CAIP	Certificate Authorizing Importation of Pesticide
CCO	Chemical Control Order
CFCs	Chlorofluorocarbons
CMO	Customs Memorandum Order
CPA	Certified Pesticide Applicators
CSIRO	Commonwealth Scientific and Industrial Research Organization
DAO	DENR Administrative Order
DENR	Department of Environment and Natural Resources
DTI	Department of Trade and Industry
EDI	Electronic Data Interchange
EEC	Entry Encoding Center
EMB	Environmental Management Bureau
EPU	Environmental Protection Unit
EQB	Environmental Quality Division
FPA	Fertilizer and Pesticide Authority
HCFC	Hydrochlorofluorocarbons
HS	Harmonized System
IEIRD	Import Entry and Internal Revenue Declaration
MAC	Mobile Air-conditioning
MeBr	Methyl Bromide
MLF	Multilateral Fund
MSDS	Material Safety Data Sheet

NASA	US National Aeronautics and Space Administration
NCPP	Philippine National CFC Phase-out Plan
ODP	Ozone Depleting Potential
ODS	Ozone Depleting Substances
PBBs	Polybrominated Biphenyls
PCBs	Polychlorinated Biphenyls
PCL	Priority Chemical List
PCO	Pest Control Operators
PD	Presidential Decree
PICCS	Philippine Inventory of Chemicals and Chemical Substances
PIPAC	Philippine Institute of Pure and Applied Chemistry
POD	Philippine Ozone Desk
PPA	Philippine Ports Authority
RA	Republic Act
RAC	Refrigeration and Air-conditioning
SDV	Supplemental Declaration on Valuation
SEC	Securities and Exchange Commission
SMEs	Small and Medium Enterprises
TCC	Tariff and Customs Code
UN SIN	United Nations Substance Identification Number
UNEP	United Nations Environment Programme
UV-B	Ultraviolet radiation
VCRC	Valuation and Classification Review Committee
WCO	World Customs Organization
WMO	World Meteorological Organization

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3. Republic Act No. 8749, "An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes"
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6. DENR Administrative Order No. 98-58 Priority Chemicals List (PCL)
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10. PD NO. 1144 Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority
11. Fertilizer and Pesticide Authority Implementing Rules and Regulations Governing the Importation, Manufacture, Formulation, Repacking, Distribution, Delivery, Sale, Storage and Use of Pesticides
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Part I

"National Regulations and Import Licensing System for the Phase-Out of Ozone Depleting Substances in the Philippines"

1. Background

1.1 The Ozone and the Ozone Layer

The ozone is a naturally occurring gas composed of three oxygen atoms (O_3) found in the Earth's atmosphere. It is colorless and has a strong odor. Normal oxygen, which we breathe, has two oxygen atoms (O_2) and is colorless and odorless.

The Earth's atmosphere is divided into several layers. The lowest region, the *troposphere*, extends from the Earth's surface up to about 10 km in altitude. Virtually all human activities occur in the troposphere. The next layer, the *stratosphere*, continues from 10 km to about 50 km in altitude. Most commercial airline traffic occurs in the lower part of the stratosphere. It is in the stratosphere where 90% of the ozone gas may be found, forming a veil or a beneficial "shield" that screens the Earth from harmful ultraviolet radiation (UV-B) coming from the sun. This is commonly known as the Ozone Layer.

The ozone layer is so thin that if spread out on the earth's surface, it would only be about three millimeters (3mm) thick, about the thickness of the sole of a man's shoes.

1.2 The Ozone Hole

The Ozone Hole actually refers to the loss of the blocking effect of ozone against ultraviolet rays. This is the consequence when the ozone layer is severely depleted, in effect allowing entry of greater concentrations of harmful UV-B in the planet.

On 16 September 1989, the preliminary findings of the US National Aeronautics and Space Administration (NASA) showed that the ozone hole was about the size of North America and the height of Mount Everest.

But in September 2002, the big hole in the ozone layer that was discovered during the 1980's showed signs of recovery. According to the Commonwealth Scientific and Industrial Research Organization (CSIRO) of Australia, the ozone layer will recover in 50 years. The projection is based on the decreasing amount of ODS in the atmosphere. The "United Nations Environment Programme/World Meteorological Organization (UNEP/WMO) Scientific Assessment of Ozone Depletion: 2002" also concluded that the Antarctic ozone hole will disappear by 2050 provided that all the provisions of the Montreal Protocol are strictly adhered to by all parties.

1.3 Causes of Ozone Depletion and Ozone Depleting Substances (ODS).

Scientific evidence, accumulated over more than two decades of study by the international community, has shown that human-produced chemicals, commonly known as Ozone Depleting Substances (ODS), are responsible for the depletion of the ozone layer. ODS are chemical substances that have the potential to react with ozone molecules in the stratosphere. The ability of these chemicals to deplete the ozone layer is referred to as the Ozone Depleting Potential (ODP).

Hereunder is the list of ODS commonly imported in the Philippines and their corresponding ODP and common uses.

Table 1. ODS Commonly Imported in the Philippines with their Corresponding ODP and Common Uses:

Common Name	Scientific Name	Ozone Depleting Potential (ODP)	Common Uses
CFC 11	Trichlorofluoromethane	1.0	➤ Blowing Agent ➤ Propellant
CFC 12	Dichlorodifluoromethane	1.0	➤ Refrigerant ➤ Propellant ➤ Blowing Agent
CFC 13	Chlorotrifluoromethane	1.0	➤ Refrigerant
CFC 113	Trichlorotrifluoromethane	0.8	➤ Cleaning Agent ➤ Solvent
CFC 114	Dichlorotetrafluoroethane	1.0	➤ Cleaning Agent ➤ Solvent
CFC 115	Chloropentafluoroethane	0.6	➤ Refrigerant
CFC 502	48.8%-HCFC 22 51.2%-CFC 115	0.34	➤ Refrigerant
Halon 1211	Bromochlorodifluoro-methane	3.0	➤ Fire-extinguishing Agent
Halon 1301	Bromotrifluoromethane	10.0	➤ Fire-extinguishing Agent
Halon 2402	Dibromotetrafluoroethane	6.0	➤ Fire-extinguishing Agent
Carbon Tetrachloride	Tetrachloromethane	1.1	➤ Cleaning Agent ➤ Solvent
1,1,1 TCA Methyl Chloride	Trichloroethane	0.1	➤ Cleaning Agent ➤ Solvent
HCFH 22	Chlorodifluoromethane	0.055	➤ Refrigerant
HCFC 123	Dichlorodifluoromethane	0.02	➤ Refrigerant/ Blowing Agent
HCFC 124	Chlorotetrafluoroethane		➤ Refrigerant/ Blowing Agent
HCFC 141B	Dichlorofluoroethane	0.11	➤ Blowing Agent
Methyl Bromide**	Bromomethane	0.6	➤ Soil Fumigant ➤ Quarantine Treatment ➤ Post Harvest Treatment

*From the Updated Philippine Country Program for Ozone Layer Protection

**Quarantine and Pre-Shipment Applications are exempted

Among the ODS, the most popular is chlorofluorocarbons (CFCs) developed in the 1930s, a chemical which revolutionized household and commercial refrigeration and made automobile air conditioning possible. Once tagged as a "miracle compound" by the chemical industry, little did people know then that CFCs would one day be identified as a major contributor

to the depletion of the ozone layer. Since CFCs are chemically stable, it can remain in the atmosphere for decades or even centuries before they are eventually broken down.

1.4 Effects of Ozone depletion

Any damage to the ozone layer will naturally mean the entry of harmful UV-B into the atmosphere. The UV-B is a highly energetic light, which has severe impact on human health and the environment. Thus without the ozone layer, there probably would not be a single living thing on earth. The apparent ill-consequences of exposure to UV-B rays are as follows:

Human health	UV-B may cause suppression of the immune system, induce skin cancer, and cause serious damage to the eyes, including eye cataracts, which is a major cause of blindness in many countries.
Plants & trees	Ozone layer depletion has adverse effects on agriculture and causes damage to forests. Increased UV-B radiation reduces the quality of certain types of tomatoes, potatoes, sugar beets and soybeans, among others.
Marine organism	UV-B causes severe damage to aquatic organisms, particularly the small creatures such as the plankton, aquatic plants, fish larvae, shrimps and crabs—all of which form the essential base of the aquatic and marine food web.
Materials	Materials used in buildings — paints, rubbers, wood and plastics are degraded by UV-B radiation, particularly plastics and rubbers used outdoors. Damage would be severe in tropical regions where the effects are enhanced by high temperatures and levels of sunshine.
Ground Level UV-B radiation	results in increased ground level
Smog	smog, especially in cities where vehicular and industrial emissions provide the basis for photochemical reactions. This has its own adverse effects on human health and the environment.

1.5 Preserving the Ozone Layer

To implement measures to protect the ozone layer, the Montreal Protocol on Substances that Deplete the Ozone Layer was promulgated on 16 September 1987. The Montreal Protocol is based on the "precautionary principle" that enables the world community to take actions to address a major global environmental problem even before all scientific, economic and technical questions have been fully resolved. To reflect this approach, the parties to the Montreal Protocol have agreed to a procedure for the treaty itself to evolve over time and to reflect the latest findings on the state of the ozone layer, science of ozone layer depletion and the progress

toward development and implementation of alternative technologies. This evolutionary feature is the regular and comprehensive assessment of the control measures adopted followed by amendments or adjustments to the Montreal Protocol.

Under the Protocol, all countries are required to gradually reduce the consumption and production of ODS. For this purpose, member countries are categorized into Article 2 and Article 5 countries. Developed countries generally fall under Article 2 and developing countries, like the Philippines, fall under Article 5.

To help the implementation process of the Montreal Protocol in Article 5 countries, a Multilateral Fund (MLF) was established in 1990 wherein contributions made by Article 2 countries are allocated to fund phase-out and other related projects in Article 5 countries.

The London Amendment to the Montreal Protocol was ratified by the Philippine Senate on 10 March 1993 and the Copenhagen Amendment was ratified by the Philippine Senate on 19 March 2001. The Montreal and Beijing Amendments to the Protocol have yet to be ratified by the Philippine Senate.

Should the Montreal and Beijing amendments to the Montreal Protocol be finally ratified, the Philippines shall be qualified to all benefits and assistance from the MLF upon which the incremental costs in eliminating the production and use of ODS may be financed.

Our obligations under the Montreal Protocol are the following:

CFCs:	Montreal Protocol obliges each Article 5 country to freeze its annual consumption and production of CFC 11, 12, 13, 114 and 115 at its average 1995-1997 level from 1999. Consumption and production then must be reduced accordingly at 50% by 2005, 85% by 2007 and a total phase-out must be achieved by 2010.
Halons:	Article 5 countries should freeze their annual consumption / production of halons at its average 1995-1998 level from 2002, and a total phase-out should be achieved by 2010.
Methyl Bromide:	Article 5 countries should freeze their annual consumption / production of MeBr at its average 1995-1997 level from 2002. A total phase-out should be achieved by 2015.

1.6 ODS consumption in the Philippines.

Since the Philippines is not a producer of ODS, the demands for these substances are met by imports from other countries.

1.6.1 CFC Consumption

Currently, small and medium enterprises (SMEs) which are mainly in the service sector,

remain a serious concern for CFC regulation. They comprise a large part of the remaining CFC users yet they have the least access to new information and available technologies for ODS phase-out.

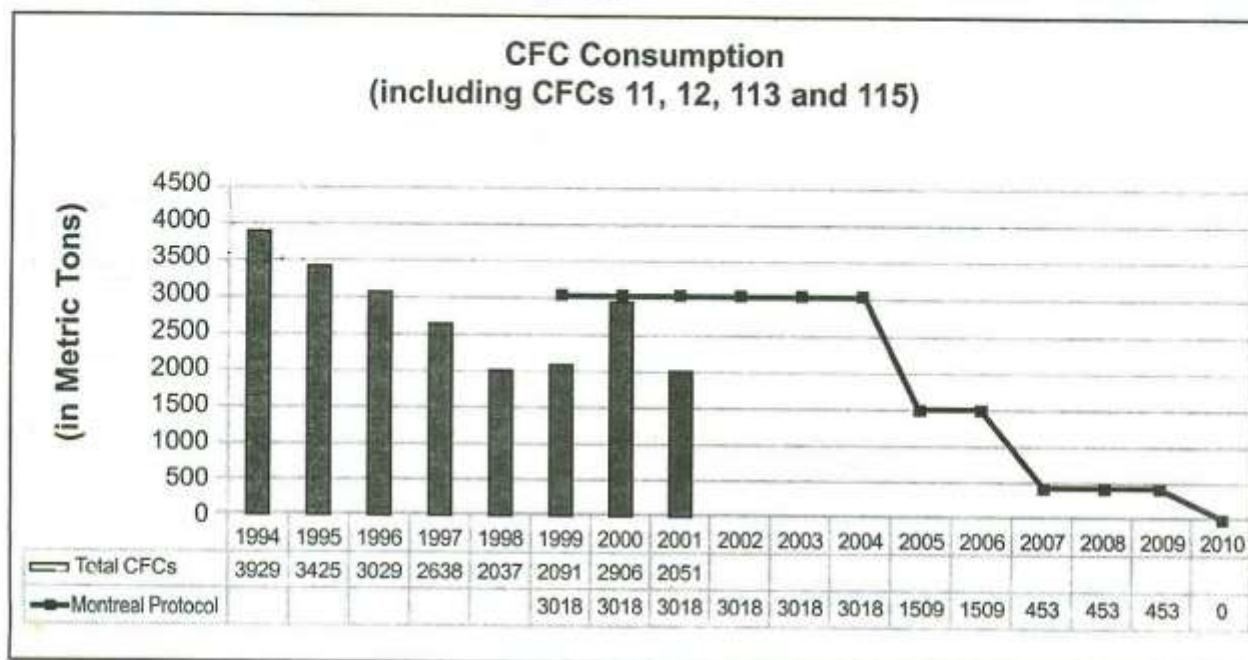
Based on 2001 data, the total consumption of Annex A, Group I chemicals (CFC) was 2,049.4 ODP MT. The following table shows the breakdown of the 2001 consumption for the CFCs and the CFC component of R502, as well as CTC.

Table 2. 2001 Consumption for CFCs, CFC Component of R502 and CTC

	CFC-12	CFC-11	R-502	CTC	Total
MT 2001	1,378.3	668.6	4.1	0.05	2,051.0
ODP	1.00	1.00	0.6	1.10	
ODP MT 2001	1,378.28	668.6	2.46	0.06	2,049.4

*From the Philippines National CFC Phase-out Plan (NCP)

Table 3. CFC Consumption in the Philippines



The graph shows that, based on current consumption trends, the Philippines will need to reduce its consumption of 2,049.3 ODP MT by at least 537.3 ODP MT during the period 2001 to 2005 to meet its 50% reduction requirement (1,509 ODP MT) and another 1,056.3 ODP MT between 2005 and the end of 2006 to ensure its compliance with the 85% reduction target (452.7 ODP MT) by 2007 and 100% reduction by 2010. The 50% reduction by 2005 will primarily be done through the complete phase-out of CFC 11 and the close down of the manufacturing sector using CFC

a) CFC Consumption in the Manufacturing Sector

CFC usage in the manufacturing sector can be characterized by the following: as blowing agent in the production of aerosol and foam, solvents in the pharmaceuticals, garments/textiles sectors, and electronics manufacturing, and as refrigerant in the production of refrigeration equipment (domestic refrigerators, commercial refrigeration equipment, refrigerated trucks and water coolers).

Presently, due to cheaper garments from other countries, help from the MLF and the downturn of the economy, most CFC-based manufacturing has been eliminated, except for the manufacture of foams and a very small amount of aerosol products and commercial/industrial refrigeration equipment. The electronics manufacturing sector no longer uses CFC-113, 1, 1, 1 TCA and there is currently only very small laboratory use of CTC.

With the exception of foams and a small amount of industrial/commercial refrigeration equipment manufacturers, the remaining CFC consumption in the manufacturing sector is from small and medium enterprises. There remains some small consumption associated with the manufacture (revamping) of refrigerated trucks, a small consumption associated with the production of water coolers and small display counters/upright freezers.

Below is a summary of CFC consumption data in the manufacturing sector:

Table 4. Consumption Data in the Manufacturing Sector

Substance/Usage	Weight in ODP MT	% Share Vs. Total CFC Consumption
CFC-11	508.57	24.82
1. Foams	499.47	24.37
2. Commercial/Industrial Refrigeration	9.10	0.44
CFC-12	9.64	0.47
1. Commercial/Industrial Refrigeration	5.00	0.24
2. Water Coolers	2.04	0.10
3. Aerosols	2.60	0.13
TOTAL	518.21	25.29

*From the NCPP

b) CFC Consumption in the Service Sector

The refrigeration and the air-conditioning service sectors have the largest demand for CFC-12, a significant demand for CFC-11 and a small demand for R-502. The demand for CFC-12 and R-502 is for servicing of refrigeration and air-conditioning systems. CFC-11 is used to service large centrifugal chillers and for flushing all types of refrigeration and air-conditioning systems to clean them from acids and other contaminants after compressor failures or other problems.

Automotive air-conditioning is the dominant user of CFC-12 in the Philippines and due to the technological differences and the trade structure, the service in this sector is separate

from stationary refrigeration. The largest consumption aside from the mobile air-conditioning (MAC) sector is from the commercial and domestic refrigeration sub-sectors.

Below is a summary of CFC consumption data in the servicing sector:

Table 5. CFC Consumption in the Servicing Sector.

Substance/Usage	Weight in ODP MT	% Share Vs. Total CFC Consumption
CFC-11	160.0	7.81
1. Chillers	60.00	2.93
2. Flushing	100.00	4.88
CFC-12	435.00	21.23
1. Household Refrigeration	93.00	4.54
2. Commercial/Industrial Refrigeration	342.00	16.69
3. MACS	933.60	45.46
SUV/AUV	565.5	27.59
Cars	335.90	16.39
Buses	32.20	1.57
Servicing with CFC-115 (51.2% in (R502)	2.46	0.12
TOTAL	1,522.00	74.71

*From the POD

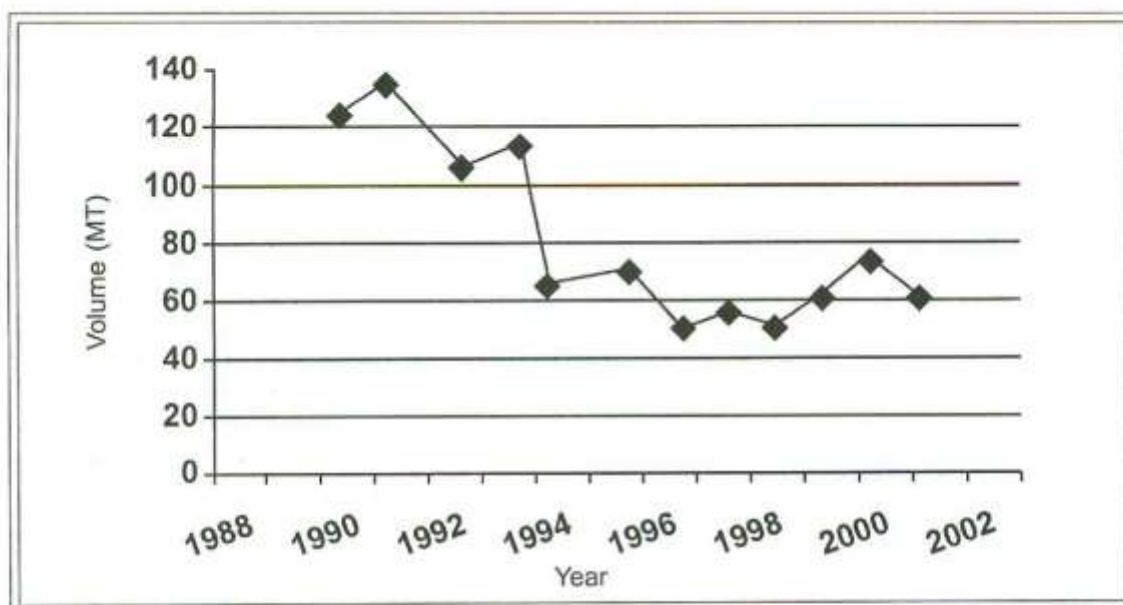
1.6.2 Methyl Bromide Consumption

Methyl Bromide is an effective and easy to use pesticide that can kill a wide range of pests and it is ideal for use in sterilizing soil and treating stored products. However, it is a powerful ozone-depleting substance. Even before the Philippines entered the Montreal Protocol, methyl bromide was already regulated by the Fertilizer and Pesticide Authority.

Based on the results of the survey conducted by the Pesticide Action Network (Phils.), methyl bromide is mainly used for quarantine and pre-shipment and structural fumigation, and limited use for soil fumigation and in golf courses. The FPA is trying to look for alternatives to methyl bromide, like phosphine and manual cooking of soil as fumigant, however, they are not of the same quality as methyl bromide.

Following is the methyl bromide consumption in the Philippines based on importation permits issued by FPA:

Table 6. Methyl Bromide Consumption in the Philippines (based on permits issued by the FPA)



*From Paper entitled, "Current Status of Methyl Bromide Use in the Philippines and its Commitment to the Montreal Protocol"

1.6.3 Halons

Halons are utilized as fire-extinguishing agents. Halon-1211 is employed in portable fire extinguishers, while Halon-1301 is usually used as fixed systems for total flooding. Both of these Halons were scheduled for phase-out in 1998. Since then, no importation of such chemicals were registered/reported by the EMB.

1.7 The Phase-out Program

The Montreal Protocol defined phase-out schedules for the various categories of ODS. In accordance with these schedules, the bulk of ODS, including all the substances specified in the original Protocol, were phased out in industrialized countries by the end of 1995. The remaining categories are scheduled for total phase-out by 2010 (i.e., non-QPS application of methyl bromide) and 2030 (i.e., HCFCs). Developing countries, however, have longer phase-out schedules.

Table 7. Montreal Protocol Phase-out Schedule by Substance

<i>Class/Name of ODS</i>	<i>Base Level</i>	<i>Freeze</i>	<i>20%</i>	<i>30%</i>	<i>50%</i>	<i>70%</i>	<i>85%</i>	<i>Phase Out</i>
<i>Annex A CFC</i>	1995-1997	1999			2005		2007	2010
<i>Annex B CFC</i>	1998-2000		2003				2007	2010
<i>Halons</i>	1995-1997	2002			2005			2010
<i>Methyl Bromide**</i>	1995-1998	2002	2005					2015
<i>Methyl Chloroform (1,1,1 TCA)</i>	1998-2000	2003		2005				2015
<i>Carbon Tetrachloride (CTC)</i>	1998-2000						2005	2010
<i>HCFCs</i>	2015	2015						2040

*From UNEP

**For non-QPS application

1.7.1 Acceleration of Phase-out Program

On 1 December 1998, the DENR issued a Notice to the Public banning the importation and consumption of certain ODS as recommended by the 1993 Philippine Country Program for Ozone Layer Protection. The ban which was affirmed by the CCO (DAO No. 2000-18) practically accelerated the phase-out schedule of certain ODSs, as follows:

Table 8. Accelerated Phase-out Schedule of Certain ODS.

ODS	Montreal Protocol Phase-Out Schedule (100% Starting)	Accelerated Phase-out Schedule (100 % by end off)
CFC 113	2010	1996
CFC 114	2010	1998
CFC 115	2010	1998
Halon 1211	2010	1998
Halon 1301	2010	1998
CTC	2010	1996
1,1,1 TCA	2015	1996

*From NCPP

Since then, the EMB did not issue import clearances for said substances which were banned for importation.

With the approval of the Philippine National CFC Phase-out Plan in November 2002, the Philippines agreed to accelerate the phase-out schedule of CFCs which are still being used (i.e. CFC-11, CFC-12, & R-502), as follows:

Table 9. Updated CFC Phase-out Schedule based on the NCPP

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Maximum Allowable CFC Consumption	2,049.3	2,049.3	1,960	1,810	1,509	1,360	453	400	300	0

*From NCPP

1.8 Projects Implemented

About 56 various projects were granted financing by the MLF to the Philippines with the approximate total budget allocation of US\$30.328 million. These projects can be categorized into two: a) investment projects or those granted to firms/enterprises to phase-out the use of ODS in the manufacturing of new products as well as in servicing existing equipment, and b) non-investment projects which include technical assistance, public awareness campaign, surveys and project preparation, policy & plan formulation, among others.

Table 10. Summary of MLF-assisted Projects to Phase-out ODS in the Philippines

Type of Project	Number of projects	Total Cost (US\$ million)	Amount of ODS Eliminated	Number of Completed Projects
Non-Investment Projects	20	1.933	N.A.	18
Investment Projects	36	28.395	1,639.87	35

*From the POD

As of 2003, there are three (3) on-going projects being implemented by the DENR. The list of all completed and on-going projects is found in the Annexes.

1.8.1 Philippine National CFC Phase-out Plan

Among the three (3) on-going projects, the Philippine National CFC Phase-out Plan (NCPP) is the biggest and has a direct impact to phase-out CFC. The NCPP employs a phase-out strategy based on a combination of policy and regulatory interventions and investment and

non-investment support activities including training, capacity building and public awareness. The phase-out plan requires active management by various user communities and a proactive attitude. The plan covers a number of sectors and sub-sectors with different profiles and potential for conversion over differing timeframes, thus, the programs are sector and sub-sector specific.

Last 20 November 2002, the Executive Committee of the MLF approved the implementation of the NCPP for eight (8) years with a total funding of US\$10.58 million. The objective of this NCPP is to enable the government to phase-out its CFC consumption in accordance with the phase-out schedule of the Montreal Protocol. Without additional intervention from government or the MLF, the Philippines will not meet the 85% reduction requirement and will thus not be able to meet the subsequent interim phase-out targets as well.

Under the NCCP, the Philippines commits that in exchange for the annual funding to be released by the MLF, it will eliminate the corresponding amount of CFC consumption as well as achieve the performance targets set in the plan. If the Philippines fails to comply with its annual commitments, the MLF will withhold funding for subsequent tranches/years until such time that required reduction has been met. If it fails to achieve the reduction target on a particular year, the MLF will reduce the subsequent tranche on the basis of fifteen thousand (\$15,000.00) dollars per OPD MT of reduction not achieved in any year.

a) Measures in the Manufacturing Sector

To contribute to the significant reduction of CFCs required for the 50% consumption reduction target in 2005, CFC consumption in the manufacturing sector must be eliminated. The government has decided to assign a high priority to the complete phase-out of CFCs in the manufacturing sector by 1 January 2005 and will thus enforce the ban on the use of CFCs in this sector by the same date.

This will be done by providing technical and financial assistance to change their production to ozone-friendly technology and invoking new policy where necessary and enforcing import controls.

b) Measures in the Service Sector

To meet its 85% reduction obligations by 1 January 2007 and the total elimination of CFC consumption by 1 January 2010, there must be major reductions in the service sector. This will have an impact on all sectors and it is necessary to immediately create awareness, adjust attitudes and behavior and alter the conditions in the marketplace in a gradual and orderly manner through both demand and supply-side management measures.

The refrigeration and air-conditioning service sectors affect important functions in society and requires a different approach and timing than in the manufacturing sector. The phase-out of CFCs will thus require a change in practice among thousands of service enterprises, mostly refrigeration and airconditioning (RAC) and mobile airconditioning

(MAC) service shops. The service sector phase-out will consist of components such as, training of technicians, introduction of the "code of good practice", re-use of CFC through recovery, recycling and reclamation and early replacement and retrofit of CFC-using equipment to non-CFC systems.

2. The Institutional Framework

The Department of Environment and Natural Resources (DENR), through the Environmental Management Bureau (EMB), acts as the national coordinator on programs in drawing up policies and devising administrative measures for the implementation of the Montreal Protocol in the Philippines. Since the Philippines is not a producer of any ODS, the phase-out of these substances pertain mainly to controlling ODS importation and usage.

Under the DENR-EMB is an office known as the Philippine Ozone Desk (POD) which was created to facilitate and coordinate ODS phase-out projects and policies.

2.1 The Department of Environment and Natural Resources (DENR)

The DENR is primarily responsible for the conservation, management and proper use of the country's environment for the welfare of the present and future generation of Filipinos. Specifically, the department is tasked to ensure "full exploration and development, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, offshore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment xxx"¹.

2.2 The Environmental Management Bureau (EMB)

Under DENR's wing is the EMB, whose mandate is to advise the DENR Secretary on matters relating to environmental management, conservation and pollution control. Particularly, it shall:

1. Recommend possible legislation, policies and programs for environmental management and pollution control;
2. Advise the Regional Offices in the efficient and effective implementation of policies, programs and projects for the effective and efficient environmental management and pollution control;
3. Formulate environmental quality standards such as the quality standards for water, air, land, noise and radiation;
4. Recommend rules and regulations for environmental impact assessments and provide technical assistance for their implementation and monitoring;

¹ Administrative Code, Title XIV, Chapter 1, Sec. 1 & 2(1).

5. Formulate rules and regulations for the proper disposition of solid wastes, toxic and hazardous substances;
6. Advise the DENR Secretary on the legal aspects of environmental management and pollution control and assist in the conduct of public hearings in pollution cases;
7. Provide secretariat assistance to the Pollution Adjudication Board;
8. Coordinate the inter-agency committees that may be created for the preparation of the State of the Philippine Environment Report and the National Conservation Strategy;
9. Provide assistance to the Regional Offices in the formulation and dissemination of information on environmental and pollution matters to the general public;
10. Assist the DENR Secretary and the Regional Officers by providing technical assistance in the implementation of environmental and pollution laws; and
11. Provide scientific assistance to the Regional Offices in the conduct of environmental research programs.²

2.3 The Philippine Ozone Desk (POD)

In 1992, the DENR "Montreal Protocol Secretariat" was created. This later evolved into the POD with the objective of the protection and preservation of the ozone layer. Specifically, the POD's mandate is to study and recommend policies and devise administrative measures for the implementation of the Montreal Protocol in the country. Specifically, its major tasks include ensuring compliance of timetables set for reducing ODS consumption, strengthening procedures for restricting imports, coordination with relevant government agencies, working on phase-out projects and evaluating the same and collecting national data on ODS consumption.

In August 2001, the DENR structure was reorganized and two (2) Undersecretaries were designated as National Program Coordinator and Co-Coordinator. They were both assigned oversight responsibility with respect to the POD. The following are the key positions in relation to the POD:

²Ibid., Sec. 17.

Table 11. Key POD Officials

Position	Duties and Responsibilities
Project coordinator (DENR Undersecretary for Operations)	Serves as the focal person for the POD related matters; Reports to the DENR Secretary of the POD-related projects.
Project Coordinator (DENR Undersecretary for Planning and policy)	Provides advice or exercises supervision over the POD upon request or during the absence of the Project Coordinator, particularly on matters pertaining to policy direction.
EMB Director	Provides administrative and technical supervision to the POD and oversee the accomplishment of tasks associated with the project and compliance with targets.
Project Manager	Provides the day-to-day administrative and technical supervision to the POD staff; Reviews the POD's WFP for approval of the DENR and WB; Oversees the accomplishment of tasks associated with POD project and assesses compliance with targets.
Project Evaluation & Monitoring Officer	conducts researches and surveys on the field on ODS usage; Integrates and evaluates technical data for translation into prospective policies, guidelines, and/or national plans on environmental protection or management.

*From the POD

Subsequently, a Montreal Protocol Inter-Agency Technical Working Group was created by the DENR to ensure that all agencies involved will value the importance of achieving environmental programs targets and objectives. This group is composed of over 25 member departments/agencies/offices who are expected to give their input and consensus to enable the DENR to achieve its goals relative to ODS. A Resources Group was also convened which involves industry players, ODS importers and users. The POD has also already identified personnel in the regions to be in-charge of ODS in the regional offices. A complete list of all members of these groups is found in the Annexes.

On 24 July 2002, the DENR-EMB and the Bureau of Customs (BoC) forged a Memorandum of Understanding to clarify the respective responsibilities and to establish the working relationship between them. The MOU specifically stated the tasks and duties of the agencies which includes the issuance of rules and regulations for importing and transporting ODS, issuance of Pre-shipment Clearances to ODS importers, support the BoC in obtaining resources such as equipment, manpower, information, etc., all on the part of the DENR. The BoC tasks include the enforcement of the rules and regulations, information about the import

data and notifying the DENR of any "suspicious" shipments. The goal of the MOU is for the agencies to have a formal working relationship to be able to help each other for the government to reach its goals regarding ODS. Personnel have also been assigned by the agencies to ensure that there is constant coordination.

2.4 Fertilizer and Pesticide Authority

The Fertilizer and Pesticide Authority (FPA), a technically-oriented authority with the required expertise to regulate, control and develop both the fertilizer and pesticide industries, was created on 30 May 1977 by virtue of Presidential Decree (PD) 1144. Aside from ensuring the agricultural sector of adequate supply of fertilizer and pesticides at reasonable prices and educating the agricultural sector in the use of these inputs, FPA is also mandated to protect the public and the environment from the risks inherent in the use of pesticides.

Since methyl bromide (MeBr) is classified as pesticide, the mandate to regulate the substance's importation rests with the FPA.

Presently, the DENR (through the EMB) and the FPA have drafted a Memorandum of Agreement (MOA) to clarify their respective responsibilities and establish their working relationship to comply and fulfill their obligations under Philippine laws and the Montreal Protocol in relation to methyl bromide. Under the proposed MOA, in addition to the agencies' specific responsibilities, a Working Group for Methyl Bromide Phase-out Project will be created to "ensure adequate coordination, cooperation, information sharing and problem solving between the agencies".

3. The Legislative Framework

3.1 Republic Act No. 6969 and its Implementing Rules and Regulations

Republic Act No. 6969 otherwise known as the "Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990", is a law to control toxic substances and hazardous nuclear waste. It empowers and authorizes DENR to regulate, restrict or prohibit importation, manufacture, processing, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment. By virtue of this law, corresponding department orders are issued by the DENR, establishing monitoring mechanisms, regulations and prohibitions on chemicals, including ODS.

Sanctions against non-compliance to R.A. 6969 and its subordinate legislation include fines and jail sentences.

R.A. 6969 covers the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all unregulated chemical substances and mixtures in the Philippines, including its entry, even in transit.

The main objective of R.A. 6969 is to monitor, regulate and keep an inventory of imported, manufactured, or used chemicals that present unreasonable risk or injury to health or to the environment in accordance with national policies and international commitments.

3.1.1 *The Inter-Agency Technical Advisory Council.*³

To effectively carry out the provisions of R.A. 6969, a Council was created under the DENR. Its principal function⁴ was to formulate pertinent rules to effectively implement the law. Thus, DENR Administrative Order No. 92-29 (DAO 92-29) was issued. Additionally, the Council was tasked to assist the DENR in the preparation and updating of the inventory of chemical substances and mixtures that fall within the coverage of R.A. 6969, to conduct preliminary evaluation of the characteristics of chemical substances and mixtures to determine their toxicity and effects on health and the environment and make the necessary recommendations to the DENR and other functions that the Secretary may require from time to time.

DAO 92-29 also provides that the DENR Secretary may delegate his powers to offices or persons under the supervision of the DENR to ensure that the rules and regulations are faithfully complied with.

3.1.2 *Important provisions in DAO 92-29*

DENR issued DAO 92-29 to provide for specific rules and regulations to implement the provisions of R.A. 6969. Thus, DAO 92-29 gives DENR the mandate to regulate and/or control the usage, transport, process, manufacture, import or export of any new substances and priority chemicals that pose an unreasonable risk or hazard to public health or the environment through the passage of Chemical Control Orders.

DAO 92-29 outlines the procedure concerning the importation requirements of chemicals, including ODS. Generally, the following procedure must be followed: nomination of existing chemicals, notification of new chemicals and the fulfillment of requirements for pre-manufacture and pre-importation such that before any new chemical substance or mixture can be manufactured, processed or imported for the first time as determined by the DENR, the manufacturer, processor or importer shall submit detailed information about the chemical which includes but is not limited to the following: proper chemical name, trade name and uses, CAS number, chemical and molecular structure, physical characteristics, chemical properties, toxicological data, etc.

Chemicals may be subject to testing when there is a reason to believe that the chemical substances or mixture may present an unreasonable risk to health or the environment or there may be substantial human or environmental exposure thereto and when there are insufficient data and experience for determining or predicting the health and environmental effects of the chemical substance or mixture.

If the DENR determined that the use, storage, transport, process, manufacture, import or export of any new substance or a priority chemical poses an unreasonable risk or hazard to public health or the environment, the Department may, by order published in the Official Gazette or any newspaper of general circulation:

³ cf. RA 6969, Section 7.

⁴ cf. RA 6969, Section 7, par. 2.

- (i) Prohibit the use, manufacture, import, export, transport, process, storage, possession, or sale of the chemical substance;
- (ii) Limit the use, manufacture, import, export, transport, process, storage, possession or sale of the chemical substances; or
- (iii) Place such controls or conditions on the use, manufacture, import, export, transport, process, storage, possession or sale of the chemical substance to abate or minimize risks or hazards posed by the chemical substance on public health and environment.

An order issued by the DENR under this category is known as a Chemical Control Order (CCO).⁵ The DENR Secretary or his representative may cause the impoundment or confiscation of any chemical substance and its conveyance and container if there is a reasonable ground to believe that the sale, storage, possession, use, manufacture, transport, import or export for a chemical substance does not comply with the CCO.⁶

3.1.3 *Prohibited acts and omissions/violations of the law*

The law and its implementing rules and regulations identify the unlawful and prohibited acts or omissions with regard to chemicals. Commission of these acts and omissions will be subject persons responsible to fines and penalties:

- i) Knowingly use a chemical substance or mixture which is imported, manufactured, processed or distributed in violation of this Act or implementing rules and regulations or orders;
- ii) Failure or refusal to submit reports, notices or other information, access to records, as required by this Act, or permit inspection of establishment where chemicals are manufactured, processed, stored or otherwise held;
- iii) Failure or refusal to comply with the pre-manufacture and pre-importation requirements; and
- iv) Cause, aid or facilitate, directly or indirectly, in the storage, importation, or bringing into Philippine territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.

- Upon receipt of a report from a duly authorized inspector or upon a verified complaint from a private person, the DENR Secretary or his duly authorized representative shall order an investigation or inquiry on the alleged violation of any provision of R.A. 6969 and its implementing rules. If after the investigation there appears to be a violation thereof, the DENR Secretary or his representative shall issue summons informing the respondents of the nature of charges and requiring them to appear before a conference for the purpose of determining whether an Order for confiscation or impoundment or fine should be issued.⁷

⁵ cf. DAO 29, Section 20 (1) and (2).

⁶ cf. DAO 29, Section 23 (1).

⁷ cf. DAO 29, Section 10.

Furthermore, whenever the DENR Secretary or his representative find *prima facie* evidence that the violation presents unreasonable risk and/or injury to health or the environment, they may issue an Ex-parte Order of confiscation or impoundment, provided that the respondent may file his Motion for Reconsideration ten (10) days from date of confiscation or impoundment. Such Motion shall be resolved within fifteen (15) days from receipt of the same.⁸

3.2 Republic Act No. 8749, known as the "Clean Air Act"

Popularly known as the "Philippine Clean Air Act of 1999", RA 8749 is intended to formulate a holistic national program on air pollution. DENR is the lead agency but cooperates with other government agencies as well as with industry and related non-governmental organizations. The Clean Air Act's primary focus is on ambient air quality but it is applicable to all air pollutants including ODS.

Recognizing ODS as a pollutant, the Clean Air Act directed the DENR to publish a list of substances which are known to cause harmful effects on the stratospheric ozone layer and thereafter phase-out the same in the country. The law likewise reaffirmed the Philippines' commitment to the Montreal Protocol and its amendments.⁹

In this law, the term ODS was defined in the following wise:

"Ozone Depleting Substances (ODS) mean those substances that significantly deplete or otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment such as, but not limited to, chlorofluorocarbons, halons, and the like"¹⁰

3.3 The Tariff and Customs Code (TCC)

Under the Tariff and Customs Code, as amended, the Bureau of Customs (BoC) is mandated to assess and collect lawful revenues from imported articles and other fees, fines and charges, to prevent and suppress smuggling and other fraud and to enforce provisions of the code and associated regulations, but also other laws, rules and regulations implemented by the DENR-EMB. The BoC has the general duties, powers and jurisdiction to assess and collect the lawful revenues from imported articles and all dues, fees, charges, fines and penalties accruing under the tariff and customs laws, prevent and suppress smuggling and other frauds upon the BoC, supervise and control all import and export cargoes, landed or stored in piers, airports, terminal facilities, including container yards and freight stations, for the protection of government revenue and exercise exclusive original jurisdiction over seizure and forfeiture cases under the tariff and customs laws.¹¹

⁸ cf. DAO 29, Section 11.

⁹ cf. RA 8749, Section 5(r).

¹⁰ cf. DAO 29, Section 10.

¹¹ cf. TCC, Section 602.

In relation to ODS, the collector shall cause all articles entering the jurisdiction of his district and destined for importation through his port to be entered at the customhouse, shall cause all such articles to be appraised and classified, and shall assess and collect the duties, taxes and other charges thereon, and shall hold possession of all imported articles upon which duties, taxes, and other charges have not been paid or secured to be paid, disposing of the same according to law.¹²

Where articles are of prohibited importation or subject to importation only upon conditions prescribed by law, it shall be the duty of the Collector to exercise such jurisdiction in respect thereto as will prevent importation or otherwise secure compliance with all legal requirements.¹³

In August 1996, Customs Memorandum Order No. 24-96 was issued regarding the effective management of the Automated Customs Operations System Reference Database. This system introduced better efficiency by having faster clearances, streamlined procedures and increased revenue collection. Due to this system, ODS imports are easily identified and updated.

3.3.1 Important Provisions in relation to ODS imports

a. Rule on importation.

Under the TCC, articles are to be imported through customhouse. Hence, all articles imported into the Philippines, whether subject to duty or not, shall be entered through a customhouse at a port of entry.¹⁴

b. When importation begins and when it is deemed terminated.

Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.¹⁵

c. Owner/s of Imported Articles.

All articles imported into the Philippines shall be held to be the property of the person to whom the same are consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned articles and the salvors of articles saved from a wreck at sea, along a coast or in any area of the Philippine may be regarded as the consignees.

¹² cf. TCC, Section 1206.

¹³ cf. TCC, Section 1207.

¹⁴ cf. TCC, Section 1201.

¹⁵ cf. TCC, Section 1202.

d. *Liability of Importer for Duties.*

Unless relieved by laws or regulations, the liability for duties, taxes, fees and other charges attaching on importation constitutes a personal debt due from the importer to the government which can be discharged only by payment in full of all duties, taxes, fees and other charges legally accruing. It also constitutes a lien upon the articles imported which may be enforced while such articles are in custody or subject to the control of the government.¹⁶

3.3.2 *Search, Seizure and Arrests*

It is within the power of a customs officials and his duty to conduct searches and make seizures of any vessel, aircraft, cargo, articles, animal or other movable property when the same is subject to forfeiture or liable for any fine imposed under customs and tariff laws, and also make arrests for violation of any customs and tariff laws.¹⁷

3.3.3 *Obligations/Tasks of Customs Officers*

Once a shipment arrives for inspection by a customs collector, he must determine the following:

- (i) Persons authorized to make import entry;
- (ii) All imported articles must be cleared under a formal or informal entry;
- (iii) Declaration of the Import Entry. - Except in case of informal entry, no entry of imported article shall be effected until there shall have been submitted to the Collector a written declaration, in such form as shall be prescribed by the Commissioner, containing statements of substance as follows:
 - (a) That the entry delivered to the Collector contains a full and true statement of all the articles which are the subject of the entry.
 - (b) That the invoice and entry contain a just and faithful account of the actual cost of said articles, including and specifying the value of all containers or coverings, and that nothing has been omitted therefrom or concealed whereby the Government of the Republic of the Philippines might be defrauded of any part of the duties lawfully due on the articles.
 - (c) That, to the best of declarant's information and belief, the invoice and all bills of lading relating to the articles are the only ones in existence relating to the importation in question and that they are in the state in which they were actually received by him;

¹⁶ cf. TCC, Section 1204.

¹⁷ cf. TCC, Section 2205, 2210, and 2211.

- (d) That, to the best of the declarant's information and belief, the entry, invoice and bill of lading, and the declaration thereon are in all respects genuine and true, and were made by the person by whom the same purport to have been made, respectively.¹⁸

The imported articles shall be subject to regular physical examination by the customs officers when the following occur:

- (i) The government surveyor's seal on the container has been tampered with or broken or the container shows signs of having opened or having its identity changed;
- (ii) The container is leaking or damaged;
- (iii) The number, weight, and nature of packages indicated in the customs entry declaration and supporting documents differ from the manifest;
- (iv) The shipment is covered by alert/hold order;
- (v) The importer disagrees with the findings as contained in the government surveyor's report; or
- (vi) The articles are imported though air freight where the Commissioner or Collector has knowledge that there is a variance between the declared and true quantity, measurement, weight, and tariff classification.¹⁹

3.3.4 Forfeitures

There are many instances when articles may be subject to forfeiture. However, for our purposes and in relation to ODS, imported articles are subject to forfeiture under the TCC when an article which is fraudulently concealed is removed from any public or private warehouse under customs supervision; when there is an un-manifested article found on any vessel or aircraft if manifest therefore is required and any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package, provided the Collector is of the opinion that the misdeclaration was contrary to law. Undervaluation of imported articles makes the articles seizable if the undervaluation is more than thirty (30%) percent of the actual value and less than thirty (30%) percent will make the importer liable for a fine or penalty. Additionally, the absence of the requisite license from the DENR will alert the BoC that the imported articles may be seized and forfeited after hearing on the matter.

¹⁸ cf. TCC, Section 1304.

¹⁹ cf. RA 7650 (06 April 1993)

3.4 DENR Administrative Order (DAO) No. 98-58

Through this issuance, the following substances were included in the Priority Chemicals List (PCL):

Table 12. Substances under the Priority Chemicals List

1. 1,1,1,-Trichloroethane	15. Ethylene Oxide
2. 1,2 -Diphenylhydrazine	16. Halons
3. Arsenic Compounds	17. Hexachlorobenzene
4. Asbestos	18. Hexachloroethane
5. Benzene	19. lead Compounds
6. Beryllium Compounds	20. Mercury Compounds
7. Cadmium Compounds	21. Mirex
8. Carbon Tetrachloride	22. Polychlorinated Biphenyls (PCBs)
9. Chlorofluoro Carbons (CFCs)	23. Phosgene
10. Chloroform	24. Pentachlorophenol
11. Chlorinated Ethers	25. Polybrominated Biphenyls (PBBs)
12. Chromium Compounds	26. Selenium
13. Cyanide Compounds	27. Tributyltin
14. Ethylene Dibromide	28. Vinyl Chloride

*From DAO 98-58 HCFCs are not on the PCL but they are regulated based on the CCO (DAO 2000-18)

Detailed information on the foregoing chemicals, including their chemical formula and composition, is found in the Annexes.

Thus, users, importers, and manufacturers of these chemicals were required to comply with the following requirements:

- a. Completion and submission to the Environmental Quality Division (EQD) of the Environmental Management Bureau (EMB) of a Hazardous Wastes Registration Form;
- b. Completion and submission to the EQD, EMB of the PCL Biennial Report. The First Biennial Report should be submitted from September 1 to December 31, 1998. Subsequent Biennial Reports shall be submitted within fifteen (15) days from the end of each calendar year; and
- c. Registration and Biennial Reports must be in a form prescribed by the DENR and accompanied with the payment of prescribed fees.

The PCL came from the Philippine Inventory of Chemicals and Chemical Substances (PICCS). The PICCS is a list of all existing chemicals and chemical substances used, sold, distributed, imported, processed, manufactured, stored, exported, treated or transported in the Philippines. The chemicals and chemical substances were nominated by the industries themselves.

Its purpose is to serve as a guide for manufacturers and importers of chemicals. Manufacturers and importers need not notify and secure clearance from DENR before they manufacture or import chemicals included in the PICCS provided these chemicals are not in the PCL and are not subject to CCOs. Chemicals currently included in the PICCS may be added to the PCL if further information or research shows that the chemical may pose an unreasonable risk to public health and the environment.

3.5 Republic Act No. 7394, known as the Consumer Protection Act

The Department of Trade and Industry (DTI) is mandated under the Consumer Act of the Philippines to issue standards and regulations to protect the interest of the consumer, including protection against hazards to health and safety and deceptive, unfair and unconscionable sales acts and practices. This includes an accreditation scheme for repair and service firms and their technical personnel. Under this scheme, no person shall operate a repair or service firm, or act as technical personnel without first being accredited by the DTI.

3.6 The Omnibus Investment Code (Executive Order 226)

This law and its 2000 Priority Investment Plan are utilized by the government to encourage compliance with the Montreal Protocol and the Framework Convention on Climate Change by supporting the use of non-ODS equipment.

3.7 The Environmental Protection Unit

In Customs Special Order No. 7-2002 dated 3 April 2002, the EPU was transferred and placed under the office of the Deputy Commissioner, Intelligence and Enforcement Group with duties and functions such as monitoring the processing of all importation of waste products and/or recyclable products, conduct spot checks in coordination with the DENR, conduct surveillance, detection and/or apprehension on all importation of waste products and/or recyclable products without proper clearance from EMB, DENR and/or without payment of duties to the government, coordinate/participate in all activities regarding Environmental Protection conducted by other government agencies and non-government organizations whether local or foreign based institutions, effect proper coordination with the District Collector of Customs and other concerned offices; and develop the capability to strictly enforce the TCC.

Further, the Order mandates that EPU's shall be established in all principal ports and sub-ports of entries to effectively enforce environmental laws/regulations.

3.8 The Philippine Ports Authority (PPA)

On 11 December 2001, the PPA issued Memorandum Circular No. 46-2001 regarding the Monitoring of Chemicals under the Priority Chemicals List with the objective of properly monitoring the movement of environmentally hazardous chemicals and to assist the DENR in the implementation of laws covered by R.A. 6969 and the Clean Air Act. Basically, the circular mandates that the PPA Committee on Safety, Health and Environment shall consolidate all the reports of their officers at the ports regarding the movement of ODS and transmit the gathered information to the DENR-EMB on or before the 15th of every month.

4. The Licensing System

4.1 Licensing System for CFCs & HCFCs

Under the Bangko Sentral ng Pilipinas Circular No. 1389 Series of 1993, CFCs were considered as "regulated commodities", thus, importation was earlier regulated by the Bureau of Food and Drug of the Department of Health.

However, in 1993 the regulation and control of these ODSs through the issuance of importation clearances, were transferred to the Environmental Quality Division of the EMB of the DENR pursuant to Department Administrative Order No. 29, series of 1992. Around eight (8) importers were registered in the BFAD became the basis of EMB in establishing the current list of registered importers. Issued importation clearances by the BFAD were required by the EMB for the importers to verify and establish consumption of ODS and quota. The EMB chose the highest import quantity of the importers as the basis of their quota. From 1994-1998, the quota remained the same since during that period the Montreal Protocol Schedule mandated that the importations should be frozen. The EMB, however, still entertained new importers.

By 1999, quota started to reduce by 10% from the baseline consumption or the 1996 consumption. Simultaneously, the CCO preparation was on going. On 1 December 1999, a Notice to the Public was issued banning the importation of halons, carbon tetrachloride, trichloroethane or methyl chloroform, CFC114, CFC113, CFC115, and CFC12 and CFC11 which are used for manufacturing new products with their respective schedules. It was then that new importers of CFCs were no longer accepted.

4.1.2 DENR Administrative Order No. 2000-18 (DAO 2000-18)/Registration

On 23 February 2000, a Chemical Control Order (CCO) for Ozone Depleting Substances (ODS), DAO 2000-18, was issued. It contained the phase-out schedule for CFCs and the basis for quota allocation. It provided for detailed measures/regulations on the import, export, use, manufacture, transport, processing, storage, possession sale of ODS to abate their risks and hazards to the stratospheric ozone, public health and the environment. Generally, it provides for a system of registration on the importation of ODS. Under the CCO, any person, natural or juridical, who imports ozone-depleting substances (regardless of source as allowed under the agreements of the Montreal Protocol and DAO 2000-18) must be duly registered with the DENR-EMB. A certificate of registration is only valid for a period of one (1) year and may only be granted after showing proof of the following:

- i) Understanding and appreciation of the role of these substances in depleting the stratospheric ozone, and its consequences.
- ii) Capability to take effective measures, including the necessary equipment, technology, training and infrastructure, for the purpose of effectively handling ozone-depleting substances, minimizing their emissions, and ultimately phasing out their use by replacing with substitutes/alternatives duly recognized and certified by the DENR-EMB.

- iii) No violation of any provisions of RA 6969 and its implementing rules and regulations and other pertinent environmental laws and regulations.

Application for registration must include the following information, to wit:

- a) Duly accomplished registration form;
- b) Copy of the Environmental Compliance Certificate issued by the appropriate office of the DENR, if warranted;
- c) Whether the applicant is an Importer-Distributor or an Importer -End-user;
- d) Certified copy of the SEC, CDA or DTI Registration and updated list of its officers; and
- e) Such other information and/or documents as may be required by the DENR-EMB.

The CCO also established a system of accreditation to determine the capability of any person, natural or juridical, in handling ODS who provides the servicing requirements for individuals and industries using these substances in any of the forms with respect to any industry and its corresponding activity such as dry cleaning, motor vehicle air-conditioning, commercial and industrial refrigeration and air-conditioning, domestic refrigeration/air-conditioning, fixed flooding fire protection and portable fire extinguishers. A certificate of accreditation is valid for only one (1) year and shall only be granted after showing proof of the following:

- (i) Understanding and appreciation of the role of these substances in depleting the stratospheric ozone, and its consequences;
- (ii) Capability to take effective measures, including the necessary equipment, technology, training and infrastructure, for the purpose of effectively handling ozone-depleting substances, minimizing their emissions and ultimately phasing out their use by replacing with substitutes/alternatives duly recognized and certified by the DENR-EMB.

The application for accreditation must also include the following information, to wit:

- 1) Duly accomplished accreditation form;
- 2) Copy of the Environmental Compliance Certificate issued by the appropriate office of the DENR, if warranted;
- 3) Certified copy of the SEC, CDA, or DTI Registration and updated list of its officers; and
- 4) Such other information and/or documents as may be required by the DENR-EMB,

Figure 13. Procedure for Registration of Importers Per Chemical



4.1.3 Pre-shipment importation clearance

Under allowable circumstances, any person, natural or juridical, duly registered with the DENR-EMB who engages in the importation of ODS must secure an importation clearance from the DENR-EMB prior to the entry of these substances in any area within the Philippine Territory.

As such, any shipment not covered by an importation clearance shall be deemed illegal import and shall be confiscated and forfeited in favor of the Government.

All accomplished application forms must include the following documents:

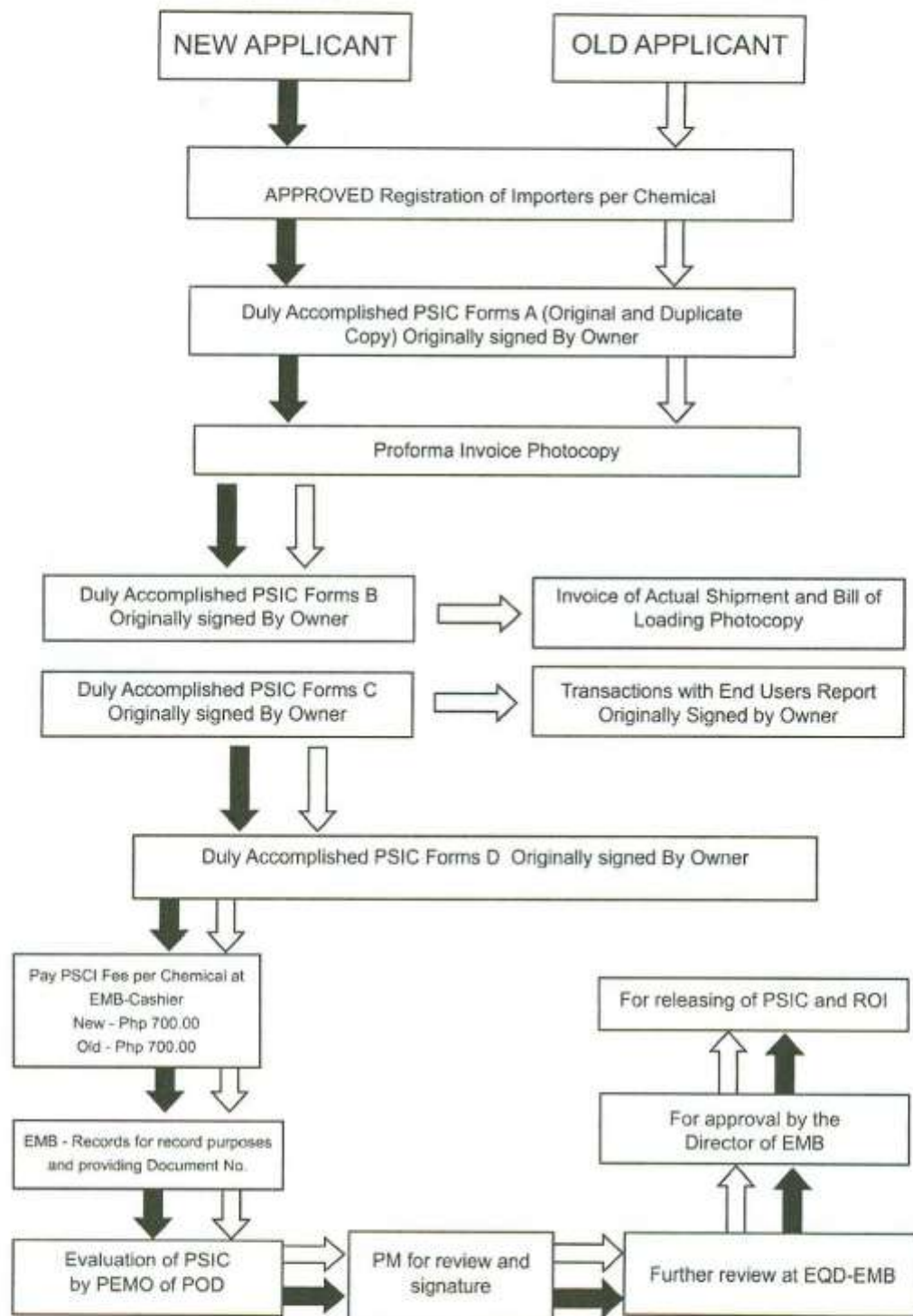
- (a) Proof that application fees are paid;
- (b) Copy of the Material Safety Data Sheet (MSDS) from the manufacturing firm every time an importer applies for clearance of a new chemical;
- (c) Photocopy of the Pro-forma Invoice;
- (d) Description of the applicant's handling procedure, safety precautions and emergency response for the chemical;
- (e) Original accomplished copy of the Record of Actual Arrival of Shipment accompanied by a photocopy of the Bill of Lading issued by the Carrier (shipping/transport contractor) of the most recent importation of the chemical made by the applicant;
- (f) Summary of Transactions of the most recent importation clearance issued on the same chemical applied for (not applicable to new importers); and
- (g) List of Intended Buyers and/or End-Users.

Importers shall distribute these substances only to accredited Service Providers or those entities utilizing these substances for essential uses duly certified by the DENR-EMB. Clearances shall be issued only on a per substance per shipment basis.

The clearances shall be issued in three copies, one each for the DENR, the Bureau of Customs, and the importer.

The validity of Pre-Shipment Importation Clearance must not exceed six consecutive calendar months from the date of issuance. Any transaction not covered under the terms and conditions of the Pre-Shipment Importation Clearance shall be considered a violation of the CCO.

Figure 14. Pre-shipment Importation Clearance Per Chemical



4.1.4 The Quota System

All importers of ODS are given a quota on what is allowed to be imported on a yearly basis, which means that they can only import their ODS needs within the quota granted to them

and within the period given to them, which is one (1) year from approval of application. This quota system is non-transferable to other importers, thus an importer cannot assign his quota to another if it is not used. If an importer does not avail of his quota for a specific period, then the quota is forfeited.

The overall quota system for ODS is also regulated and must be lessened each year until phase-out. The following is a table on ODS quota based on the CCO:

Table 15. ODS Quota Based on the CCO

YEAR	Maximum permits that can be issued as a percentage of base year (%)
1996	100 (base year)
1999	90
2000	80
2001	75
2002	70
2003	65
2004	60
2005	50
2006	45
2007	15
2008	10
2009	5
2010	5

*From DAO 2000-18 or the Chemical Control Order for ODS

*Note that the DAO 2000-18 is being revised to assure a zero (0) consumption by 2010.

A list of ODS importers with their contact numbers is attached in the Annexes.

4.2 Licensing System for Methyl Bromide

Pursuant to the law creating the FPA, pesticides, fertilizers and other agricultural chemicals shall only be imported, manufactured, formulated, stored, distributed, sold or offered for sale, transported, delivered for transportation or used when it has been duly registered with the FPA.

4.2.1 Registration of Pesticides

Given the benefits and risks associated with the use of pesticides, FPA is challenged to institute strong and extensive mechanisms to prevent pesticides from harming human health and the environment. One of these mechanisms is the registration of pesticides. This is in pursuance to Section 9 paragraph 1 of PD 1144, to wit:

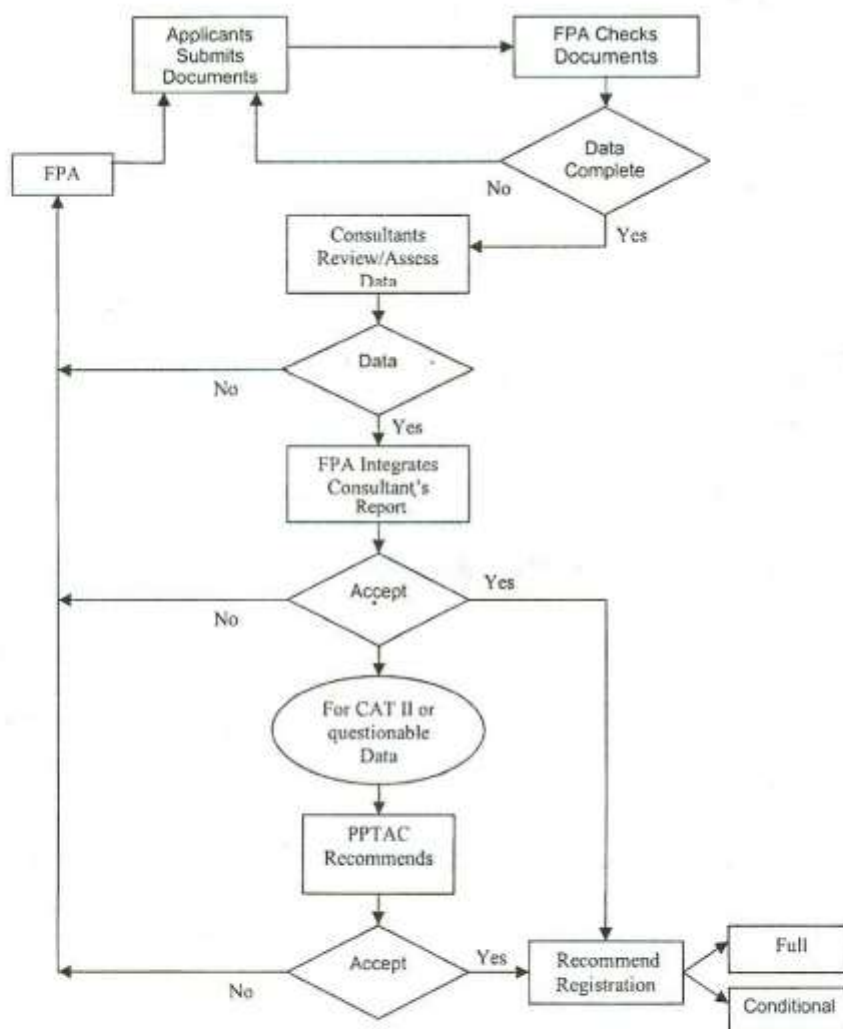
"Pesticides, fertilizers and other agricultural chemicals shall be imported, manufactured, formulated, stored, distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with FPA ..."

Thus, before a new pesticide is allowed in the market, it must have undergone an exhaustive range of safety tests. These tests are carried out following strict regulations and guidelines. After the safety tests are completed, the registrant applies for registration with FPA by submitting the minimum data requirements. Their application follows the procedure depicted in Table 16. FPA evaluators, who are experts in various fields, review the voluminous studies on safety and effect to the environment. Pesticides are given registration and the right to be sold in the country only when FPA management finds the application complying with all the requirements.

Methyl bromide, a broad-spectrum pesticide used for the control of various insect pests, nematodes, weeds, pathogens and rodents, is also regulated by FPA.

Methyl bromide is already registered with FPA. It went through safety and efficacy tests before being allowed for distribution. However, it is restricted to FPA Certified Pesticide Applicators' (CPA) use only because it is an acute poison and requires appropriate techniques in its application.

Figure 16. Schematic diagram of the pesticide product registration process.



*From the FPA Pesticide Regulatory Policies and Implementing Guidelines, 2nd ed.

4.2.2 *Importation, Distribution and Use of Methyl Bromide in the Philippines*

Pursuant to Section 9 of PD 1144 and Sections 1 and 2 of Article III of the FPA Rules and Regulations No. 1, Series 1977, all pesticide handlers must obtain a license with the Fertilizer and Pesticide Authority:

"No person shall engage in the business of importing, manufacturing, formulating, exporting, repacking, distributing, storing, or selling any pesticide, except under a license issued by the Authority. A separate license shall be required for each establishment or place of business subject to these rules, to be conspicuously displayed therein.

All commercial applicators of pesticides shall apply for a license, in a form to be supplied by the Authority and shall obtain a commercial applicator's license and be assigned a license number by the Authority before such a person shall perform services as a commercial applicator. Each commercial applicator shall obtain a license for each place of business maintained in the Philippines."

Thus, importers, distributors, pest control operators (PCO) and end-users are licensed while Certified Pesticide Applicators (CPA) are accredited by the FPA. Requirements for licensing can be obtained from the FPA. These licenses have a validity of one year.

Only CPAs (fumigators) are authorized by the FPA to apply methyl bromide. CPAs are those who have attended a four-day training course and passed an examination administered by the FPA. The training course and examination are based on activity modules for fumigators (FPA Pesticide Regulatory Policies and Implementing Guidelines, 2nd ed., Section 4.5.1. A).

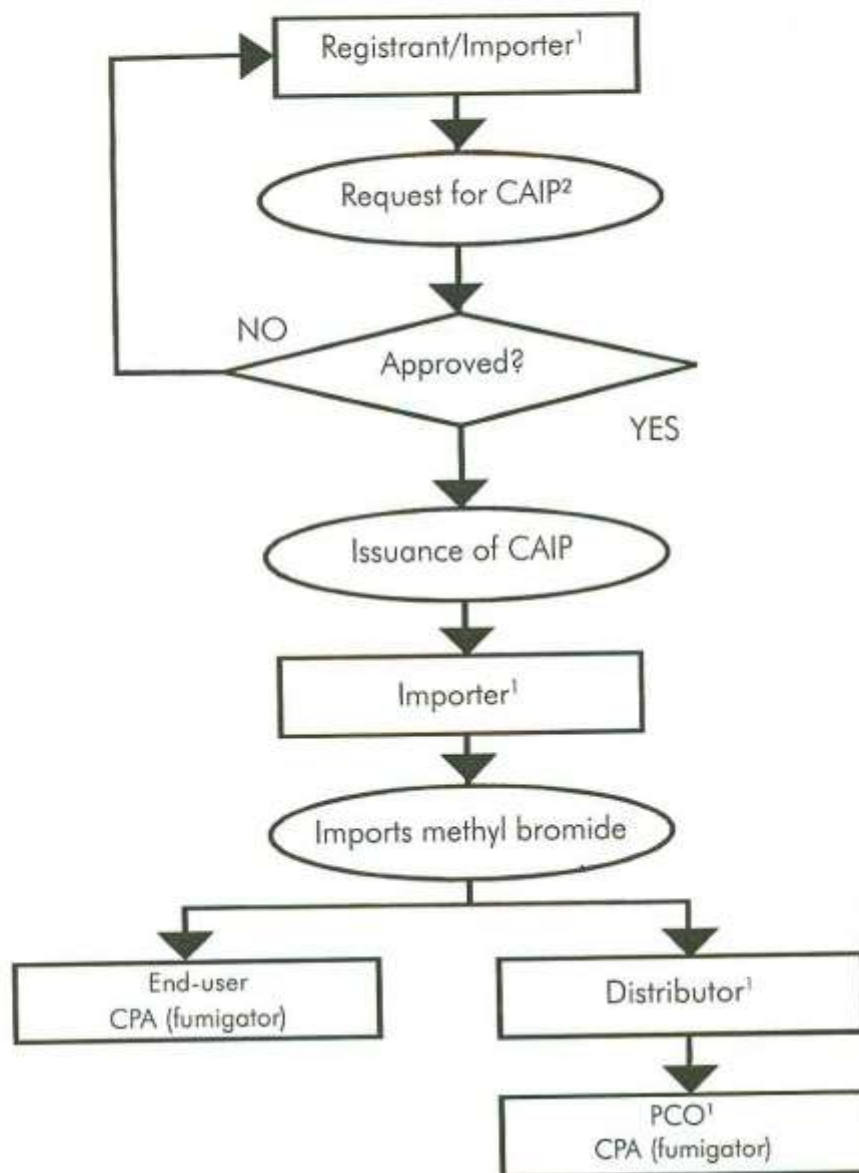
Pursuant to Pesticide Circular No. 1, Series of 1981, a Certificate Authorizing Importation of Pesticide (CAIP) is issued to the importer upon submission of the necessary requirements mandated by the FPA and after the favorable evaluation of disposition reports of previous importation. Only registered methyl bromide importers shall be allowed by FPA to import.

The movement of methyl bromide in the Philippines is depicted in Table 17. After importation, the distributor sells methyl bromide only to an FPA licensed PCO or to an institution that has a CPA as an employee.

There are also cases where the importer is also the end-user. In this situation, the end-user employs a CPA. They may also be the registrant of methyl bromide.

As required in Section 6.5 (1) and (2), of the FPA Pesticide Regulatory Policies and Implementing Guidelines, (2nd ed.) , all handlers shall record all operations involving the distribution and use of methyl bromide.

Figure 17. Movement of Methyl Bromide in the Philippines.



5. Enforcement of Licensing System

5.1 Specific Penal and Administrative Provisions

To be able to enforce all laws, rules and regulations relating to ODS, penalties and fines are necessary to ensure that importers, companies and individuals will comply with them.

¹ FPA Licensed.

² CAIP: Certificate Authorizing Importation of Pesticide.

Under R.A. 6969, penalties imposed for violation of its provisions include imprisonment and fines. Should the offender be a foreigner, he or she shall be deported and barred from subsequent entry into the Philippines. If the offender is a government official, he shall automatically be deemed dismissed from office and disqualified from holding any elective or appointive position. Penalty also carries with it confiscation and forfeiture of the imported products or the proceeds therefrom. Should the articles be prohibited wastes, the importer is responsible for transporting the same to their origin.

The CCO also imposes liability, both criminal and administrative, on violations of its provisions, as found in R.A. 6969 and its implementing rules and regulations.

Chemical substances confiscated and forfeited by the government at its option shall be turned over to the DENR for safekeeping and proper disposal. Additionally, the administrative fines imposed and collected by the DENR shall accrue to a special fund to be administered by the DENR exclusively for projects and research activities relative to toxic substances and mixtures.

Penalties under the TCC include fines, imprisonment and forfeiture. If the violator is a member of the BoC, penalties include perpetual disqualification to hold public office and to participate in any public election. If a violator is an alien, he shall be deported. Violations of the TCC include, but are not limited to concealment, failure to report fraud, fraudulent invoices/declarations, removal, breakage and alteration of marks, removing articles from customs custody, repacking the articles, failure to keep importation records, failure to pay correct duties and taxes.

Under the Consumer Protection Act, it shall be unlawful for any person to introduce or deliver for introduction into commerce any mislabeled hazardous substance or banned hazardous substance; to alter, mutilate, destroy, obliterate or remove the whole or any part of the label of a mislabeled hazardous substance, or banned hazardous substance, if such act is done while the substance is in commerce or while the substance is held for sale, whether or not it is the first sale; to receive in commerce any mislabeled hazardous substance or banned hazardous substance and the delivery or preferred delivery thereof at cost or otherwise. Penalties for violation of the provisions of the Consumer Protection Act include fines and imprisonment or both, depending on the discretion of the court.

The Clean Air Act imposes various penalties for violations of its provisions. Fines and penalties imposed shall be liens upon the personal and immovable properties of the violators. In addition to this, closure, suspension of development, construction or operations of the source of the pollution shall be executed until such time that environmental safeguards are put in place. Permanent closure may be ordered if the violator is a repeat offender. For gross violators, criminal charges may be filed.

Presently, there have not been many cases filed for violation of these laws. Most of the cases are administrative wherein the DENR-EMB mandates compliance with clearances that are issued. Penalties imposed have usually been fines, closure of establishment or suspension/revocation of licenses.

5.2 ODS names, labeling and packaging

There are no international standards which require uniform naming, labeling or packaging of ODS or ODS products/equipment. Therefore, there are many identifiers or labels that customs officers need to be familiar with.

a. Harmonized System (HS) customs codes.

The most common way of identifying goods for customs officers is the use of HS customs codes. The HS coding system of the WCO provides uniform codes that are used around the world to facilitate trade.

The WCO and UNEP Ozone Secretariat cooperate to classify ODS and mixtures containing them and to assign HS codes to the different groups of ODS, ODS mixtures, as well as ODS products/equipment.

HS codes are represented with six digits at the international level. The first four digits represent the heading and the next two digits the sub-heading.

HS codes that contain one or two dashes are international codes, and are directly applicable by all the parties to the HS Convention. Countries that are not party to the HS Convention are welcome to use the HS codes too.

When a HS code contains three dashes, the national authorities of the Parties at the HS Convention may create their own codes under the international code by adding some digits for each one of the chemicals or groups of chemicals.

Some products designed for ODS use include air-conditioners, refrigerators, freezers, water coolers, ice machines, heat pumps, compressors, among others. These products may be imported as new or used products. The HS does not distinguish between used and new goods, provided that the goods can still be used for their original purposes.

b. Overview of ODS names.

There are a variety of names for ODS. There are short chemical and complete chemical names, trade names, CAS numbers, UN numbers, and ASHRAE numbers. These trade names and numbers are commonly found in the Material Safety Data Sheets (MSDS), which are provided by the chemical manufacturers or suppliers for the consumers for handling and safety purposes. Specifications of the chemical substances, formula and other essential information (e.g. hazards identification of the product, first aid measures, fire fighting measures, etc.) are also found in the MSDS.

i. Trade names

Trade names are the names that companies call their products. Examples of trade names are Freon-12, Genetron-11, and Algofrene-11.

ii. CAS numbers

The CAS registry number (CAS No.) is a number assigned by the United States Chemical

Abstracts Service to identify a chemical. The CAS number is specific for single chemicals and for some mixtures. It contains 5 to 9 digits separated into three groups by hyphens. The first group, starting from the left, has up to 6 digits, the second group always has 2 digits, the third group has 1 digit.

This number, which has the format [123456-78-9], consisting of up to nine digits, has no chemical significance other than to unambiguously identify a particular substance, specifically in computerized literature retrieval systems. For instance, the CAS No. for CFC-12 is 75-71-8.

iii. UN numbers

The United Nations Substance Identification Number (UN SIN or UN number) is a four-digit international standard number which identifies a particular chemical or group of chemicals. The UN numbering system provides a unique identification number to each chemical substance. This number is commonly used throughout the world to aid in the quick identification of the materials contained within bulk containers (such as rail cars, semi-trailers and intermodal containers).

iv. ASHRAE numbers

The ASHRAE number for refrigerants is defined in ASHRAE standard 34-1997 on "Number Designation and Safety Classification of Refrigerants". The number designation of hydrocarbon and halocarbon refrigerants is systematic and allows the determination of the chemical composition of the compounds from the refrigerant numbers.

5.3 ODS identifying equipment

ODS identifying equipments are not readily available. The most common of these identifying equipments/tests would be the refrigerant identifiers/analyzers, the pressure/temperature test, leak detectors and sampling. Here in the Philippines, the BoC cannot readily identify ODS at the port. They must coordinate with the POD for testing.

Hereunder are presently DENR-recognized Environmental Laboratories that are confirmed to be analyzing ODS, such as CFCs:

a. Adamson University Technology Research and Development Center (AUTRDC).²⁰

The laboratory offers mainly analytical services in support of the needs of government, academe and the private sector in relation to agricultural, industrial and scientific endeavors. The laboratory also conducts tests for conformance of samples to specific standards.

b. Chempro Analytical Services Laboratories, Inc.²¹

²⁰ Located at 900 San Marcelino St., Ermita.

²¹ Located at the 6th floor, AF Building, 182 Shaw Boulevard Extension, Pasig City.

Chempro is a private company that provides chemical and microbiological testing for all types of samples. It aims to perform quality tests and to give reliable results to clients at the shortest possible time. Accredited by the DENR-EMB, among others, Chempro performs tests on ODS/Alternative Chemicals and Blend Chemicals.

c. Philippine Institute of Pure and Applied Chemistry (PIPAC).²²

PIPAC is an independent scientific institute organized to conduct chemical research, analysis and training. Founded in 1973 by professors of the Department of Chemistry of the Ateneo de Manila University, PIPAC has since then serviced the requirements of over 300 corporations. PIPAC is accredited as a testing laboratory by the Bureau of Product Standards of the Department of Trade and Industry, Bureau of Foods and Drugs of the Department of Health, and by the Fertilizer and Pesticide Authority.

5.4 Seizure of ODS

At the outset, it is imperative to state that there are no specific regulations/guidelines that directly address seizure procedures of illegally imported ODS. Thus, the general provisions of the Tariff and Customs Code are applied to prevent its illegal entry into Philippine territory.

a. Warrantless searches and seizures.

It is a basic constitutional principle that no search may be conducted without a warrant having been validly issued by judicial authorities. However, this strict requirement was held to be inapplicable by way of an exception for purposes of enforcing the provisions of the TCC.

b. TCC provision on seizure.

The authority of the Bureau of Customs to effect searches and seizures shall commence when an aircraft or vessel enters Philippine territory until they have legally passed the customhouse. In order to prevent smuggling and to secure the collection of legal duties, taxes and other charges the customs service may exercise surveillance over the coast beginning when a vessel or aircraft enters Philippine territory and concluding when the article imported therein has legally passed the customhouse.²³

Corollary to the above powers, customs officers, with the prior authorization in writing by the Commissioner, may demand evidence of payment of duties and taxes on foreign articles openly offered for sale or kept in storage, and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings. During such proceedings, however, the person or entity for whom such articles have been seized shall be given the opportunity to show the source of such articles and the payment of duties and taxes thereon.²⁴

²² Located at the Ateneo de Manila University Campus, Loyola heights, Quezon City.

²³ cf. TCC, Section 2202.

²⁴ cf. TCC, Section 2536.

c. Procedure for the issuance of Alert/Hold Orders²⁵

An alert order is issued to warn all concerned customs personnel to be cautious and thorough in the examination of the alerted shipment and its accompanying import documents in order to verify derogatory information or suspected violation of the shipment.

On the other hand, a hold order is issued against a shipment when the law enforcement unit requesting for its issuance is certain that the shipment is attendant with violations of customs laws, rules and regulations.

Generally, it is prohibited to delay, obstruct and to impede the clearance, delivery or movement of any shipment unless there is an Alert/Hold Order issued by the Office of the Customs Commissioner for the stated purpose. The Orders shall be enforced by the proper law enforcement unit, which shall endeavor to complete its verification within forty-eight (48) hours from receipt thereof. On or before such period, the law enforcement unit concerned shall submit a report to the Collector of Customs on any action undertaken thereon.

d. Lifting of Alert/Hold Orders.²⁶

Alert Orders may immediately be lifted by the action officer if he finds no violation of customs rules and regulations. At the same time, such officer shall simultaneously submit a written report on such action to his superior, who in turn will forward the same to the Duty Officer, Alert/Hold Computer file, and the Office of the Commissioner for recording purposes only. However, the action officer concerned shall be administratively and criminally held liable in case the said shipment later on turns out to be attendant with violations.

Alternatively, Hold Orders shall be lifted only by the chief of the law enforcement unit that requested for its issuance.

5.5 Storage, handling and safety regulations

Under the TCC, articles seized by the BoC are stored in designated warehouses, along with other seized articles, until they are auctioned or disposed off. In the custody of the BoC, there are no specific safety and handling regulations for ODS.

Those articles that are confiscated or impounded by the DENR are kept in its premises under lock and key. As for the importers, they are required to submit the material safety data sheet every time they apply for a clearance.

As for handling of ODS, it must be remembered that these are non-flammable gases used as refrigerants, which are normally stored under pressure in liquid form and normally

²⁵ cf. Customs Memorandum Order (CMO) Nos. 104-92 and 8-93 re: Rules on the Issuance of Alert/Hold Orders applicable to shipments unloaded at the South Harbor, North Harbor, the MICP and at the Ninoy Aquino, Laoag, Cebu and Zamboanga international airports, respectively.

²⁶ cf. CMO No. 4-94 re: Guidelines in the Lifting of Alert and Hold Orders.

come in sealed containers, drums, cylinders, cans and other similar containers. Preliminary inspection of the general condition of the consignment is advisable to eliminate risk of leakage of the ODS. When unloading, it should be kept in mind to minimize the risk of collision, accidental dropping and spillage because release of ODS to the atmosphere should be stopped at all costs.

Storage costs are shouldered by the importer and costs will continue to run until there is determination on the action to be taken on the seized goods. If articles are auctioned, proceeds of the sale first go to storage costs.

5.6 Illegal trade of ODS

The primary driving force for illegal trade of ODS is the high profit margin which can be made due to low priced ODS on world markets and the rising prices of ODS within national markets with import restrictions. Alternatives to ODS are often more expensive thus creating further demand for ODS and increasing the risk of illegal trade. Trade restrictions between Parties to the Montreal Protocol and its Amendments and non-Parties are another source of illegal trade. In some countries, ODS have become the most profitable illegally traded goods after drugs.

The following subsections describe the main smuggling schemes that may be used in the country and the corresponding methods to detect illegal trade:

a. Smuggling Scheme I: Mislabeling as non-ODS

ODS may be imported by making false labels in their containers, cylinders, or cardboard packaging. Mislabeled CFC refrigerants may be falsely declared and labeled as a non-controlled substance, such as hydrocarbons (propane, butane) or hydrofluorocarbons (HFC-134a). In some cases, they may be labeled as hydrochlorofluorocarbons (HCFC-22), which are controlled substances, but whose first phase-out obligation applicable to developing countries is the freeze in 2016.

b. Smuggling scheme II: Mislabeling as recovered ODS

Imports of recovered (including recycled and reclaimed) ODS is not counted in a country's ODS consumption. Therefore, virgin ODS may falsely be claimed as recovered ODS. However, very little recovered ODS exists on world markets because recovered ODS is usually re-used in the same country where it was recovered. Virgin ODS is often cheaper as a result of developed countries having already phased out their consumption of most ODS.

c. Smuggling Scheme III: Concealment and double layering of ODS

ODS may be hidden with other cargo or disguised as a non-regulated substance. For example, ODS may be transported in propane cylinders. Small quantities may be concealed in cars, trucks, etc. This is a common smuggling method at land points of entry. Small cylinders of CFC

refrigerants may be concealed in outer cartons of HCFC or HFC refrigerants.

On the other hand, "double layering" is another method of concealing ODS. Materials listed on the shipping documents are loaded close to the door of the trailer or cargo container and the ODS is hidden behind it. In these cases, the documents or paper-works supporting the cargoes may appear correct at first glance.

d. *Screening methods.*

i) *Screening importers which are not licensed to import ODS refrigerants.*

Any bonafide importer of non-ODS refrigerants is also likely to be an importer of ODS refrigerants and will thus be a licensed importer. Any import declared as non-ODS by a company whose name does not figure in the list of licensed importers of ODS refrigerants merits closer examination. The business address of any importer should likewise be checked to see whether it actually exists.

ii) *Screening documentation for consistency of codes and names.*

Carefully check the shipping documents such as freight papers, shipping manifests and bills of lading. The paperwork may contain false trade names, customs codes, or fictitious importers, businesses and addresses.

The customs codes may not be applied correctly because the use-related codes are often wrongly attributed to the ODS instead of those based on the classification of the actual chemical substance.

iii) *Screening by quantity of import.*

Trade with refrigerants is only profitable in huge quantities - therefore watch for large quantities of refrigerants. In most developing countries, the consumption of non-ODS refrigerants (e.g. HFC or HC refrigerants) is small compared to that of CFC and HCFC refrigerants. Any unusually large imports of non-ODS refrigerants should be cause for closer examination. The same is applied to unusually large imports of HCFC refrigerants. Only inspection of the containers will provide certainty as to their real contents. A country's ODS and non-ODS consumption and import data from the previous two years and the current year's total licensed quantity of ODS (e.g. CFC and HCFC) imports may serve as useful reference.

iv) *Screening by producer countries.*

Screening by ODS producing countries is a simple method used to identify shipments which may potentially be illegal. Any shipment from an ODS-producing country, even if declared as non-ODS, is cause for close examination.

For easy reference, presented hereunder is a table of main ODS- producing countries:

Table 18. ODS Producing Countries

ODS Type	Country
CFCs	China, India, Russian Federation, Netherlands, Brazil, Korea, Italy, Spain, Mexico, Venezuela, United Kingdom
Halons	China, Korea, Russian Federation
Carbon tetrachloride	India, Brazil, Ukraine, Romania
Methyl Chloroform	Japan, United States, France, China
HCFCs	United States, France, Japan, China, United kingdom, Netherlands, Spain, India
Methyl Bromide	United States, Israel, Japan, France, China, Romania, India

*From Training Manual for Customs Officers

v) *Screening by country with recycling capacity.*

Virgin ODS is sometimes deliberately contaminated in order to make it resemble recovered or recycled ODS. The import of recovered/recycled ODS is an indication of illegal trade if the country does not have any recycling capacity, or if the consumption of ODS is already phased out. If this is the case, the refrigerant should be analyzed and the origin further investigated.

vi) *Physical examination of containers and packaging.*

The appearance of refrigerant containers may indicate mislabeling if they have been painted, if they show signs of tampering, or if they have a paper label. Most gas cylinders have a silk-screened or spray-painted label. If a cylinder has been repainted, then a closer examination is warranted.

Refrigerant cylinders containing virgin refrigerants usually have a shrink-wrapped valve. If the shrink-wrap is damaged or missing, the cylinder contents should be subjected to further examination and analysis

5.7 **Guide Questions to Ask Importers/Consignees to Elicit information on ODS**

- Are you a registered/accredited importer of ODS?
- Are you engaged in the trading of ODS or are you an end user?
- Are you carrying any ODS in your shipment?
- What is the type of container you are using and how is it packed?

- e. Is it a compressed gas or liquid ODS?
- f. Is it a recovered, recycled or virgin ODS?
- g. Is it flammable or not?
- h. Is the country of origin a source/manufacturer of ODS?

5.8 Customs Checklist

The initial examination of documents should be the first step taken to identify potential discrepancies.

✓	Compare the packing list, bill of entry, and the country of origin to make sure they match.
✓	Ensure the customs code on the entry matches the description on the invoice.
✓	Compare the invoice and the bill of lading to the outward-bound ship manifest.
✓	Verify the country of origin, whether it is a signatory to the Montreal protocol and its amendments.
✓	Verify that the importer and place of business actually exist.
✓	Contact the licensing to verify that importer is licensed to import that specific material.
✓	Note the quantity, source and destination of ODS. These will serve as important clues that may provide indicators to prohibit illegal importation.
✓	Verify that the container number actually exists. Discovery of fictitious container numbers have led to the disclosure of illegal trade.
✓	Review all the necessary documents, if there is something there that doesn't match, it may be an illegal shipment.
✓	Inspect the merchandise.
✓	Check packaging, size and shape, and label on container.
✓	Identify the name and description of the chemical, which should match ALL documentation.
✓	Seize the material if the importer does not have an import/export license.
✓	Coordinate this seizure may be called to testify in court, so take good notes.

5.9 Actual import clearance procedure (Different Lanes)

In general, imports are classified by the Bureau of Customs into three categories, namely:

Category I For "liberalized commodities"

Category II Items that require import permit/clearances from concerned government agencies before importation can be made

Category III Items proscribed by law to be imported in the Philippines.

Correspondingly, the Bureau of Customs has three lanes where imported items are being processed for tariff and customs duties. They are:

Green lane: Where low-risk cargoes that do not require documentary examination and physical inspection are assigned;

Yellow lane: Where medium-risk cargoes that require documentation check but no physical examination are assigned;

Red lane: Where high-risk cargoes that requires both documentary and physical examination are assigned.

Procedurally, when a shipment of ODS arrives in the port of entry, it is transferred to the dangerous cargo area by customs and its entry is filed with the Entry Encoding Center. Customs codes have been tailored specially for ODS, when imported as pure chemicals. In the Philippines, tariff headings have been given to CFC 11, 12, 113, methyl bromide, halons and carbon tetrachloride. All others are under the tariff heading of halogenated derivatives of hydrocarbons. The computer system decides whether the cargo should go through the yellow or red channel. The importer then submits its import permit issued by the POD to the customs officers for examination. The entry will then be re-channeled to the green lane, where duties are paid. The documents are then referred to customs officers for the cargo's release. The BoC keeps a copy of the permit.

Additionally, Customs Memorandum Order (CMO) No. 37-2001 on Revised Cargo Clearance Procedure provides for rules and regulations on all importation under formal entry, except those covered by the Super Green Lane Facility which is governed by CAO No. 2-2000, CMO No. 2-2000, and CMO No. 2-2000-A. This CMO gives a detailed account of the procedure for imports and created the Valuation and Classification Review Committee (VCRC) which must be found in every District Port which shall determine if the proper regulations have been followed and acts as an appeal committee for importers on decisions by customs collector/officer.

The following are the documentation requirements for cargo clearance at the BoC:

- i. Import Entry and Internal Revenue Declaration (IEIRD) Form - BC Form 236, which include the Supplemental Declaration on Valuation (SDV) form.
- ii. Bill of Lading or Air Waybill or House Bill of Lading, where applicable;
- iii. Commercial Invoice;
- iv. Packing List; and
- v. Other additional documents as may be required.

The IEIRD shall be based on self-assessment. As such, the importer and the customs broker shall make a complete and correct declaration of the specifications and/or particulars of the importation on the IEIRD and the SDV, which declaration shall be under oath and subscribed to by the importer and the customs broker before a notary public or a Customs officer authorized to administer such oath under pain of prosecution for perjury. However, in the case of SDV, the Customs broker shall sign to attest to the authenticity of the signature of the importer. The importer/broker shall compute the duties and taxes using the appropriate valuation method. The computed duties and taxes based on self-assessment shall be paid through authorized Agent Bank.

For ports where the Automated Customs Operations System (ACOS) is in operation, electronic lodgment of import entries shall be made through any of the following as may be applicable

- i. Entry Encoding Center (EEC)
- ii. Direct Traders Input (DTI)
- iii. Electronic Data Interchange (EDI)
- iv. By Internet

For ports which are not equipped with ACOS, lodgment shall be at the Entry Processing Division or equivalent unit. In these ports, provisions pertaining to ACOS and selectivity shall not apply.

When physical examination is directed, the recommendation as well as the ground(s) for the approval of such examination shall be indicated on the covering import entry by the concerned customs officers.

5.10 Actual Case: Importer X

To illustrate customs procedures and relations with the DENR regarding ODS imports, find below the facts of Importer X's case:

On 3 March 2002, shipment containing 19.68 MT of Forane 22 consigned to Importer X arrived at the Manila International Container Port. The shipment was declared under Entry No. 023417-02 and the corresponding duties and taxes were paid.

On account of the alleged fake DENR Pre-shipment Clearance submitted by Importer X, the Import Specialist Team of the BoC recommended that a 100% examination be conducted on the shipment. A Warrant of Seizure and Detention was issued against the shipment for violation of R.A. 6969 in relation to the TCC.

During the hearing of the case, Importer X's Export manager alleged that the company was not aware that the clearance it submitted covering the shipment was fake. She claimed that she underwent the normal procedure in applying for the clearance and that it was released to her through the releasing section of the DENR. Importer X claimed that it was a victim rather

than a violator. Importer X offered to settle the case by way of payment of duties and taxes. Subsequently, Importer X submitted a new clearance issued by the DENR. The BoC accepted the settlement because since the shipment was not a banned importation, release thereof is not contrary to law, Importer X was willing to pay the correct duties and taxes plus penalties and that there as no fraud attending the shipment.

In an investigation by the DENR, which included members of the BoC, it was ascertained that the PSIC submitted to the BoC to release the shipment was actually for another shipment and not for the particular questionable one examined at the BoC. It was further claimed that the purchaser of the subject shipment was issued a PSIC by a "fixer" at the POD. This was determined to be false. The purchaser was not able to identify the "fixer" from among the staff at the POD/DENR. Administratively, it was recommended that an order be issued against Importer X for importing hazardous chemical substances without the corresponding clearance and that assistance from the National Bureau of Investigation be sought to determine if a criminal action for falsification of public documents and criminal sanctions under R.A. 6969 will prosper. As to the BoC, it was understood that it will also try to recover the shipment and file the necessary charges against the importer.

The use of fake documents is only one way to import ODS illegally. As in this case, the BoC was alert and identified the document. However, since another PSIC was presented to them, there arose a confusion as to the validity and genuineness of the subsequent PSIC in relation to the subject shipment.

To be able to effectively carry out their functions regarding imports of ODS, there really must be close coordination between DENR and BoC so that the importers cannot blame either agency of fault in the process of their importation.

5.11 Recommendations

Presently, the POD is classified as a "Special Projects" office. Since all work relating to ODS and therefore compliance with obligations to the Montreal Protocol is the responsibility of this office, it is suggested that the POD be institutionalized and made an integral part of the DENR with its own budget in the General Appropriations Act. This may be done through a department order since the Secretary is given the continuing power to reorganize her department to address its needs. A stable organization, continuity and institutional memory will be beneficial and an advantage to the government's efforts to comply with the Montreal Protocol.

The changes and improvements in the licensing system are currently being addressed through the revision of the CCO. The main problem with the current licensing system is that in practice, records of actual imports are only submitted by importers wanting to apply for subsequent clearances, while those no longer importing have not shown their records to the DENR. In fact, there is a discrepancy with the numbers of imports between DENR and the BoC, which resulted in confusion regarding 2000 and 2001 import data. This problem can be resolved with better cooperation between the agencies, which has already started with the execution of a Memorandum of Understanding specifically mandating the tasks of its members. Further agreements, focusing

on the procedures after violations of the laws, rules and regulations will help in solving current problems. There should be a quicker response system between the BoC and POD since the BoC needs to determine the legalities of imports in real time, meaning once an imported article is at a port of entry, the customs officer only has about two (2) hours to complete the import. This is also important when there are seizures and when the articles are in transit when BoC has given up jurisdiction over the articles. The POD can continually inform the BoC of its list of importers with pre-shipment clearance forms and their quotas to alert the BoC. Also, the Central Bank circular regarding the issuance of letters of credit only to those with an importation clearance may be revisited and updated.

As regards the BoC, it may be an advantage if a customs officer is designated an expert in ODS and its importation. Priority must be given to environment related regulations. An identification labeling system for ODS and a similar labeling system on ODS containing equipments should also be in place to facilitate detecting illegal imports. A dedicated storage area for seized ODS and ODS equipment may pinpointed to make it easier for safekeeping and testing. A system for re-export can also be implemented. Seized or forfeited articles by the BoC become the property of government and are usually auctioned. However, in the case of ODS, since the importers and users are strictly regulated, another auction procedure may be implemented wherein only qualified importers may participate in an auction and only when they have not completed their quotas.

Part II

Annexes

List of Related Laws

RA 6969

REPUBLIC ACT

No. 6969

Subject:	An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and for Other Purposes
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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Short Title. - This Act shall be known as the "Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990."

Section 2. Declaration of Policy. - It is the policy of the State to regulate, restrict or prohibit the importation, manufacture, processing, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment; to prohibit the entry, even in transit, of hazardous and nuclear wastes and their disposal into the Philippine territorial limits for whatever purpose; and to provide advancement and facilitate research and studies on toxic chemicals.

Section 3. Scope. - This Act shall cover the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all unregulated chemical substances and mixtures in the Philippines, including the entry even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purposes.

Section 4. Objectives. - The Objectives of this Act are:

- a. To keep an inventory of chemicals that are presently being imported, manufactured, or used; indicating, among others, their existing and possible uses, test data, names of firms manufacturing or using them, and such other information as may be considered relevant to the protection of health and the environment;
- b. To monitor and regulate the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk or injury to health or to the environment in accordance with national policies and international commitments;
- c. To inform and educate the populace regarding the hazards and risks attendant to the manufacture, handling, storage, transportation, processing, distribution, use and disposal of toxic chemicals and other substances and mixtures; and
- d. To prevent the entry, even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purpose.

Section 5. Definition. - As used in this Act:

- a. **Chemical substance** means any organic or inorganic substance of a particular molecular identity, including:

- i) Any combination of such substances occurring in whole or in part as a result of chemical reaction or occurring in nature: and
 - ii.) Any element or uncombined chemical.
- b. **Chemical mixture** means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction, if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined. This shall include nonbiodegradable mixtures.
- c. **Process** means the preparation of a chemical substance or mixture after its manufacture for commercial distribution:
 - i) In the same form or physical state or in a different form or physical state from that which it was received by the person so preparing such substance or mixture; or
 - ii) As part of an article containing a chemical substance or mixture.
- d. **Importation** means the entry of a product or substance into the Philippines (through the seaports or airports of entry) after having been properly cleared through or still remaining under customs control, the product or substance of which is intended for direct consumption, merchandising, warehousing, for further processing.
- e. **Manufacture** means the mechanical or chemical transformation of substances into new products whether work is performed by power-driven machines or by hand, whether it is done in a factory or in the worker's home, and whether the products are sold at wholesale or retail.
- f. **Hazardous substances** are substances which present either:
 - 1) short-term acute hazards such as acute toxicity by ingestion, inhalation or skin absorption, corrosivity or other skin or eye contact hazard or the risk of fire or explosion; or
 - 2) long-term environmental hazards, including chronic toxicity upon repeated exposure, carcinogenicity (which may in some cases result from acute exposure but with a long latent period, resistance to detoxification process such as biodegradation, the potential to pollute underground or surface waters, or aesthetically objectionable properties such as offensive odors.

- g. **Hazardous** wastes are hereby defined as substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or brought from the country of origin for dumping or disposal into or in transit through any part of the territory of the Philippines. Hazardous wastes shall also refer to by-products, side-products, process residues, spent reaction media, contaminated plant or equipment or other substances from manufacturing operations, and as consumer discards of manufactured products.
- h. **Nuclear** wastes are hazardous wastes made radioactive by exposure to the radiation incidental to the production or utilization of nuclear fuels but does not include nuclear fuel, or radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial, or industrial purpose.

Section 6. Functions, Powers and Responsibilities of the Department of Environment and Natural Resources. - The Department of Environment and Natural Resources shall be the implementing agency tasked with the following functions, powers, and responsibilities:

- a. To keep an updated, inventory of chemicals that are presently being manufactured or used, indicating, among others, their existing and possible uses, quantity, test data, names of firms manufacturing or using them, and such other information as the Secretary may consider relevant to the protection of health and the environment;
- b. To require chemical substances and mixtures that present unreasonable risk or injury to health or to the environment to be tested before they are manufactured or imported for the first time;
- c. To require chemical substances and mixtures which are presently being manufactured or processed to be tested if there is a reason to believe that they pose unreasonable risk or injury to health and the environment;
- d. To evaluate the characteristics of chemicals that have been tested to determine their toxicity and the extent to their effects on health and the environment;
- e. To enter into contracts and make grants for research, development, and monitoring of chemical substances and mixtures;
- f. To conduct inspection of any establishment in which chemicals are manufactured, processed, stored or held before or after their commercial distribution and to make recommendations to the proper authorities concerned;
- g. To confiscate or impound chemicals found not falling within the standard set by the rules and regulations and the said acts cannot be enjoined except after the chemicals have been impounded;

- h. To monitor and prevent the entry, even in transit, of hazardous and nuclear wastes and their disposal into the country;
- i. To subpoena witnesses and documents and to require other information if necessary to carry out the provisions of this Act;
- j. To call on any department, bureau, office, agency, state university or college, and other instrumentalities of the Government for assistance in the form of personnel, facilities, and other resources as the need arises in the discharge of its functions;
- k. To disseminate information and conduct educational awareness campaign on the effects of chemical substances, mixtures and wastes on health and environment; and
- l. To exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Act.

Section 7. Inter-agency Technical Advisory Council. - There is hereby created an Inter-agency Technical Advisory Council attached to the Department of Environment and Natural Resources which shall be composed of the following officials or their duly authorized representatives:

Secretary of Environment and Natural Resources	-	Chairman
Secretary of Health	-	Member
Director of the Philippine Nuclear Research Institute	-	Member
Secretary of Trade and Industry	-	Member
Secretary of Science and Technology	-	Member
Secretary of National Defense	-	Member
Secretary of Foreign Affairs	-	Member
Secretary of Labor and Employment	-	Member
Secretary of Finance	-	Member
Secretary of Agriculture	-	Member
Representative from the non-governmental organization on health and safety	-	Member

The representative from the non-governmental organization shall be appointed by the President for a term of three (3) years. The council shall have the following functions:

- a. To assist the Department of Environment and Natural Resources in the formulation of the pertinent rules and regulations for the effective implementation of this Act;
- b. To assist the Department of Environment and Natural Resources in the preparation and updating of the inventory of chemical substances and mixtures that fall within the coverage of this Act;
- c. To conduct preliminary evaluation of the characteristics of chemical substances

and mixtures to determine their toxicity and effects on health and the environment and make the necessary recommendations to the Department of Environment and Natural Resources; and

- d. To perform such other functions as the Secretary of Environment and Natural Resources may from time to time, require.

Section 8. Pre-Manufacturing and Pre-Importation Requirements. - Before any new chemical substances or mixture can be manufactured, processed or imported for the first time as determined by the Department of Environment and Natural Resources, the manufacturer, processor or importer shall submit the following information: the name of the chemical substances; its chemical identity and molecular structure; proposed categories of use; an estimate of the amount to be manufactured, processed or imported; processing and disposal thereof; and any test data related to health and environmental effects which the manufacturer, processor or importer has.

Section 9. Chemicals Subject to Testing. - Testing shall be required in all cases where:

- a. There is a reason to believe that the chemical substances or mixture may present an unreasonable risk to health or environmental exposure thereto;
- b. There are insufficient data and experience for determining or predicting the health and environmental effects of the chemical substance or mixture; and
- c. The testing of the chemical substance or mixture is necessary to develop such data.

The manufacturers, processors or importers shall shoulder the costs of testing the chemical substance or mixture that will be manufactured, processed or imported.

Section 10. Action by the Secretary of Environment and Natural Resources or his Duly Authorized Representative. - The Secretary of Environment and Natural Resources or his duly authorized representative shall, within ninety (90) days from the date of filing of the notice of manufacture, processing or importation of a chemical substance or mixture, decide whether or not to regulate or prohibit its importation, manufacture, processing, sale, distribution, use or disposal. The Secretary may, for justifiable reasons, extend the ninety-day pre-manufacture period within a reasonable time.

Section 11. Chemical Substance Exempt from the Pre-Manufacture Notification. - The manufacture of the following chemical substances or mixtures shall be exempt from pre-manufacture notification:

- a. Those included in the categories of chemical substances and mixtures already listed in the inventory of existing chemicals;
- b. Those to be produced in small quantities solely for experimental or research and development purposes;

- c. Chemical substances and mixtures that will not present an unreasonable risk to health and the environment; and
- d. Chemical substances and mixtures that exist temporarily and which have no human or environmental exposure such as those which exist as a result of chemical reactions in the manufacture or processing of a mixture of another chemical substance.

Section 12. Public Access to Records, Reports or Notification. - The public shall have access to records, reports or information concerning chemical substances and mixtures including safety data submitted, data on emission or discharge into the environment, and such documents shall be available for inspection or reproduction during normal business hours except that the information or particular person thereof confidential and may not be made public when such would divulge trade secrets, production or sales figures or methods, production or processes unique to such manufacturer, processor, or distributor or would otherwise tend to affect adversely the competitive position of such manufacturer, processor or distributor. The Department of Environment and Natural Resources, however, may release information subject to claim of confidentiality to a medical research or scientific institution where the information is needed for the purpose of medical diagnosis or treatment of a person exposed to the chemical substance or mixture.

Section 13. Prohibited Acts. - The following acts and omissions shall be considered unlawful:

- a. Knowingly use in chemical substance or mixture which is imported, manufactured, processed or distributed in violation of this Act or implementing rules and regulations or orders;
- b. Failure or refusal to submit reports, notices or on the information, access to records as required by this Act, or permit inspection of establishment where chemicals are manufactured, processed, stored or otherwise held;
- c. Failure or refusal to comply with the pre-manufacture and pre-importation requirements; and
- d. Cause, aid or facilitate, directly or indirectly, in the storage, importation or bringing into Philippine territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.

Section 14. Criminal Offenses and Penalties. -

- a) i. The penalty of imprisonment of six (6) months and one day to six (6) years and one day and a fine ranging from Six hundred pesos (Php600.00) to Four thousand pesos (Php4,000.00) shall be imposed upon any person who shall violate section 13(a) to (c) of this Act and shall not be covered by the Probation Law. If the offender is a foreigner, he or she shall be deported and barred

- from any subsequent entry into the Philippines after serving his or her sentence;
- ii. In case any violation of this Act is committed by a partnership, corporation, association or any juridical person, the partner, president, director or manager who shall consent to or shall knowingly tolerate such violation shall be directly liable and responsible for the act of the employees and shall be criminally liable as a co-principal;
 - iii. In case the offender is a government official or employee, he or she shall, in addition to the above penalties, be deemed automatically dismissed from office and permanently disqualified from holding any elective or appointive position.
- b) i. The penalty of imprisonment of twelve (12) years and one day to twenty (20) years, shall be imposed upon any person who shall violate section 13 (d) of this Act. If the offender is a foreigner, he or she shall be deported and barred from any subsequent entry into the Philippines after serving his or her sentence;
- ii. In the case of corporations or other associations, the above penalty shall be imposed upon the managing partner, president or chief executive in addition to an exemplary damage of at least Five hundred thousand pesos (PhP500,000.00). If it is a foreign firm, the director and all officers of such foreign firm shall be barred from entry into the Philippines, in addition to the cancellation of its license to do business in the Philippines;
- iii. In case the offender is a government official or employee, he or she shall in addition to the above penalties be deemed automatically dismissed from office and permanently be disqualified from holding any elective or appointive position.
- c) Every penalty imposed for the unlawful importation, entry, transport, manufacture, processing, sale or distribution of chemical substances or mixtures into or within the Philippines shall carry with it the confiscation and forfeiture in favor of the Government of the proceeds of the unlawful act and instruments, tools or other improvements including vehicles, sea vessels and aircraft used in or with which the offense was committed. Chemical substances so confiscated and forfeited by the Government at its option shall be turned over to the Department of Environment and Natural Resources for safekeeping and proper disposal.
- d) The person or firm responsible or connected with the bringing or importation into the country of hazardous or nuclear wastes shall be under obligation to transport or send back said prohibited wastes; Any and all means of transportation, including all facilities and appurtenances that may have been used in transporting to or in the storage in the Philippines of any significant amount of hazardous or nuclear wastes shall at the option of the government be forfeited in its favor.

Section 15. Administrative Fines. - In all cases of violations of this Act, including violations of implementing rules and regulations which have been duly promulgated and published in accordance with Section 16 of this Act, the Secretary of Environment and Natural Resources is hereby authorized to impose a fine of not less than Ten thousand pesos (PhP10,000.00), but not more than Fifty thousand pesos (PhP50,000.00) upon any person or entity found guilty thereof.

The administrative fines imposed and collected by the Department of Environment and Natural Resources shall accrue to a special fund to be administered by the Department exclusively for projects and research activities relative to toxic substances and mixtures.

Section 16. Promulgation of Rules and Regulations. - The Department of Environment and Natural Resources, in coordination with the member agencies of the Inter-Agency Technical Advisory Council, shall prepare and publish the rules and regulations implementing this Act within six months from the date of its effectivity.

Section 17. Appropriation. - Such amount as may be necessary to implement the provisions of this Act is hereby annually appropriated and included in the budget of the Department of Environment and Natural Resources.

Section 18. Separability Clause. - If any provision of this Act is declared void or unconstitutional, the remaining provisions thereof not affected thereby shall remain in full force and effect.

Section 19. Repealing Clause. - All laws, presidential decrees, executive orders and issuances, and rules and regulations which are inconsistent with this Act are hereby repealed or modified accordingly.

Section 20. Effectivity. - This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in any newspaper of general circulation.

Approved:

(Sgd.) RAMON V. MITRA
Speaker of the House
of Representative

(Sgd.) JOVITO R. SALONGA
President of the Senate

This Act which is a consolidation of Senate Bill No. 255 and House Bill No. 25194 was finally passed by both the Senate and the House of Representatives on September 6, 1990.

(Sgd.) QUIRINO D. ABAD SANTOS, JR
Secretary of the House
of Representative

(Sgd.) EDWIN P. ACOB
Secretary of Senate

Approved: OCTOBER 26, 1990

(Sgd.) CORAZON C. AQUINO
President of the Philippines

DAO 29-IRR of RA 6969

DENR ADMINISTRATIVE ORDER

No. 29

Series 1992

Subject:	IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT 6969
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Pursuant to provisions of Section 16, Republic Act 6969, otherwise known as "Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990", the Department of Environment and Natural Resources hereby adopts and promulgates the following Rules and Regulations:

Title I. General Provisions And Administrative Procedures

Chapter I General Provisions

Section 1. Title. These Rules and Regulations shall be known as the Implementing Rules and Regulations of Republic Act 6969.

Section 2. Declaration of Policy. It is the policy of the State to regulate, restrict or prohibit the importation, manufacture, processing, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment; to prohibit the entry, even in transit, of hazardous and nuclear wastes and their disposal into Philippine territorial limits for whatever purpose; and to provide advancement and facilitate research and studies on toxic chemicals and hazardous and nuclear wastes.

Section 3. Scope. These Rules and Regulations shall cover the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all unregulated chemical substances and mixtures in the Philippines including the entry, even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purpose.

Section 4. Construction. These Rules and Regulations shall be liberally construed to carry out the national policy to regulate, restrict or prohibit the importation, manufacture, processing, sale, distribution, use and disposal of chemical substance and mixtures that present unreasonable risk and/or injury to health or the environment; to prohibit the entry, even in transit, of hazardous and nuclear wastes and their disposal into the Philippine territorial limits for whatever purpose and to provide advancement and facilitate research and studies on toxic chemicals and hazardous and nuclear wastes.

Section 5. Administrative And Enforcement. These Rules and Regulations shall be

administered by the Secretary or his duly authorized representative or through any other department, bureau, office, agency, state university or college and other instrumentalities of the government for assistance in the form of personnel, facilities and other resources as the need arises in the discharge of its functions.

Section 6. Definitions. The following words and phrases when used in these Rules and Regulations shall, unless the context clearly indicates otherwise, have the following meanings:

1. **"CAS"** means Chemical Abstracts Service, a uniquely identifying number of adopted internationally which permits one to generate toxicological information from a computer base.
2. **"Chemical Substance"** means any organic or inorganic substance of a particular molecular identity excluding radioactive materials and includes - any element or uncombined chemical; and any combination of such substances; or any mixture of two or more chemical substances.
3. **"Chemical mixture"** means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in the past, the result of chemical reaction, if none of the chemical substances and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined. This shall include nonbiodegradable mixtures.
4. **"Department"** means the Department of Environment and Natural Resources.
5. **"Environmental Protection Officer"** means an officer appointed or deputized by the Secretary to execute the provisions of these Rules and Regulations subject to conditions, limitations or restrictions as prescribed by the Secretary.
6. **"Hazardous substances"** are substances which present either:
 - a. short-term acute hazards such as acute toxicity by ingestion, inhalation or skin absorption, corrosivity or other skin or eye contact hazard or the risk of fire or explosion;
 - b. long-term environmental hazards, including chronic toxicity upon repeated exposure, carcinogenicity (which may in some case result from acute exposure but with a long latent period, resistance to detoxification process such as biodegradation, the potential to pollute underground or surface waters, or aesthetically objectionable properties such as offensive odors.
7. **"Hazardous wastes"** are substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or

brought from the country of origin for dumping or disposal into or in transit through any part of the territory of the Philippines.

"Hazardous wastes" shall also refer to by-products, side-products, process residues, spent reaction media, contaminated plant or equipment or other substances from manufacturing operations and as consumer discards of manufactured products which present unreasonable risk and/or injury to health and safety and to the environment.

8. **Importation** means the entry of a product or substance into the Philippines (through the seaports or airports of entry) after having been properly cleared through or still remaining under customs control, the product or substance of which is intended for direct consumption, merchandising, warehousing, for further processing.
9. **"Inert waste"** means any waste that, when placed in a landfill is reasonably expected not to undergo any physical, chemical, and/or biological changes to such an extent as to cause pollution or hazard to public health and safety.
10. **"New Chemicals"** means any chemical substance imported into or manufactured in the country after December 31, 1993 and which are not included in the Philippine Inventory of Chemicals and Chemical Substances as published by the Department.
11. **Nuclear wastes** are hazardous wastes made radioactive by exposure to the radiation incidental to the production or utilization of nuclear fuels but does not include nuclear fuel, or radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial, or industrial purpose.
12. **Manufacture** means the mechanical or chemical transformation of substances into new products whether work is performed by power-driven machines or by hand, whether it is done in a factory or in the worker's home, and whether the products are sold at wholesale or retail.
13. **"Occupier"** is one who must have a license to accept, produce, generate, store, treat, recycle, reprocess, process, manufacture or dispose of hazardous waste.
14. **"Permit"** means a legal authorization to engage in or conduct any or all of the following activities for:
 - a. **Toxic chemicals** - importation, storage, manufacture, processing, selling, transport and disposal

- b. Hazardous wastes - storage, treatment, transport, export, processing, reprocessing, recycling and disposal
 - c. Hazardous materials - importation or exportation
- 15. "Person" or "persons" includes any being, natural or juridical, susceptible of rights and obligations or of being the subject of legal relations.
- 16. "Pollution" means any alteration of the physical, chemical, biological properties of any water, air and/or land resource of the Philippines, or any discharge thereto of any liquid, gaseous or solid waste, or any production of unnecessary noise, or any emission of objectionable odor, as will or is likely to create or to render such water, air and/or land resources harmful, detrimental or injurious to public health, safety or welfare, or which will adversely affect their utilization for domestic, industrial, agricultural, recreational or other legitimate purposes.
- 17. "Premises" shall include but not limited to:
 - a. building or part of a building;
 - b. a tent, stall or other structure whether permanent or temporary;
 - c. land;
 - d. vehicle;
 - e. boat or ship
- 18. Process means the preparation of a chemical substance or mixture after its manufacture for commercial distribution:
 - i. In the same form or physical state or in a different form or physical state from that which it was received by the person so preparing such substance or mixture; or
 - ii. As part of an article containing a chemical substance or mixture.
- 19. "Secretary" means the Secretary of the Department of Environment and Natural Resources.
- 20. "Transport" includes conveyance by air, water and land.
- 21. "Waste generator" means a person who generates or produces, through any commercial, industrial or trade activities, hazardous wastes.
- 22. "Wastewater transporter" means a person who is licensed to treat, store, recycle, or dispose of hazardous wastes.

23. "Waste treater" means a person who is licensed to treat, store, recycle, or dispose of hazardous wastes.
24. "Unreasonable risk" means expected high frequency of undesirable effects or adverse responses arising from a given exposure to a substance.

Chapter II

Administrative Provision

Section 7. Powers and Functions Of The Department Of Environment And Natural Resources. The Department of Environment and Natural Resources shall be tasked with the following functions, powers and responsibilities:

- a. To keep an updated inventory of chemicals that are presently being manufactured or used, indicating among others, their existing and possible uses, quantity, test data, names of firms manufacturing or using them, and such other information as the Secretary may consider relevant to the protection of health and the environment;
- b. To require chemical substances and mixtures that present unreasonable risk or injury to health or to the environment to be tested before they are manufactured or imported for the first time;
- c. To require chemical substances and mixtures which are presently being manufactured or processed to be tested if there is reason to believe that they pose unreasonable risk or injury to health and the environment;
- d. To evaluate the characteristics of chemicals that have been tested to determine their toxicity and the extent of their effects on health and the environment;
- e. To enter into contracts and make grants for research, development and monitoring of chemical substances and mixtures;
- f. To conduct inspection of any establishment in which chemicals are manufactured, processed, stored or held before or after their commercial distribution and to make recommendations to the proper authorities concerned;
- g. To confiscate or impound chemicals found not falling within the standards set by these Rules and Regulations and the said acts cannot be enjoined except after the chemicals have been impounded;
- h. To monitor and prevent the entry, even in transit, of hazardous and nuclear wastes and their disposal into the country;
- i. To subpoena witnesses and documents and to require other information if necessary to carry out the provisions of this Act;

- j. To call on any department, bureau, office, agency, state university or college, and other instrumentalities of the Government for assistance in the form of personnel, facilities and other resources as the need arises in the discharge of its functions;
- k. To disseminate information and conduct educational awareness campaign on the effects of chemical substances, mixtures and wastes on health and environment; and
- l. To exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under RA 6969.

Section 8. Delegation Of Powers And Functions Of The Secretary

- 1. The Secretary may appoint and/or deputize officers subject to conditions, limitations or restrictions as may be prescribed by him.
- 2. The Secretary may delegate his powers to:
 - a. conduct inspection of any establishment in which chemicals are manufactured, processed, stored or held before or after their commercial distribution and to make recommendations to the proper authorities concerned;
 - b. conduct inspection of any premises in which hazardous wastes are being generated, stored, processed, reprocessed, recycled, treated and/or disposed of and to make recommendations to the proper authorities;
 - c. stop, detain, inspect, examine and remove to some suitable place for inspection and examination any vehicle or boat that is believed to being or likely to be used for the transport of chemical substances and hazardous and nuclear wastes subject to pertinent provisions of these Rules and Regulations;
 - d. monitor and prevent the entry, even in transit, of hazardous and nuclear wastes and their disposal into the country;
 - e. subpoena witnesses and documents and to require other information if necessary to carry out the provisions of these Rules and Regulations.
- 3. The Secretary may, by notice, amend or revoke the:
 - a. delegated authorities previously granted under Section 8(2) of these Rules and Regulations; and
 - b. appointed of an Environmental Protection Officer.

Section 9. Duties And Responsibilities Of An Environmental Protection Officer. An Environmental Protection Officer shall have the following duties and responsibilities:

- a. To make such examination or inquiry as is necessary to determine whether these Rules and Regulations are being complied with.

- b. To enter any premises in which he reasonable believes that chemical substance or hazardous waste are being used, manufactured, stored, processed, reprocessed, generated, treated, transported or disposed of and may –
 - i. without payment take or require the occupier or person in charge of the premises or person in possession of any chemical substance to give the Environmental Protection Officer samples of the chemical substance for examination and testing subject to pertinent provisions of these Rules and Regulations.
 - ii. require the production of any relevant documents and inspect, examine and make copies of or extracts from them or remove them to make a copy of extract; and
 - iii. take such photographs or audio or visual recordings as he considers necessary.
- c. To stop, detain, inspect, examine and remove to some suitable place for inspection and examination any vehicle or boat that he believes is being or likely to be used for the transport of chemical substances and hazardous wastes without the necessary permit from the Department.
- d. To require a person found committing an offense under these Rules and Regulations to state the person's full name and address.
- e. To exercise such other duties and responsibilities as may be authorized by the Secretary.

Section 10. *Confiscation, Impoundment And Imposition Of Administrative Fines.* Upon receipt of a report from a duly authorized inspector or upon a verified complaint from a private person, the Secretary or his duly authorized representative shall order an investigation or inquiry in such a manner as he may determine on the alleged violation of any of the provision of RA 6969 and these Rules and Regulations. If after investigation there appears to be a violation of any of the provisions of RA 6969 or these Rules and Regulations, the Secretary or his duly authorized representative shall issue summons informing respondent/s of nature of charges against him and requiring the said respondent or respondents to appear before him or his duly designated representative for a conference for the purpose of determining whether an Order for confiscation or impoundment or fine should be issued.

Section 11. *Ex-Parte Order Of Confiscation Or Impoundment.* Whenever the Secretary or his duly authorized representative finds a prima facie evidence that the violation presents unreasonable risk and/or injury to health or the environment, the Secretary or his duly authorized representative may issue an Ex-Parte Order of confiscation or impoundment, provided that the respondent files his Motion for Reconsideration within ten (10) days from date of confiscation or impoundment which Motion for Reconsideration shall be resolved within fifteen (15) days from receipt of the same.

Chapter III

Inter-Agency Technical Advisory Council

Section 12. Composition Of The Inter-Agency Technical Advisory Council. The interagency Technical Advisory Council shall be composed of the following officials or their duly authorized representatives:

Secretary of Environment and Natural Resources	-	Chairman
Secretary of Health	-	Member
Secretary of Trade and Industry	-	Member
Secretary of Science and Technology	-	Member
Secretary of National Defense	-	Member
Secretary of Foreign Affairs	-	Member
Secretary of Labor and Employment	-	Member
Secretary of Finance	-	Member
Secretary of Agriculture	-	Member
Secretary of Philippine Nuclear Research Institute	-	Member
Representative from non-governmental organizations on health and safety	-	Member

The representative from the non-governmental organization shall be appointed by the President for a term of three (3) years.

Section 13. Functions Of The Council. The Council shall have the following functions:

- a. To assist the Department in the formulation of these rules and regulations for the effective implementation of RA 6969;
- b. To assist the Department in the preparation and updating of the inventory of chemical substances and mixtures that fall within the coverage of RA 6969;
- c. To conduct preliminary evaluation of the characteristics of chemical substances and mixtures to determine their toxicity and effects on health and the environment and make the necessary recommendations to the Department; and
- d. To perform such other functions as the Secretary may, from time to time, require.

Title II. Toxic Chemical Substances

Chapter IV Inventory of Chemical Substances

Section 14. Chemical Substances Inventory (click for the [Annual Chemicals Inventory Checklist Form](#))

1. The Secretary or his duly authorized representative shall cause the keeping, updating, compilation and maintenance of an inventory of chemical substances which are stored, imported, exported, used, processed, manufactured or transported.
2. The inventory shall contain such information that the Secretary or his duly authorized representative considers to be relevant to the protection of health and the environment.
3. The Secretary or his duly authorized representative shall cause the release of an updated listing of the inventory comprising the chemical substance's name and its CAS number.

Section 15. Pre-manufacturing And Pre-Importation Data Requirements (click for the [PMPIN Abbreviated Form](#))

1. The desired information for a nomination of a chemical substance under Section 16 and the required information for a notification of a chemical substance under Section 17 shall comprise -
 - a. its proper chemical name;
 - b. its trade name or names;
 - c. its chemical and molecular structure;
 - d. its CAS number;
 - e. its RTECS number (if available)
 - f. its United Nations number (if applicable)
 - g. its United Nations class and subsidiary risk category (if applicable);
 - h. the following physical characteristics (if applicable) -
 - i. boiling point;
 - ii. melting point;
 - iii. specific gravity;
 - iv. vapor pressure;
 - v. appearance;

- vi. odor;
- vii. purity; and
- viii. water/octanol partition coefficient;

i. the following chemical properties (if applicable)

- i. solubility in water; and
- ii. solubility in an organic solvent;

j. the following toxicological data (if applicable) -

- i. measured lethal dose (median) in two species;
- ii. measured lethal concentration (median) in two species;
- iii. results of an irritation test on the skin and eyes of species;
- iv. results of a short-term sub-lethal toxicity test on one species

k. any recommended time weighted exposure average (eight hour working day);

l. its flash point measured under close cup conditions;

m. its upper and lower explosive limits (if applicable);

n. its known stability and incompatibilities;

o. its carcinogenic, teratogenic and mutagenic properties;

p. the name and address of the nominating person; and

q. the anticipated volume in cubic meters or weight in tones, per annum of the chemical substance being used, stored, manufactured, processed, offered for sale or sold, transported, imported and exported by the nominating person.

2. The documents containing the above information shall be considered as public document.

Section 16. Nomination Of Existing Chemicals

1. Until 31 December 1993, a person shall submit to the Department for inclusion in the Philippine Inventory of Chemicals and Chemical Substances, a list of chemical substances which are currently used, sold, distributed, imported, processed, manufactured, stored, exported or transported in the Philippines in a form as may be provided by the Department.

2. The person who nominates a chemical substance shall provide as much information as outlined in Section 15 of these Rules and Regulations and that such nomination shall contain the following minimum data:

- a. chemical names
- b. trade name or names
- c. chemical structure
- d. CAS number
- e. anticipated volume in cubic meters, or weight in tones per annum of chemicals being nominated
- f. name and address of nominating person.

3. Chemical substances in the chemical inventory shall be regarded by the Department as existing chemical substances and, therefore, exempted from the provisions of Section 17.

4. The Department shall not accept any further nominations of chemical substances under this section after 31 December 1993.

Section 17. Notification Of New Chemicals (*click for the Notice of Commencement* (manufacture or import) Form)

1. After 31 December 1993, a chemical substance which is not included in the chemical inventory shall be considered as new chemical substance. (*click for the Biennial Report Form*) Unless exempted, any person who uses, stores, imports, manufactures, transports or processes a chemical substance after 31 December 1993 which is not listed in the chemical inventory shall be liable for violation of Section 16 of these Rules and Regulations and shall be dealt with subject to the provisions of Section 15 of RA 6969.

2. No person shall use, store, transport, import, sell, distribute, manufacture, or process a new chemical substance unless permitted by the Department. Permit shall be granted under the following conditions:

- a. The Department must be notified of the intention to do so at least one hundred and eighty (180) days before commencing such activity; and
- b. The Department shall be provided with such information as outlined in Section 15;:

3. The notification must be made in accordance with a form and in a manner prescribed by the Department and accompanied with the payment of the prescribed fee.

4. The notification which does not comply with the requirement of Section 17(3) will not be acted and/or accepted.

5. The Department shall have the discretion not to include the new chemical substance in the chemical inventory if the information provided to the Department by the person does not fully comply with the requirements of Section 15 or the Department suspects that the data are of dubious quality.

6. Any person who falsifies information on a chemical substance while nominating an existing or new chemical substance shall be criminally liable.

Section 18. Assessment Of Chemicals

1. Upon notification of a new chemical substance under Section 17 of these Rules and Regulations, the Department shall within ninety (90) days determine whether -

- a. to add the chemical substance to the chemical inventory;
- b. to seek further information to any person for the purpose of assessing public health and environmental risk posed by the use, storage, manufacture, import, process or transport of the chemical substance or;

- c. to issue Chemical Control Order in accordance to Section 20 of these Rules and Regulations.

2. The Department shall notify the applicant in writing of its decision.

Section 19. Priority Chemical List

1. The Department shall compile and may amend from time to time a list to be known as the Priority Chemicals List.

2. The Department may determine which chemical substance from the chemical inventory should be included, deleted, or excluded from the Priority Chemicals List.

3. The Department shall publish in the Official Gazette or newspaper of general circulation the Priority Chemicals List and any amendments and deletions to the List.

4. The Department may require information from any person for the purpose of assessing the public and environmental risk posed by the use, storage, manufacture, import, process or transport of the priority chemicals.

Section 20. Chemical Control Orders

1. If the Department has determined that the use, storage, transport, process, manufacture, import or export of any new substance or a priority chemical poses an unreasonable risk or hazard to public health or the environment, the Department, may, by order published in the Official Gazette or any newspaper or general circulation:

- a. prohibit the use, manufacture, import, export, transport, process, storage, possession or sale of the chemical substance;
- b. limit the use, manufacture, import, export, transport, process, storage, possession or sale of the chemical substances; or
- c. place such controls or conditions on the use, manufacture, import, export, transport, process, storage, possession or sale of the chemical substance to abate or minimize risks or hazards posed by the chemical substances on public health and environment.

2. An order issued by the Department under Section 20(1) shall be known as Chemical Control Order.

Chapter V

Testing Requirements

Section 21. Chemicals Subject To Testing

1. Testing shall be required in all cases where:

- a. There is reason to believe that the chemical substances or mixture may present an unreasonable risk to health or environment;
 - b. There is insufficient data and experience for determining or predicting the health and environmental effects of the chemical substance or mixture; and
 - c. The testing of the chemical substance or mixture is necessary to develop such data.
2. The manufacturers, processors or importers of such chemicals subjected to testing shall shoulder the costs of testing the chemical substance or mixture.

Chapter VI

Exemptions

Section 22. Exemptions. The following substances and mixtures shall be exempted from the requirements of Section 17, 18 and 21 of these Rules and Regulations:

1. Those chemicals already included in the Philippine Inventory of Chemicals and Chemical Substances;
2. Those to be produced or used in small quantities solely for experimental or research and development purposes;
3. Those that are reaction intermediates which do not leave the closed production system or undergo intermediate storage during the reaction process;
4. Those chemical substances that are regulated by laws other than RA 6969.

Section 23. Confiscation

1. The Secretary or his duly authorized representative may cause the impoundment or confiscation of any chemical substance and its conveyance and container if there is reasonable grounds to believe that:

- a. the sale, storage, possession, use, manufacture, transport, import, or export for a chemical substance does not comply with the Chemical Control Order; or
- b. the sale, storage, possession, use, manufacture, transport, import or export of chemical substance poses an immediate threat or hazard to public health and safety or the environment.

2. Any costs incurred by the Department under Section 23(1) shall be reimbursed by the occupier of the premises from which the Environmental Protection Officer impounded or confiscated the chemical substance.

Title III. Hazardous And Nuclear Wastes

Chapter VII Hazardous Waste

Section 24. Policy

1. It shall be the policy of the Department to prohibit the entry even in transit of hazardous wastes and their disposal into the Philippine territorial limits for whatever purpose.

2. The Department encourages proper management of hazardous wastes generated within the country by promoting, in order of preference:

- a. minimization of the generation of hazardous waste;
- b. recycling and reuse of hazardous waste
- c. treatment of hazardous waste to render it harmless; and
- d. landfill of inert hazardous waste residues.

3. Hazardous waste shall be managed in such a manner as not to cause or potentially cause -

- a. pollution;
- b. state of danger to public health, welfare and safety;
- c. harm to animals, bird, wildlife, fish or other aquatic life;
- d. harm to plants and vegetation; or
- e. limitation in the beneficial use of a segment of the environment.

4. The waste generator shall be responsible for the proper management and disposal of the hazardous waste.

5. The waste generator shall bear the costs for the proper storage, treatment and disposal of their hazardous waste.

Section 25. Classification Of Hazardous Waste

1. The classes and subcategories of wastes listed in Table 1 shall be prescribed as hazardous waste for the purpose of these Rules and Regulations.

2. The types of wastes listed in Table 2 shall be exempted from the requirements of these Rules and Regulations.

3. The listings provided for Tables 1 and 2 are not inclusive and shall be subject to periodic review.

Table 1. Prescribed Hazardous Wastes

Class	Subcategory	Waste Number
Plating Wastes	Discarded plating solutions and salts with a cyanide concentration of less than 200 ppm.	A101
	Discarded heat treatment solutions and salts with a cyanide concentration of less than 200 ppm.	A102
	Plating solutions and salts containing cyanides at a concentration exceeding 200 ppm.	A103
	Heat treatment solutions and salts containing cyanides at a concentration exceeding 200 ppm.	A104
	Complexed cyanide solutions and salts.	A105
	Other cyanide wastes arising from the plating and heat treatment industries.	A199
Acid Waste	Sulfuric Acid	B201
	Hydrochloric Acid	B202
	Nitric Acid	B203
	Phosphoric Acid	B204
	Hydrofluoric Acid	B205
	Mixture of Sulfuric and Hydrochloric Acid	B206
	Other inorganic acids	B207
	Organic acids	B208
	Other mixed acids	B299
Alkali Wastes	Caustic soda	C301
	Potash	C302
	Alkaline cleaners	C303
	Ammonium Hydroxide	C304
	Lime slurries	C305
	Lime-neutralized metal sludges	C306
	Other alkaline materials	C399

Inorganic Chemical Wastes	Nontoxic salts	D401
	Arsenic and its compound	D402
	Boron compounds	D403
	Cadium and its compounds	D404
	Chromium compounds	D405
	Lead compounds	D406
	Mercury and mercuric compounds	D407
	Other salts and complexes	D499
Reactive Chemical Wastes	Oxidizing agents	D501
	Reducing agents	D502
	Explosive and unstable chemicals	D503
	Highly reactive chemicals	D599
Paints/		
	Aqueous-based	E601
Resins/	Solvent-based	E202
Latexes/inks Dyes/Adhesives/ Organic Sludges	Other mixed	E699
Organic Solvents	Flash point > 61°C	F701
	Flash point < 61 °C	F702
	Chlorinated solvents and Residues	F703
Putrescible/ Organic Wastes		
	Animal/abattoir wastes	G801
	Grease trap wastes from industrial or Commercial premises	G802
	Others	G899
Textile	Tannery wastes	H901
	Other textile wastes	H999
Oil	Waste oils	I101
	Interceptor sludges	I102
	Vegetable oils	I103
	Waste tallow	I104
	Oil/water mixtures	I105

Containers	Portable containers previously containing toxic chemical substances	J201
Immobilized Wastes	Solidified and polymerized wastes	K301
	Chemically fixed wastes	K302
	Encapsulated Wastes	K303
Organic Chemicals	Aliphatics	L401
	Aromatics and phenolics	L402
	Highly odorous	L403
	Surfactants and detergents	L404
	Halogenated solvents	L405
	Polychlorinated biphenyls and related materials	L406
	Other organic chemicals	L499
Miscellaneous Wastes	Pathogenic or infectious wastes	M501
	Asbestos wastes	M502
	Pharmaceuticals wastes and drugs	M503
	Pesticides	M504

Table 2. Exempted Wastes

Description

Garbage from domestic premises and households

Industrial and commercial wastewaters which are disposed of on-site through the sewage system

Industrial and commercial solid wastes which do not contain prescribed hazardous wastes as identified in Table 1.

Materials from building demolition except asbestos

Septic tank effluents and associated sullage wastewaters.

Untreated spoils from mining, quarrying and excavation works but not materials in the nature of tailings, commercially treated materials and mine facility consumables.

Section 26. Waste Generators

1. All waste generators shall:

- a. notify the Department of the type and quantity of wastes generated in accordance with the form and in a manner approved by the Department and accompanied by a payment of the prescribed fee; and
- b. provide the Department, on a quarterly basis, with information to include the type and quantity of hazardous waste generated, produced or transported outside, and such other information as may be required.

1. All waste generators shall:

2. A waste generator shall continue to own and be responsible for the hazardous waste generated or produced in the premises until the hazardous waste has been certified by the waste treater as had been treated, recycled, reprocessed or disposed of.

3. A waste generator shall prepare and submit to the Department comprehensive emergency contingency plans to mitigate and combat spills and accidents involving chemical substances and/or hazardous waste. These plans shall conform with the content of the guidelines issued by the Department.

4. A waste generator shall be responsible for training its personnel and staff on-

- a. the implementation of the plan required under Section 26(3); and
- b. the hazard posed by the improper handling, storage, transport, and use of chemical substances and their containers.

Section 27. Waste Transporter

1. No transport of hazardous waste shall be allowed unless prior permit is secured from the Department.

2. Any application for the issuance or amendment of a permit to transport hazardous waste shall be made in accordance with the form and in a manner approved by the Department and accompanied by a payment of the prescribed fee.

3. The Department shall maintain a register of waste transporters.

4. A waste generator shall only use waste transporters duly authorized by the Department to transport hazardous wastes.

Section 28. Waste Transport Record

1. A waste transport record shall be in a form prescribed by the Department and shall contain the following particulars -

- a. the name and address of the waste generator;
- b. the name of the waste transporter used to transport a load of hazardous wastes;
- c. the registration number of the waste transport vehicle;
- d. the waste treatment license of the waste transporter;
- e. the description of the hazardous waste transporter including its class and subcategories as stated in Table 1 ;
- f. the quantity of the hazardous waste transported;
- g. the type of container used during the transport;
- h. the name and address of transit points and the final destination of the hazardous waste; and
- i. the intended method of hazardous waste treatment, storage, export, recycling, processing, reprocessing or disposal at the destination.

2. Prior to the transport of hazardous wastes, the waste generator shall complete, in duplicate, portions that refer to the waste generator in the prescribed form and shall submit the same to the Department accompanied by payment of the prescribed fee.

3. The waste generator shall retain and store a copy of the waste transport record for a period of twenty-four (24) months from the date of receipt of Department.

4. Prior to the transport of the hazardous waste, the waste transporter shall complete, in duplicate, portions referring to the waste transporter in the prescribed form.

5. The waste transporter shall place a copy of the waste transport record in the driver's cabin of the waste transport vehicle.

6. Upon arrival at the waste treatment, storage, recycling, reprocessing, processing or disposal premises, the waste transporter shall give a copy of the waste transport record to the waste treater.

7. Upon receiving a waste transport record, the waste treater shall:

- a. verify the accuracy of the waste description of the hazardous waste;
- b. complete portions of the waste treater on the waste transport record; and
- c. retain and store the complete waste transport record for a period of twenty-four months after receipt of the hazardous waste.

8. If the hazardous waste data is inaccurate the waste treater shall immediately inform the waste generator of such inaccuracy within a reasonable period of time. The waste treater shall have the right to deny acceptance of such hazardous waste if such acceptance may cause any danger of hazard in the operation of its premises;

9. If the hazardous waste is accepted by the waste treater for treatment, storage, export, recycling, reprocessing, processing or disposal, the waste treater shall certify in writing, the acceptance of the hazardous waste to the waste generator.

10. The waste treater shall send to the Department within five (5) days, the certification required under Section 28(9) copy furnished the waste generator.

11. Any waste transporter while transporting hazardous waste is involved in an accident which results in the spillage or release of the hazardous waste to the environment shall immediately contain the spillage and notify the Department.

Section 29. Hazardous Waste Storage And Labeling

1. Vessels, containers and tanks for the storage of hazardous waste shall be clearly labeled and this labeling shall comprise the following particulars -

- a. the class of the hazardous waste as specified in Table 1;
- b. the sub-category of the hazardous waste as specified in Table 1;
- c. the waste number as specified in Table 1;
- d. the name and address of the waste generator; and
- e. the maximum capacity of volume.

2. The labeling of the vessels, containers and tanks specified in Section 29(1) shall be conspicuously marked in paint, decals or other permanent form of markings.

Section 30. Waste Treatment And Disposal Premises

1. No waste treater shall accept, store, treat, recycle, reprocess or dispose of hazardous wastes unless done in the premises as prescribed in Table 3 and permitted by the Department.

Table 3. Prescribed Wastes Treatment Premises

Category	Description
A.	Premises that conduct on-site disposal of hazardous wastes generated or produced at the premises through industrial or commercial processes and activities other than disposal via sewer.
B.	Commercial or industrial hazardous waste incinerators.
C.	Landfills, dumps or tips that accept hazardous waste for disposal
D.	Premises that recycle or reprocess hazardous waste which were not generated or produced at that premise.
E.	Premises that immobilize, encapsulate, polymerize or treat hazardous wastes which were not generated or produced at that premise.

- F. Premises that store hazardous wastes, which were not generated or produced at that premise for periods exceeding thirty (30) days.

2. An application for issuance or amendment of a permit under this section shall be made in accordance with a form and in a manner approved by the Department accompanied with the payment of the prescribed fee and accompanied by such plans, specifications and other information and a summary thereof as may be required by the Department.

3. The Department shall maintain a register of waste treaters.

Section 31. Import And Export Of Hazardous Substances

1. Any person who wishes to import into the Philippines or export hazardous substances must seek and obtain prior written approval from the Department.

2. An application made under Section 31(1) shall be made in the form and manner approved by the Department and accompanied by payment of the prescribed fee.

3. The Department shall cause the seizure of the imported hazardous substances which does not comply with the approved permit, return the hazardous substance to their point of origin and initiate proceedings to recover cost incurred.

Chapter VIII Nuclear Waste

Section 32. Policy

1. It shall be the policy of the government to prohibit the entry, even in transit, of nuclear waste and their storage or disposal into the Philippine territorial limits for whatever purpose.

2. The Philippine Nuclear Research Institute (PNRI) shall be the government agency responsible for the regulation and licensing of nuclear facilities and radioactive materials pursuant to the provisions of R.A. 2067, the Science Act 56 of 1958, and R.A. 5207, the Atomic Energy Regulatory and Liability Act of 1968, both as amended. Radioactive material as defined in the laws include radioactive products or wastes.

Section 33. Specific Exemption

1. The following are exempt from the requirements of these regulations:

- a. Any holder of a valid PNRI license authorized to operate a nuclear power plant or atomic energy facility, who, in the course of operating his licensed facility, transports spent nuclear fuel for reprocessing in a foreign country and re-acquires

the by-products of reprocessing, including its nuclear wastes for storage in his facility.

- b. States which are signatories to the Basel Convention and countries with bilateral agreements with the Philippines that would allow the passage or transit shipment of nuclear waste over Philippine territorial limit. Prior informed arrangements and notification schedules shall have been made through proper Philippine authorities including the DENR and the PNRI.

2. The DENR and the PNRI shall exercise their rights to monitor and inspect such shipments for the protection of the public and the national interest.

Section 34. Abandoned Or Unclaimed Nuclear Waste

Nuclear wastes which are unclaimed or abandoned, and whose legal ownership cannot be ascertained, shall be subject to the regulations of the PNRI on the management and disposal of nuclear wastes.

Section 35. Scrap Metal That May Contain Radioactive Materials

1. Any importer of scrap metal intended for domestic reprocessing shall certify to the DENR that the scrap metal he is importing does not contain radioactive material in any form, shape or containment.
2. Scrap metal that may contain radioisotopes of the elements Cesium, Cobalt Americium, Strontium, or as may be determined by the PNRI shall not be processed for the fabrication of metal bars or components.

Section 36. Reporting And Notification

Any person shall immediately notify the DENR or the PNRI of any existence of unauthorized radioactive material or nuclear waste anywhere in the Philippines. The report should be such as to cause the immediate location of the radioactive material to institute the necessary protective and recovery measures.

Title IV. Common Provisions

Chapter IX

Permitting Regulations

Section 37. Prescribed Fees For Toxic Chemical Substances

1. The Department shall prescribe fees for the notification and assessment of new chemicals under Section 17 and Section 18.

2. The Department shall publish the scale of fees and amendments to the scale of fees in the Official Gazette or any newspaper of general circulation which shall take effect fifteen (15) days after its publication.

Section 38. Prescribed Fees For Hazardous And Nuclear Wastes

1. The Department shall prescribe reasonable fees for -

- a. registration of a waste generator;
- b. permitting of a waste transporter;
- c. permitting of a waste treater;
- d. authority to import or export hazardous material; and
- e. waste transport record

2. The Department shall publish the scale of fees and amendments to the scale of fees in the Official Gazette or any newspaper of general circulation which shall take effect fifteen (15) days after its publication.

Chapter X

Public Access To Records, Reports And Notification And Confidentiality Of Information

Section 39. Public Access To Assessment Reports

1. The general public shall have access to the chemical inventory and to the priority chemical list.

2. The general public shall have access to the documents prepared by the Department regarding chemical control orders excepting confidential portions contained in these documents.

Section 40. Confidentiality Of Information

1. Any person who is requested to provide information to the Department under Section 16, 17, 18 and 21 of these Rules and Regulations may submit together with the information, a request that such information be treated as confidential.

2. The Department of Environment and Natural Resources may consider a record, report of information or particular person thereof confidential and may not be made public when such would divulge trade secrets, or sales figures or methods production or processes unique to such manufacturer, processor or distributor or would otherwise tend to affect adversely the competitive position of such manufacturer, processor or distributor, information other than its chemical name and CAS Number (if applicable) be treated as confidential.

3. No disclosure of any information shall be done subject to Sections 40(1) and 40(2) except -

- a. where there is written consent provided the person who requested confidentiality under Section 40(1);
- b. under an agreement, convention or treaty between the government of the Philippines and other foreign nations provided that the foreign nation undertakes to keep the information confidential;
- c. under an agreement between the Department and other statutory bodies and local authorities provided that the information is required to fulfill their obligations and provided that they agree to keep the information confidential;
- d. under formal instruction of a competent court of law;
- e. to a physician or prescribed medical professional who request the information for the purpose of making a medical diagnosis of, or rendering medical treatment to, a person in an emergency and who agrees, in writing to keep the information confidential; or
- f. where the department certifies that the disclosure of the information is in the interest of public health and safety or protection of the environment.

4. Where practical, the person who takes the request for confidentiality under Section 40(1) shall be notified in writing prior or as soon as possible to the intention of disclosure of information under Section 40(3).

Title V. Prohibited Acts And Penalties

Chapter XI

Prohibited Acts

Section 41. Administrative Violations. The following acts and omissions shall be considered as administrative violations:

1. All acts and omissions mentioned under Section 13(a to c) of Republic Act 6969.
2. Failure or refusal to subject for testing chemical substances and mixtures that present unreasonable risk or injury to health or to the environment before said chemical substances and mixtures are manufactured or imported for the first time;
3. Failure or refusal to subject for testing chemical substances and mixtures which are presently being manufactured or processed if there is a reason to believe that said chemical substances and mixtures pose unreasonable risk or injury to health and the environment;
4. Refusing, obstructing or hampering the entry of authorized representatives of the Secretary into any establishment in which chemicals are processed, manufactured, stored or held before or after their commercial distribution during reasonable hours for the purpose of conducting an inspection.

5. Failure or refusal to notify the Department with the type and quantity of hazardous wastes generated and to provide quarterly report of waste generation as provided for under Section 26 of these Rules and Regulations.

6. Failure or refusal to secure permit or authorization from the Department prior to transport, storage, or disposal of hazardous wastes as provided for in Section 27, 28 and 30 of these Rules and Regulations.

7. Failure or refusal to secure approval from the Department prior to conduct of any importation or exportation of hazardous substances as provided for in Section 31 of these Rules and Regulations.

8. Failure or refusal to provide proper labeling as provided for under Section 29 of these Rules and Regulations regarding hazardous waste storage and labeling.

9. Failure or refusal to comply with subpoena or subpoena duces tecum issued by the Secretary or his duly authorized representative.

Section 42. Criminal Offenses

1. Knowingly use a chemical substance or mixture which is imported, manufactured, processed or distributed in violation of these Rules and Regulations;

2. Failure or refusal to submit reports, notices or other information, access to records as required by Republic Act 6969 as permit inspection of establishment where chemicals are manufactured, processed, stored or otherwise held;

3. Failure or refusal to comply with the pre-manufacture and pre-importation requirements;

4. Cause, aid or facilitate, directly or indirectly in the storage, importation or bringing into Philippine territory including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.

Chapter XII Penalties

Section 43. Administrative Violations And Fines. In all cases of violations under Section 41 of these Rules and Regulations, the Secretary is hereby authorized to impose a fine of not less than Ten Thousand Pesos (PhP10,000.00) but not more than Fifty Thousand Pesos (PhP50,000.00) upon any person or entity found guilty thereof.

Nothing in this provision shall however under Section 14 of RA 6969 ban the institution of the proper criminal action against any person or entity found guilty herein.

Section 44. Criminal Offenses And Penalties

1.
 - i. The penalty of imprisonment of six (6) months and one day to six (6) years and one day and a fine ranging from Six Hundred Pesos (PhP600.00) to Four Thousand Pesos (PhP4,000.00) shall be imposed upon any person who shall violate Section 42(1) of these Rules and Regulations. If the offender is a foreigner, he or she shall be deported and banned from any subsequent entry into the Philippines after serving his or her sentence.
 - ii. In case any violation of these Rules and Regulations is committed by a partnership, corporation, association or any juridical person, the partner, president, director or manager who shall consent to or knowingly tolerate such violation shall be directly liable and responsible for the act of the employees and shall be criminally liable as a co-principal;
 - iii. In case the offender is a government official or employee, he or she shall in addition to the above penalties be deemed automatically dismissed from office and permanently disqualified from holding any elective or appointive position;
2.
 - i. The penalty of imprisonment of twelve (12) years and one day to twenty (20) years shall be imposed upon any person who shall violate Section 13(d) of R.A. 6969. If the offender is a foreigner, he or she shall be deported and banned from any subsequent entry into the Philippines after serving his or her sentence.
 - ii. In the case of corporations or other associations, the above penalty shall be imposed upon the managing partner, president or chief executive in addition to an exemplary damage of at least Five Hundred Thousand Pesos (PhP500,000.00). If it is a foreign firm the director and all officers of such foreign firm shall be banned from entry into the Philippines in addition to the cancellation of its license to do business in the Philippines.
 - iii. In the case the offender is a government official or employee, he or she shall in addition to the above penalties be deemed automatically dismissed from office and permanently disqualified from holding any elective or appointive positions.

3. Every penalty imposed for the unlawful importation, entry, transport, manufacture, processing, sale or distribution of chemical substances or mixtures into or within the Philippines shall carry with it the confiscation and forfeiture in favor of the Government of the proceeds of the unlawful act and instruments, tools or other implements including vehicles, sea vessels and aircraft used in or with which the offense was committed, chemical substances so confiscated and forfeited by the Government at its option shall be turned over to the Department of Environment and Natural Resources for safekeeping and proper disposal.

4. The person or firm responsible or connected with the bringing into the country of hazardous and nuclear wastes shall be under obligation to transport or send back said prohibited wastes. Any and all means of transportation, including all facilities and appurtenances that may have been used in transporting to or in the storage in the Philippines of any significant amount of hazardous or nuclear wastes shall at the option of the government be forfeited in its favor.

Title VI. Final Provisions

Chapter XIII

Section 45. Separability Clause. If any section or provision of these Rules and Regulations is held or declared unconstitutional or invalid by a competent court, the other sections or provisions hereof shall continue to be in force as if the sections or provisions so annulled or voided had never been incorporated herein.

Section 46. Repealing Clause. All Rules and Regulations or parts of said rules and regulations of pertinent laws inconsistent with the Rules and Regulations are hereby revised, amended, modified and/or superseded as the case may be by these Rules and Regulations.

Section 47. Amendments. These Rules and Regulations may be amended and/or modified from time to time by the Department of Environment and Natural Resources.

Section 48. Effectivity. These Rules and Regulations shall take effect thirty (30) days after completion of publication in the Official Gazette or in a newspaper of general circulation.

(Sgd.) FULGENCIO S. FACTORAN, JR.
Secretary, Department of Environment and Natural Resources

RA 8749

Republic of the Philippines
Congress of the Philippines
Metro Manila

Eleventh Congress

First Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, nineteen hundred and ninety eight.

REPUBLIC ACT
No. 8749

Subject:	AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES
-----------------	--

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Chapter 1

General Provisions

Article 1

Basic Air Quality Policies

Section 1. Short Title - This Act shall be known as the "Philippine Clean Air Act of 1999."

Section 2. Declaration of Principles. - The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

The State shall promote and protect the global environment to attain sustainable development while recognizing the primary responsibility of local government units to deal with environmental problems.

The State recognizes that the responsibility of cleaning the habitat and environment is primarily area-based.

The State also recognizes the principle that "polluters must pay".

Finally, the State recognizes that a clean and healthy environment is for the good of all and should therefore be the concern of all.

Section 3. Declaration of Policies. - The State shall pursue a policy of balancing development and environmental protection. To achieve this end, the framework for sustainable development shall be pursued. It shall be the policy of the State to:

- a) Formulate a holistic national program of air pollution management that shall be implemented by the government through proper delegation and effective coordination of functions and activities;
- b) Encourage cooperation and self-regulation among citizens and industries through the application of market-based instruments;
- c) Focus primarily on pollution prevention rather than on control and provide for a comprehensive management program for air pollution;
- d) Promote public information and education to encourage the participation of an informed and active public in air quality planning and monitoring; and
- e) Formulate and enforce a system of accountability for short and long-term adverse environmental impact of a project, program or activity. This shall include the setting up of a funding or guarantee mechanism for clean-up and environmental rehabilitation and compensation for personal damages.

Section 4. Recognition of Rights. - Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:

- a) The right to breathe clean air;
- b) The right to utilize and enjoy all natural resources according to the principle of sustainable development;
- c) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
- d) The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health;
- e) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise

in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;

- f) The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act;
- g) The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and
- h) The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

Article 2

Definition Of Terms

Section 5. Definitions - As used in this Act:

- a) "Air pollutant" means any matter found in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, and the inert gases in their natural or normal concentrations, that is detrimental to health or the environment, which includes but not limited to smoke, dust, soot, cinders, fly ash, solid particles of any kind, gases, fumes, chemical mists, steam and radio-active substances;
- b) "Air pollution" means any alteration of the physical, chemical and biological properties of the atmospheric air, or any discharge thereto of any liquid, gaseous or solid substances that will or is likely to create or to render the air resources of the country harmful, detrimental, or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes;
- c) "Ambient air quality guideline values" mean the concentration of air over specified periods classified as short-term and long-term which are intended to serve as goals or objectives for the protection of health and/or public welfare. These values shall be used for air quality management purposes such as determining time trends, evaluating stages of deterioration or enhancement of the air quality, and in general, used as basis for taking positive action in preventing, controlling, or abating air pollution;
- d) "Ambient air quality" means the general amount of pollution present in a broad area; and refers to the atmosphere's average purity as distinguished from discharge measurements taken at the source of pollution;

- e) "Certificate of Conformity" means a certificate issued by the Department of Environment and Natural Resources to a vehicle manufacturer/assembler or importer certifying that a particular new vehicle or vehicle type meets the requirements provided under this Act and its rules and regulations;
- f) "Department" means the Department of Environment and Natural Resources;
- g) "Eco-profile" means the geographical-based instrument for planners and decision-makers which present an evaluation of the environmental quality and carrying capacity of an area. It is the result of the integration of primary and secondary data and information on natural resources and anthropogenic activities on the land which are evaluated by various environmental risk assessment and forecasting methodologies that enable the Department to anticipate the type of development control necessary in the planning area;
- h) "Emission" means any air contaminant, pollutant, gas stream or unwanted sound from a known source which is passed into the atmosphere;
- i) "Greenhouse gases" mean those gases that can potentially or can reasonably be expected to induce global warming, which include carbon dioxide, methane, oxides of nitrogen, chlorofluorocarbons, and the like;
- j) "Hazardous substances" mean those substances which present either: (1) short-term acute hazards such as acute toxicity by ingestion, inhalation, or skin absorption, corrosivity or other skin or eye contact hazard or the risk of fire explosion; or (2) long-term toxicity upon repeated exposure, carcinogenicity (which in some cases result in acute exposure but with a long latent period), resistance to detoxification process such as biodegradation, the potential to pollute underground or surface waters;
- k) "Infectious waste" means that portion of medical waste that could transmit an infectious disease;
- l) "Medical waste" means the materials generated as a result of patient diagnosis, treatment, or immunization of human beings or animals;
- m) "Mobile source" means any vehicle propelled by or through combustion of carbon-based or other fuel, constructed and operated principally for the conveyance of persons or the transportation of property or goods;
- n) "Motor vehicle" mean any vehicle propelled by a gasoline or diesel engine or by any other than human or animal power, constructed and operated principally for the conveyance of persons or the transportation of property or goods in a public highway or street open to public use;
- o) "Municipal waste" means the waste materials generated from communities within a specific locality;

- p) "New vehicle" means a vehicle constructed entirely from new parts that has never been sold or registered with the DOTC or with the appropriate agency or authority, and operated on the highways of the Philippines, any foreign state or country;
- q) "Octane Rating or the Anti-Knock Index (AKI)" means the rating of the anti-knock characteristics of a grade or type of automotive gasoline as determined by dividing by two (2) the sum of the Research Octane Number (RON), plus the Motor Octane Number (MON); the octane requirement, with respect to automotive gasoline for use in a motor vehicle or a class thereof, whether imported, manufactured, or assembled by a manufacturer, shall refer to the minimum octane rating of such automotive gasoline which such manufacturer recommends for the efficient operation of such motor vehicle, or a substantial portion of such class, without knocking;
- r) "Ozone Depleting Substances (ODS)" mean those substances that significantly deplete or otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment such as, but not limited to, chlorofluorocarbons, halons, and the like;
- s) "Persistent Organic Pollutants (POPs)" mean the organic compounds that persist in the environment, bioaccumulate through the food web, and pose a risk of causing adverse effects to human health and the environment. These compounds resist photolytic, chemical and biological degradation, which shall include but not be limited to dioxin, furan, Polychlorinated Biphenyls (PCBs), organochlorine pesticides, such as aldrin, dieldrin, DDT, hexachlorobenzene, lindane, toxaphene and chlordane;
- t) "Poisonous and toxic fumes" mean any emissions and fumes which are beyond internationally-accepted standards, including but not limited to World Health Organization (WHO) guideline values;
- u) "Pollution control device" means any device or apparatus used to prevent, control or abate the pollution of air caused by emissions from identified pollution sources at levels within the air pollution control standard established by the Department;
- v) "Pollution control technology" means the pollution control devices, production processes, fuel combustion processes or other means that effectively prevent or reduce emissions or effluent;
- w) "Standard of performance" means a standard for emissions of air pollutant which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirement which the Department determines, and adequately demonstrates; and
- x) "Stationary source" means any building or immobile structure, facility or installation which emit or may emit any air pollutant.

Chapter 2

Air Quality Management System

Article 1

General Provisions

Section 6. Air Quality Monitoring and Information Network. - The Department shall prepare an annual National Air Quality Status Report which shall be used as the basis in formulating the Integrated Air Quality Improvement Framework, as provided for in Section 7. The said report shall include, but shall not be limited to the following:

- a) Extent of pollution in the country, per type of pollutant and per type of source, based on reports of the Department's monitoring stations;
- b) Analysis and evaluation of the current state, trends and projections of air pollution at the various levels provided herein;
- c) Identification of critical areas, activities, or projects which will need closer monitoring or regulation;
- d) Recommendations for necessary executive and legislative action; and
- e) Other pertinent qualitative and quantitative information concerning the extent of air pollution and the air quality performance rating of industries in the country.

The Department, in cooperation with the National Statistical Coordination Board (NSCB), shall design and develop an information network for data storage, retrieval and exchange.

The Department shall serve as the central depository of all data and information related to air quality.

Section 7. Integrated Air Quality Improvement Framework. - The Department shall, within six (6) months after the effectivity of this Act, establish, with the participation of LGUs, NGOs, POs, the academe and other concerned entities from the private sector, formulate and implement the Integrated Air Quality Improvement Framework for a comprehensive air pollution management and control program. The framework shall, among others, prescribe the emission reduction goals using permissible standards, control strategies and control measures to be undertaken within a specified time period, including cost-effective use of economic incentives, management strategies, collective action, and environmental education and information.

The Integrated Air Quality Improvement Framework shall be adopted as the official blueprint with which all government agencies must comply with to attain and maintain ambient air quality standards.

Section 8. Air Quality Control Action Plan. - Within six (6) months after the formulation of the framework, the Department shall, with public participation, formulate and implement an air quality control action plan consistent with Section 7 of this Act. The action plan shall:

- a) Include enforceable emission limitations and other control measures, means or techniques, as well as schedules and time tables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;
- b) Provide for the establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality;
- c) Include a program to provide for the following: (1) enforcement of the measures described in the subparagraph (a); (2) regulation of the modification and construction of any stationary source within the areas covered by the plan, in accordance with land use policy to ensure that ambient air quality standards are achieved;
- d) Contain adequate provisions, consistent with the provisions of this Act, prohibiting any source or other types of emissions activity within the country from emitting any air pollutant in amounts which will significantly contribute to the non-attainment or will interfere with the maintenance by the Department of any such ambient air quality standard required to be included in the implementation plan to prevent significant deterioration of air quality or to protect visibility;
- e) Include control strategies and control measures to be undertaken within a specified time period, including cost-effective use of economic incentives, management strategies, collection action, and environmental education and information;
- f) Designate airsheds; and
- g) All other measures necessary for the effective control and abatement of air pollution.

The adoption of the plan shall clarify the legal effects on the financial, manpower and budgetary resources of the affected government agencies, and on the alignment of their programs with the plans.

In addition to direct regulations, the plan shall be characterized by a participatory approach to the pollution problem. The involvement of private entities in the monitoring and testing of emissions from mobile and/or stationary sources shall be considered.

Likewise, the LGUs, with the assistance from the Department, shall prepare and develop an action plan consistent with the Integrated Air Quality Improvement Framework to attain and

maintain the ambient air quality standards within their respective airsheds as provided in Section 9 hereof.

The local government units shall develop and submit to the Department a procedure for carrying out the action plan for their jurisdiction. The Department, however, shall maintain its authority to independently inspect the enforcement procedure adopted. The Department shall have the power to closely supervise all or parts of the air quality action plan until such time the local government unit concerned can assume the function to enforce the standards set by the Department.

A multi-sectoral monitoring team with broad public representation shall be convened by the Department for each LGU to conduct periodic inspections of air pollution sources to assess compliance with the emission limitations contained in their permits.

Section 9. Airsheds. - Pursuant to Section 8 of this Act, the designation of airsheds shall be on the basis of, but not limited to, areas with similar climate, meteorology and topology which affect the interchange and diffusion of pollutants in the atmosphere, or areas which share common interest or face similar development programs, prospects or problems.

For a more effective air quality management, a system of planning and coordination shall be established and a common action plan shall be formulated for each airshed.

To effectively carry out the formulated action plans, a Governing Board is hereby created, hereinafter referred to as the Board.

The Board shall be headed by the Secretary of the Department of Environment and Natural Resources as chairman. The members shall be as follows:

- a) Provincial Governors from areas belonging to the airshed;
- b) City/Municipal Mayors from areas belonging to the airshed;
- c) A representative from each concerned government agency;
- d) Representatives from people's organizations;
- e) Representatives from non-government organizations; and
- f) Representatives from the private sector.

The Board shall perform the following functions:

- a) Formulation of policies;
- b) Preparation of a common action plan;
- c) Coordination of functions among its members; and
- d) Submission and publication of an annual Air Quality Status Report for each airshed.

Upon consultation with appropriate local government authorities, the Department shall, from time to time, revise the designation of airsheds utilizing eco-profiling techniques and undertaking scientific studies.

Emissions trading may be allowed among pollution sources within an airshed.

Section 10. Management of Nonattainment Areas. - The Department shall designate areas where specific pollutants have already exceeded ambient standards as nonattainment areas. The Department shall prepare and implement a program that will prohibit new sources of exceeded air pollutant without a corresponding reduction in existing sources.

In coordination with other appropriate government agencies, the LGUs shall prepare and implement a program and other measures including relocation, whenever necessary, to protect the health and welfare of residents in the area.

For those designated as nonattainment areas, the Department after consultation with local government authorities, nongovernment organizations (NGOs), people's organizations (POs) and concerned sectors may revise the designation of such areas and expand its coverage to cover larger areas depending on the condition of the areas.

Section 11. Air Quality Control Techniques - Simultaneous with the issuance of the guideline values and standards, the Department, through the research and development program contained in this Act and upon consultation with the appropriate advisory committees, government agencies and LGUs, shall issue, and from time to time, revise information on air pollution control techniques. Such information shall include:

- a) Best available technology and alternative methods of prevention, management and control of air pollution
- b) Best available technology economically achievable which shall refer to the technological basis/standards for emission limits applicable to existing, direct industrial emitters of non-conventional and toxic pollutants; and
- c) Alternative fuels, processes and operating methods which will result in the elimination or significant reduction of emissions.

Such information may also include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact or the emission control technology.

The issuance of air quality guideline values, standards and information on air quality control techniques shall be made available to the general public: Provided, That the issuance of information on air quality control techniques shall not be construed as requiring the purchase of certain pollution control devices by the public.

Section 12. Ambient Air Quality Guideline Values and Standards. - The Department, in coordination with other concerned agencies, shall review and/or revise and publish annually a list of hazardous air pollutants with corresponding ambient guideline values and/or standard necessary to protect public health and safety, and general welfare. The initial list and values of the hazardous air pollutants shall be as follows:

a) For National Ambient Air Quality Guideline for Criteria Pollutants:

Pollutants	Short Term ^a			Long Term ^b		
	µg/NCM	ppm	Averaging Time	µg/NCM	ppm	Averaging Time
Suspended Particulate Matter ^c - TSP	230 ^d		24 hours	90	--	1 year ^e
- PM-10	150 ^f		24 hours	60	--	1 year ^e
Sulfur Dioxide ^g	180	0.07	24 hours	80	0.03	1 year
Nitrogen Dioxide	150	0.08	24 hours	--	--	--
Photochemical Oxidants	140	0.07	1 hour	--	--	--
As Ozone	60	0.03	8 hours	--	--	--
Carbon Monoxide	35 mg/NCM	30	1 hour	--	--	--
	10 mg/NCM	9	8 hours	--	--	--
Lead ^h	1.5	--	3 months ⁱ	1.0	--	1 year

- ^a Maximum limits represented by ninety-eight percentile (98%) values not to be exceeded more than once a year.
- ^b Arithmetic mean.
- ^c SO₂ and Suspended Particulate Matter are sampled once every six days when using the manual methods. A minimum of twelve sampling days per quarter or forty-eight sampling days each year is required for these methods. Daily sampling may be done in the future once continuous analyzers are procured and become available.
- ^d Limits for Total Suspended Particulate Matter with mass median diameter less than 25-50 µm.
- ^e Annual Geometric Mean.
- ^f Provisional limits for Suspended Particulate Matter with mass median diameter less than 10 microns and below until sufficient monitoring data are gathered to base a proper guideline.
- ^g Evaluation of this guideline is carried out for 24-hour averaging time and averaged over three moving calendar months. The monitored average value for any three months shall not exceed the guideline value.

b) For National Ambient Air Quality Standards for Source Specific Air Pollutants from Industrial Sources/Operations:

Pollutants ¹	Concentration ²		Averaging time (min.)	Methods of Analysis/ Measurement ³
	µg/NCM	ppm		
1. Ammonia	200	0.28	30	Nesslerization/Indo Phenol
2. Carbon Disulfide	30	0.01	30	Tischer Method
3. Chlorine and Chlorine compounds expressed as Cl ₂	100	0.03	5	Methyl Orange
4. Formaldehyde	50	0.04	30	Chromotropic acid Method or MBTH Colorimetric Method
5. Hydrogen Chloride	200	0.13	30	Volhard Titration with Iodine Solution
6. Hydrogen Sulfide	100	0.07	30	Methylene Blue
7. Lead	20		30	AAS ^c
8. Nitrogen Dioxide	375	0.20	30	Greiss-Saltzman
	260	0.14	60	
9. Phenol	100	0.03	30	4-Aminoantiphrine
10. Sulfur Dioxide	470	0.18	30	Colorimetric-Pararosaniline
	340	0.13	60	
11. Suspended Particulate	300	--	60	Gravimetric
Matter - TSP	200	--	60	- do -
- PM10				

¹ Pertinent ambient standards for Antimony, Arsenic, Cadmium, Asbestos, Nitric Acid and Sulfuric Acid Mists in the 1978 NPCC Rules and Regulations may be considered as guides in determining compliance.

² Ninety-eight percentile (98%) values of 30-minute sampling measured at 25°C and one atmosphere pressure.

3. Other equivalent methods approved by the Department may be used. The basis in setting up the ambient air quality guideline values and standards shall reflect, among others, the latest scientific knowledge including information on:

- a) Variable factors, including atmospheric conditions, which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;
- b) The other types of air pollutants which may interact with such pollutant to produce an adverse effect on public health or welfare; and
- c) The kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities.

The Department shall base such ambient air quality standards on World Health Organization (WHO) standards, but shall not be limited to nor be less stringent than such standards.

Section 13. Emission Charge System. - The Department, in case of industrial dischargers, and the Department of Transportation and Communications (DOTC), in case of motor vehicle dischargers, shall, based on environmental techniques, design, impose on and collect regular emission fees from said dischargers as part of the emission permitting system or vehicle registration renewal system, as the case may be. The system shall encourage the industries, and motor vehicles to abate, reduce, or prevent pollution. The basis of the fees include, but is not limited to, the volume and toxicity of any emitted pollutant. Industries, which shall install pollution control devices or retrofit their existing facilities with mechanisms that reduce pollution shall be entitled to tax incentives such as but not limited to tax credits and/or accelerated depreciation deductions.

Section 14. Air Quality Management Fund. - An Air Quality Management Fund to be administered by the Department as a special account in the National Treasury is hereby established to finance containment, removal, and clean-up operations of the Government in air pollution cases, guarantee restoration of ecosystems and rehabilitate areas affected by the acts of violators of this Act, to support research, enforcement and monitoring activities and capabilities of the relevant agencies, as well as to provide technical assistance to the relevant agencies. Such fund may likewise be allocated per airshed for the undertakings herein stated.

The Fund shall be sourced from the fines imposed and damages awarded to the Republic of the Philippines by the Pollution Adjudication Board (PAB), proceeds of licenses and permits issued by the Department under this Act, emission fees and from donations, endowments and grants in the forms of contributions. Contributions to the Fund shall be exempted from donor taxes and all other taxes, charges or fees imposed by the Government.

Section 15. Air Pollution Research and Development Program. - The Department, in coordination with the Department of Science and Technology (DOST), other agencies, the private sector, the academe, NGOs and POs, shall establish a National Research and

Development Program for the prevention and control of air pollution. The Department shall give special emphasis to research on and the development of improved methods having industry-wide application for the prevention and control of air pollution.

Such a research and development program shall develop air quality guideline values and standards in addition to internationally-accepted standards. It shall also consider the socio-cultural, political and economic implications of air quality management and pollution control.

Article 2

Air Pollution Clearances And Permits For Stationary Sources

Section 16. Permits. - Consistent with the provisions of this Act, the Department shall have the authority to issue permits as it may determine necessary for the prevention and abatement of air pollution.

Said permits shall cover emission limitations for the regulated air pollutants to help attain and maintain the ambient air quality standards. These permits shall serve as management tools for the LGUs in the development of their action plan.

Section 17. Emission Quotas. - The Department may allow each regional industrial center that is designated as special airshed to allocate emission quotas to pollution sources within its jurisdiction that qualify under an environmental impact assessment system programmatic compliance program pursuant to the implementing rules and regulations of Presidential Decree No. 1586.

Section 18. Financial Liability for Environmental Rehabilitation. - As part of the environmental management plan attached to the environmental compliance certificate pursuant to Presidential Decree No. 1586 and rules and regulations set therefor, the Department shall require program and project proponents to put up financial guarantee mechanisms to finance the needs for emergency response, clean-up or rehabilitation of areas that may be damaged during the program or project's actual implementation. Liability for damages shall continue even after the termination of a program or project, where such damages are clearly attributable to that program or project and for a definite period to be determined by the Department and incorporated into the environmental compliance certificate.

Financial liability instruments may be in the form of a trust fund, environmental insurance, surety bonds, letters of credit, as well as self-insurance. The choice of the guarantee instrument or combinations thereof shall depend, among others, on the assessment of the risks involved. Proponents required to put up guarantee instruments shall furnish the Department with evidence of availment of such instruments.

Article 3

Pollution From Stationary Sources

Section 19. Pollution From Stationary Sources. - The Department shall, within two (2) years from the effectivity of this Act, and every two (2) years thereafter, review, or as the need therefor arises, revise and publish emission standards, to further improve the emission standards for stationary sources of air pollution. Such emission standards shall be based on mass rate of emission for all stationary sources of air pollution based on internationally-accepted standards, but not be limited to, nor be less stringent than such standards and with the standards set forth in this section. The standards, whichever is applicable, shall be the limit on the acceptable level of pollutants emitted from a stationary source for the protection of the public's health and welfare.

With respect to any trade, industry, process and fuel-burning equipment or industrial plant emitting air pollutants, the concentration at the point of emission shall not exceed the following limits:

Pollutants	Standard Applicable to Source	Maximum Permissible Limits (mg/NCM)	Methods of Analysis ^a
1. Antimony and its compounds	Any source	10 as Sb	AAS ^b
2. Arsenic and its compounds	Any source	10 as As	AAS ^b
3. Cadmium and its compound	Any source	10 as Cd	AAS ^b
4. Carbon Monoxide	Any industrial source	500 as CO	Orsat Analysis
5. Copper and its compounds	Any industrial source	100 as Cu	AAS ^b
6. Hydrofluoric Acid and Fluoride Compounds	Any source other than the manufacture of Aluminum from Alumina	50 as HF	Titration with Ammonium Thiocyanate
7. Hydrogen Sulfide	i) i) Geothermal power plants ii) i) Geothermal exploration and well-testing ii) ii) Any source other than i) and (i)	i, ii 7 as H ₂ S	Cadmium Sulfide Method Cadmium Sulfide Method
8. Lead	Any trade, industry or process	10 as Pb	Titration with Ammonium Thiocyanate
9. Mercury	Any source	5 as elemental Hg	AAS ^b Cold-Vapor Technique or Hg Analyzer
10. Nickel and its compounds, except Nickel Carbonyl	Any source	20 as Ni	AAS ^b
11. NO _x	i) Manufacture of Nitric Acid ii) Fuel burning steam generators Existing Source New Source • Coal-fired • Oil-fired iii) Any source other than (i) and (ii) Existing Source New Source	2,000 as acid and NO _x and calculated as NO ₂ 1,500 as NO ₂ 1,000 as NO ₂ 500 as NO ₂ 1,000 as NO ₂ 500 as NO ₂	Phenol-Disulfonic acid Method Phenol-Disulfonic acid Method Phenol-Disulfonic acid Method
12. Phosphorus peroxide ^c	Any source	200 as P ₂ O ₅	Spectrophotometry
13. Zinc and its compounds	Any source	100 as Zn	AAS ^b

- ° Other equivalent methods approved by the Department may be used.
- ° Atomic Absorption Spectrophotometry
- ° All new geothermal power plants starting construction by 01 January 1995 shall control H₂S emissions to not more than 150 g/GMW-Hr.
- ° All existing geothermal power plants shall control H₂S emissions to not more than 200 g/GMW-Hr within 5 years from the date of effectivity of these revised regulations.
- ° Best practicable control technology for air emissions and liquid discharges. Compliance with air and water quality standards is required.
- ° Emission limit of Nickel Carbonyl shall not exceed 0.5 mg/NCM.
- ° Provisional Guideline

Provided, That the maximum limits in mg/NCM particulates in said sources shall be:

1. Fuel Burning Equipment

- | | |
|-----------------------------|------------|
| a) Urban or Industrial Area | 150 mg/NCM |
| b) Other Area | 200 mg/NCM |

2. Cement Plants (Kilns, etc.) 150 mg/NCM

3. Smelting Furnaces 150 mg/NCM

4. Other Stationary Sources ° 200 mg/NCM

- ° Other Stationary Sources means a trade, process, industrial plant, or fuel burning equipment other than thermal power plants, industrial boilers, cement plants, incinerators and smelting furnaces

Provided, further, That the maximum limits for sulfur oxides in said sources shall be:

(1) Existing Sources

- | | |
|--|-------------------------------|
| (i) Manufacture of Sulfuric Acid and Sulf(on)ation Process | 2.0 gm/NCM as SO ₃ |
| (ii) Fuel Burning Equipment | 1.5 gm/NCM as SO ₂ |
| (iii) Other Stationary Sources ° | 1.0 gm/NCM as SO ₃ |

(2) New Sources

- | | |
|--|-------------------------------|
| (i) Manufacture of Sulfuric Acid and Sulf(on)ation Process | 1.5 gm/NCM as SO ₃ |
| (ii) Fuel Burning Equipment | 0.7 gm/NCM as SO ₂ |
| (iii) Other Stationary Sources ° | 0.2 gm/NCM as SO ₃ |

- ° Other Stationary Sources refer to existing and new stationary sources other than those caused by the manufacture of sulfuric acid and sulfonation process, fuel burning equipment and incineration.

For stationary sources of pollution not specifically included in the immediately preceding paragraph, the following emission standards shall not be exceeded in the exhaust gas:

I. Daily And Half Hourly Average Values

	Daily Average Values	Half Hourly Average Values
Total dust	10 mg/m ³	30 mg/m ³
Gaseous and vaporous organic substances, expressed as total organic carbon	10 mg/m ³	20 mg/m ³
Hydrogen chloride (HCl)	10 mg/m ³	60 mg/m ³
Hydrogen fluoride (HF)	1 mg/m ³	4 mg/m ³
Sulphur dioxide (SO ₂)	50 mg/m ³	200 mg/m ³
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as nitrogen dioxide for incineration plants with a capacity exceeding 3 tonnes per hour	200 mg/m ³	400 mg/m ³
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as nitrogen dioxide for incineration plants with a capacity of 3 tonnes per hour or less	300 mg/m ³	
Ammonia	10 mg/m ³	20 mg/m ³

II. All Average Values over the Sample Period of a Minimum of 4 and Maximum of 8 Hours

Cadmium and its compounds, expressed as cadmium (Cd)	Total 0.05 mg/m ³
Thallium and its compounds, expressed as thallium (Tl)	
Mercury and its compounds, expressed as mercury (Hg)	0.05 mg/m ³

Antimony and its compounds, expressed as antimony (Sb)

Total 0.5

mg/m³

Arsenic and its compounds, expressed as arsenic (As)

Lead and its compounds, expressed as lead (Pb)

Chromium and its compounds, expressed as chromium (Cr)

Cobalt and its compounds, expressed as cobalt (Co)

Copper and its compounds, expressed as copper (Cu)

Manganese and its compounds, expressed as manganese (Mn)

Nickel and its compounds, expressed as nickel (Ni)

Vanadium and its compounds, expressed as vanadium (V)

Tin and its compounds, expressed as tin (Sn)

These average values cover also gaseous and the vapor forms of the relevant heavy metal emissions as well as their compounds: Provided, That the emission of dioxins and furans into the air shall be reduced by the most progressive techniques: Provided, further, That all average values of dioxin and furans measured over the sample period of a minimum of 6 hours and a maximum of 8 hours must not exceed the limit value of 0.1 nanogram/m³.

Pursuant to Section 8 of this Act, the Department shall prepare a detailed action plan setting the emission standards or standards of performance for any stationary source, the procedure for testing emissions for each type of pollutant, and the procedure for enforcement of said standards.

Existing industries, which are proven to exceed emission rates established by the Department, in consultation with stakeholders, after a thorough, credible and transparent measurement process shall be allowed a grace period of eighteen (18) months for the establishment of an environmental management system and the installation of an appropriate air pollution control device: Provided, That an extension of not more than twelve (12) months may be allowed by the Department on meritorious grounds.

Section 20. Ban on Incineration. - Incineration, hereby defined as the burning of municipal, bio-medical and hazardous wastes, which process emits poisonous and toxic fumes, is hereby prohibited: Provided, however, That the prohibition shall not apply to traditional small-scale method of community/neighborhood sanitation "siga", traditional, agricultural, cultural, health, and food preparation and crematoria: Provided, further, That existing incinerators dealing with bio-medical wastes shall be phased out within three (3) years after the effectivity of this Act: Provided, finally, That in the interim, such units shall be limited to the burning of pathological and infectious wastes, and subject to close monitoring by the Department.

Local government units are hereby mandated to promote, encourage and implement in their respective jurisdiction a comprehensive ecological waste management that includes waste segregation, recycling and composting.

With due concern on the effects of climate change, the Department shall promote the use of state-of-the-art, environmentally-sound and safe non-burn technologies for the handling, treatment, thermal destruction, utilization, and disposal of sorted, unrecycled, uncomposted municipal, bio-medical and hazardous wastes.

Article 4

Pollution From Motor Vehicles

Section 21. Pollution from Motor Vehicles. - a) The DOTC shall implement the emission standards for motor vehicles set pursuant to and as provided in this Act. To further improve the emission standards, the Department shall review, revise and publish the standards every two (2) years, or as the need arises. It shall consider the maximum limits for all major pollutants to ensure substantial improvement in air quality for the health, safety and welfare of the general public.

The following emission standards for type approval of motor vehicles shall be effective by the year 2003:

- a) For light duty vehicles, the exhaust emission limits for gaseous pollutants shall be:

Emission Limits for Light Duty Vehicles Type Approval (Directive 91/441/EEC)

CO (g/km)	HC + NO_x (g/km) [*]	PM^a (g/km)
2.72	0.97	0.14

^{*} for compression-ignition engines only

- b) For light commercial vehicles, the exhaust emission limit of gaseous pollutants as a function of the given reference mass shall be:

Emission Limits for Light Commercial Vehicles Type Approval (Directive 93/59/EEC)

	CO (RW) (kg)	HC + NO_x (g/km) [*]	PM^a (g/km)	PM^a (g/km)
Category 1	1250 < RW	2.72	0.97	0.14
Category 2	1250 < RW < 1700	5.17	1.4	0.25
Category 3	RW > 1700	6.9	1.7	0.25

^{*} for compression-ignition engines only

c) For heavy duty vehicles, the exhaust emission limits of gaseous pollutants shall be:

Emission Limits for Heavy Duty Vehicles
Type Approval
(Directive 91/542/EEC)

CO (g/kWh)	HC (g/kWh)	NO_x (g/kWh)	PM (g/kWh)
4.5	1.1	8.0	0.36 ^a

- ^a In the case of engines of 85kW or less, the limit value for particular emissions is increased by multiplying the quoted limit by a coefficient of 1.7

Fuel evaporative emission for spark-ignition engines shall not exceed 2.0 grams hydrocarbons per test. Likewise, it shall not allow any emission of gases from crankcase ventilation system into the atmosphere.

- b) The Department, in collaboration with the DOTC, DTI and LGUs, shall develop an action plan for the control and management of air pollution from motor vehicles consistent with the Integrated Air Quality Framework. The DOTC shall enforce compliance with the emission standards for motor vehicles set by the Department. The DOTC may deputize other law enforcement agencies and LGUs for this purpose. To this end, the DOTC shall have the power to:
- (1) Inspect and monitor the emissions of motor vehicles;
 - (2) Prohibit or enjoin the use of motor vehicles or a class of motor vehicles in any area or street at specified times; and
 - (3) Authorize private emission testing centers duly accredited by the DTI.
- c) The DOTC, together with the DTI and the Department, shall establish the procedures for the inspection of motor vehicles and the testing of their emissions for the purpose of determining the concentration and/or rate of emission of pollutants discharged by said sources.
- d) In order to ensure the substantial reduction of emissions from motor vehicles, the Department of Trade and Industry (DTI), together with the DOTC and the Department, shall formulate and implement national motor vehicle inspection and maintenance program that will promote efficient and safe operation of all motor vehicles. In this regard, the DTI shall develop and implement standards and procedures for the certification of training institutions, instructors and facilities and the licensing of qualified private service centers and their technicians as prerequisite for performing the testing, servicing, repair and the required adjustment to the vehicle emission system. The DTI shall likewise prescribe regulations requiring the disclosure of odometer readings and the use of tamper-resistant odometers for all motor vehicles including tamper-resistant fuel management systems for the effective implementation of the inspection and maintenance program.

Section 22. Regulation of All Motor Vehicles and Engines. - Any imported new or locally-assembled new motor vehicle shall not be registered unless it complies with the emission standards set pursuant to this Act, as evidenced by a Certificate of Conformity (COC) issued by the Department.

Any imported new motor vehicle engine shall not be introduced into commerce, sold or used unless it complies with emission standards set pursuant to this Act.

Any imported used motor vehicle or rebuilt motor vehicle using new or used engines, major parts or components shall not be registered unless it complies with the emission standards set pursuant to this Act.

In case of non-compliance, the importer or consignee may be allowed to modify or rebuild the vehicle or engine so that it will be in compliance with applicable emission standards.

No motor vehicle registration (MVR) shall be issued unless such motor vehicle passes the emission testing requirement promulgated in accordance with this Act. Such testing shall be conducted by the DOTC or its authorized inspection centers within sixty (60) days prior to date of registration.

The DTI shall promulgate the necessary regulations prescribing the useful life of vehicles and engines including devices in order to ensure that such vehicles will conform to the emissions which they were certified to meet. These regulations shall include provisions for ensuring the durability of emission devices.

Section 23. Second-Hand Motor Vehicle Engines. - Any imported second-hand motor vehicle engine shall not be introduced into commerce, sold or used unless it complies with emission standards set pursuant to this Act.

Article 5

Pollution From Other Sources

Section 24. Pollution from Smoking. - Smoking inside a public building or an enclosed public place including public vehicles and other means of transport or in any enclosed area outside of one's private residence, private place of work or any duly designated smoking area is hereby prohibited under this Act. This provision shall be implemented by the LGUs.

Section 25. Pollution from Other Mobile Sources: - The Department, in coordination with appropriate agencies, shall formulate and establish the necessary standards for all mobile sources other than those referred to in Section 21 of this Act. The imposition of the appropriate fines and penalties from these sources for any violation of emission standards shall be under the jurisdiction of the DOTC.

Chapter 3

Fuels, Additives, Substances And Pollutants

Article 1

Fuels, Additives And Substances

Section 26. Fuels and Additives. - Pursuant to the Air Quality Framework to be established under Section 7 of this Act, this Department of Energy (DOE), co-chaired by the Department of Environment and Natural Resources (DENR), in consultation with the Bureau of Product Standards (BPS) of the DTI, the DOST, the representatives of the fuel and automotive industries, academe and the consumers shall set specifications for all types of fuel and fuel-related products, to improve fuel composition for increased efficiency and reduced emissions: Provided, however, That the specifications for all types of fuel and fuel-related products set-forth pursuant to this section shall be adopted by the BPS as Philippine National Standards (PNS).

The DOE, shall also specify the allowable content of additives in all types of fuels and fuel-related products. Such standards shall be based primarily on threshold levels of health and research studies. On the basis of such specifications, the DOE shall likewise limit the content or begin the phase-out of additives in all types of fuels and fuel-related products as it may deem necessary. Other agencies involved in the performance of this function shall be required to coordinate with the DOE and transfer all documents and information necessary for the implementation of this provision.

Consistent with the provisions of the preceding paragraphs under this section, it is declared that:

- a) not later than eighteen (18) months after the effectivity of this Act, no person shall manufacture, import, sell, supply, offer for sale, dispense, transport or introduce into commerce unleaded premium gasoline fuel which has an anti-knock index (AKI) of not less than 87.5 and Reid vapor pressure of not more than 9 psi. Within six (6) months after the effectivity of this Act, unleaded gasoline fuel shall contain aromatics not to exceed forty-five percent (45%) by volume and benzene not to exceed four percent (4%) by volume: Provided, That by year 2003, unleaded gasoline fuel should contain aromatics not to exceed thirty-five percent (35%) by volume and benzene not to exceed two percent (2%) by volume;
- b) not later than eighteen (18) months after the effectivity of this Act, no person shall manufacture, import, sell, supply, offer for sale, dispense, transport or introduce into commerce automotive diesel fuel which contains a concentration of sulfur in excess of 0.20% by weight with a cetane number or index of not less than forty-eight (48): Provided, That by year 2004, content of said sulfur shall be 0.05% by weight, and

- c) not later than eighteen (18) months after the effectivity of this Act, no person shall manufacture, import, sell, supply, offer for sale, dispense, transport or introduce into commerce industrial diesel fuel which contains a concentration of sulfur in excess of 0.30% (by weight).

Every two (2) years thereafter or as the need arises, the specifications of unleaded gasoline and of automotive and industrial diesel fuels shall be reviewed and revised for further improvement in formulation and in accordance with the provisions of this Act.

The fuels characterized above shall be commercially available. Likewise, the same shall be the reference fuels for emission and testing procedures to be established in accordance with the provisions of this Act.

Any proposed additive shall not in any way increase emissions of any of the regulated gases which shall include, but not limited to carbon monoxide, hydrocarbons, and oxides of nitrogen and particulate matter, in order to be approved and certified by the Department.

Section 27. Regulation of Fuels and Fuel Additives. - The DOE, in coordination with the Department and the BPS, shall regulate the use of any fuel or fuel additive. No manufacturer, processor or trader of any fuel or additive may import, sell, offer for sale, or introduce into commerce such fuel or additive unless the same has been registered with the DOE. Prior to registration, the manufacturer, processor or trader shall provide the DOE with the following relevant information:

- a) Product identity and composition to determine the potential health effects of such fuels and additives;
- b) Description of the analytical technique that can be used to detect and measure the additive in any fuel;
- c) Recommended range of concentration; and
- d) Purpose in the use of the fuel and additive.

Section 28. Misfuelling. - In order to prevent the disabling of any emission control device by lead contamination, no person shall introduce or cause or allow the introduction of leaded gasoline into any motor vehicle equipped with a gasoline tank filler inlet and labeled "unleaded gasoline only". This prohibition shall also apply to any person who knows or should know that such vehicle is designed solely for the use of unleaded gasoline.

Section 29. Prohibition on Manufacture, Import and Sale of Leaded Gasoline and of Engines and/or Components Requiring Leaded Gasoline. - Effective not later than eighteen (18) months after the enactment of this Act, no person shall manufacture, import, sell, offer for sale, introduce into commerce, convey or otherwise dispose of, in any manner leaded gasoline and engines and components requiring the use of leaded gasoline.

For existing vehicles, the DTI shall formulate standards and procedures that will allow non-conforming engines to comply with the use of unleaded fuel within five (5) years after the effectivity of this Act.

Article 2

Other Pollutants

Section 30. Ozone-Depleting Substances. - Consistent with the terms and conditions of the Montreal Protocol on Substances that Deplete the Ozone Layer and other international agreements and protocols to which the Philippine is a signatory, the Department shall phase out ozone-depleting substances.

Within sixty (60) days after the enactment of this Act, the Department shall publish a list of substances which are known to cause harmful effects on the stratospheric ozone layer.

Section 31. Greenhouse Gases. - The Philippine Atmospheric, Geophysical and Astronomical Service Administration (PAGASA) shall regularly monitor meteorological factors affecting environmental conditions including ozone depletion and greenhouse gases and coordinate with the Department in order to effectively guide air pollution monitoring and standard-setting activities.

The Department, together with concerned agencies and local government units, shall prepare and fully implement a national plan consistent with the United Nations Framework Convention on Climate Change and other international agreements, conventions and protocols on the reduction of greenhouse gas emissions in the country.

Section 32. Persistent Organic Pollutants. - The Department shall, within a period of two (2) years after the enactment of this Act, establish an inventory list of all sources of Persistent Organic Pollutants (POPs) in the country. The Department shall develop short-term and long-term national government programs on the reduction and elimination of POPs such as dioxins and furans. Such programs shall be formulated within a year after the establishment of the inventory list.

Section 33. Radioactive Emissions. - All projects which will involve the use of atomic and/or nuclear energy, and will entail release and emission of radioactive substances into the environment, incident to the establishment or possession of nuclear energy facilities and radioactive materials, handling, transport, production, storage, and use of radioactive materials, shall be regulated in the interest of public health and welfare by the Philippine Nuclear Research Institute (PNRI), in coordination with the Department and other appropriate government agencies.

Chapter 4

Institutional Mechanism

Section 34. Lead Agency. - The Department, unless otherwise provided herein, shall be the primary government agency responsible for the implementation and enforcement of this Act. To be more effective in this regard, the Department's Environmental Management Bureau (EMB) shall be converted from a staff bureau to a line bureau for a period of no more than two (2) years, unless a separate, comprehensive environmental management agency is created.

Section 35. Linkage Mechanism. - The Department shall consult, participate, cooperate and enter into agreement with other government agencies, or with affected non-governmental organizations (NGOs) or people's organizations (POs), or private enterprises in the furtherance of the objectives of this Act.

Section 36. Role of Local Government Units. - Local government units (LGUs) shall share the responsibility in the management and maintenance of air quality within their territorial jurisdiction. Consistent with Sections 7, 8 and 9 of this Act, LGUs shall implement air quality standards set by the Board in areas within their jurisdiction; Provided, however, That in case where the Board has not been duly constituted and has not promulgated its standards, the standards set forth in this Act shall apply.

The Department shall provide the LGUs with technical assistance, trainings and a continuing capability-building program to prepare them to undertake full administration of the air quality management and regulation within their territorial jurisdiction.

Section 37. Environment and Natural Resources Office. - There may be established an Environment and Natural Resources Office in every province, city, or municipality which shall be headed by the environment and natural resources officer and shall be appointed by the Chief Executive of every province, city or municipality in accordance with the provisions of Section 484 of Republic Act No. 7160. Its powers and duties, among others, are:

- a) To prepare comprehensive air quality management programs, plans and strategies within the limits set forth in Republic Act No. 7160 and this Act which shall be implemented within its territorial jurisdiction upon the approval of the sanggunian;
- b) To provide technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and the provision of adequate facilities relative to air quality;
- c) To take the lead in all efforts concerning air quality protection and rehabilitation;
- d) To recommend to the Board air quality standards which shall not exceed the maximum permissible standards set by national laws;

- e) To coordinate with other government agencies and non-governmental organizations in the implementation of measures to prevent and control air pollution; and
- f) Exercise such other powers and perform such duties and functions as may be prescribed by law or ordinance; Provided, however, That in provinces/cities/municipalities where there are no environment and natural resources officers, the local executive concerned may designate any of his official and/ or chief of office preferably the provincial, city or municipal agriculturist, or any of his employee; Provided, finally, That in case an employee is designated as such, he must have a sufficient experience in environmental and natural resources management, conservation and utilization.

Section 38. Record-keeping, Inspection, Monitoring and Entry by the Department. -

The Department or its duly accredited entity shall, after proper consultation and notice, require any person who owns or operates any emission source or who is subject to any requirement of this Act to: (a) establish and maintain relevant records; (b) make relevant reports; (c) install, use and maintain monitoring equipment or methods; (d) sample emission, in accordance with the methods, locations, intervals, and manner prescribed by the Department; (e) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical; and (f) provide such other information as the Department may reasonably require.

Pursuant to this Act, the Department, through its authorized representatives, shall have the right of: a) entry or access to any premises including documents and relevant materials as referred to in the herein preceding paragraphs; b) inspect any pollution or waste source, control device, monitoring equipment or method required; and c) test any emission.

Any record, report or information obtained under this section shall be made available to the public, except upon a satisfactory showing to the Department by the entity concerned that the record, report, or information, or parts thereof, if made public, would divulge secret methods or processes entitled to protection as intellectual property. Such record, report or information shall likewise be incorporated in the Department's industrial rating system.

Section 39. Public Education and Information Campaign. - A continuing air quality information and education campaign shall be promoted by the Department, the Department of Education, Culture and Sports (DECS), the Department of the Interior and Local Government (DILG), the Department of Agriculture (DA) and the Philippine Information Agency (PIA). Consistent with Section 7 of this Act, such campaign shall encourage the participation of other government agencies and the private sector including NGOs, POs, the academe, environmental groups and other private entities in a multi-sectoral information campaign.

Chapter 5

Actions

Section 40. Administrative Action. - Without prejudice to the right of any affected person to file an administrative action, the Department shall, on its own instance or upon verified complaint by any person, institute administrative proceedings against any person who violates:

- a) Standards or limitation provided under this Act; or
- b) Any order, rule or regulation issued by the Department with respect to such standard or limitation.

Section 41. Citizen Suits. - For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

- a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act, and/or
- c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall, likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days, the court shall make a determination if the complaint herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

Section 42. Independence of Action. - The filing of an administrative suit against such person/entity does not preclude the right of any other person to file any criminal or civil action. Such civil action shall proceed independently.

Section 43. Suits and Strategic Legal Actions Against Public Participation and the Enforcement of this Act. - Where a suit is brought against a person who filed an action as provided in Section 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

Section 44. Lien Upon Personal and Immovable Properties of Violators. - Fines and penalties imposed pursuant to this Act shall be liens upon personal and immovable properties of the violator. Such lien shall, in case of insolvency of the respondent violator, enjoy preference subsequent to laborer's wages under Articles 2241 and 2242 of Republic Act No. 386, otherwise known as the New Civil Code of the Philippines.

Chapter 6

Fines And Penalties

Section 45. Violation of Standards for Stationary Sources. - For actual exceedance of any pollution or air quality standards under this Act or its rules and regulations, the Department, through the Pollution Adjudication Board (PAB), shall impose a fine of not more than One hundred thousand pesos (Php100,000.00) for every day of violation against the owner or operator of a stationary source until such time that the standards have been complied with.

For purposes of the application of the fines, the PAB shall prepare a fine rating system to adjust the maximum fine based on the violator's ability to pay, degree of willfulness, degree of negligence, history of noncompliance and degree of recalcitrance: Provided, That in case of negligence, the first time offender's ability to pay may likewise be considered by the Pollution Adjudication Board: Provided, further, That in the absence of any extenuating or aggravating circumstances, the amount of fine for negligence shall be equivalent to one-half of the fine for willful violation.

The fines herein prescribed shall be increased by at least ten percent (10%) every three (3) years to compensate for inflation and to maintain the deterrent function of such fines.

In addition to the fines, the PAB shall order the closure, suspension of development, construction, or operations of the stationary sources until such time that proper environmental safeguards are put in place: Provided, That an establishment found liable for a third offense

shall suffer permanent closure immediately. This paragraph shall be without prejudice to the immediate issuance of an ex parte order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case upon prima facie evidence that there is imminent threat to life, public health, safety or general welfare, or to plant or animal life, or whenever there is an exceedance of the emission standards set by the Department and/or the Board and/or the appropriate LGU.

Section 46. Violation of Standards for Motor Vehicles. - No motor vehicle shall be registered with the DOTC unless it meets the emission standards set by the Department as provided in Section 21 hereof.

Any vehicle suspected of violation of emission standards through visual signs, such as, but not limited to smoke-belching, shall be subjected to an emission test by a duly authorized testing center for this purpose, the DOTC or its authorized testing center shall establish a roadside inspection system. Should it be shown that there was no violation of emission standards, the vehicle shall be immediately released. Otherwise, a testing result indicating an exceedance of the emission standards would warrant the continuing custody of the impounded vehicle unless the appropriate penalties are fully paid, and the license plate is surrendered to the DOTC pending the fulfillment of the undertaking by the owner/operator of the motor vehicle to make the necessary repairs so as to comply with the standards. A pass shall herein be issued by the DOTC to authorize the use of the motor vehicle within a specified period that shall not exceed seven (7) days for the sole purpose of making the necessary repairs on the said vehicle. The owner/operator of the vehicle shall be required to correct its defects and show proof of compliance to the appropriate pollution control office before the vehicle can be allowed to be driven on any public or subdivision roads.

In addition, the driver and operator of the apprehended vehicle shall undergo a seminar on pollution control and management conducted by the DOTC and shall also suffer the following penalties:

- | | | |
|-------------------|---|---|
| a) First offense | - | a fine not to exceed Two thousand pesos (Php2,000.00); |
| b) Second offense | - | a fine not less than Two thousand pesos (Php2,000.0) and not to exceed Four thousand pesos (Php4,000.00); and |
| c) Third offense | - | one (1) year suspension of the Motor Vehicle Registration (MVR) and a fine of not less than Four thousand pesos (Php4,000.00) and not more than Six thousand pesos (Php6,000.00). |

Any violation of the provisions of Section 21 paragraph (d) with regard to national inspection and maintenance program, including technicians and facility compliance shall be penalized with a fine of not less than Thirty thousand pesos (Php30,000.00) or cancellation of license of both the technician and the center, or both, as determined by the DTI.

All law enforcement officials and deputized agents accredited to conduct vehicle emissions testing and apprehensions shall undergo a mandatory training on emission standards and regulations. For this purpose, the Department, together with the DOTC, DTI, DOST, Philippine National Police (PNP) and other concerned agencies and private entities shall design a training program.

Section 47. Fines and Penalties for Violations of Other Provisions in the Act. - For violations of all other provisions provided in this Act and of the rules and regulations thereof, a fine of not less than Ten thousand pesos (Php10,000.00) but not more than One hundred thousand pesos (Php100,000.00) or six (6) months to six (6) years imprisonment or both shall be imposed. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

Section 48. Gross Violations. - In case of gross violation of this Act or its implementing rules and regulations, the PAB shall recommend to the proper government agencies to file the appropriate criminal charges against the violators. The PAB shall assist the public prosecutor in the litigation of the case. Gross violation shall mean (a) three (3) or more specific offenses within a period of (1) year, (b) three (3) or more specific offenses within three (3) consecutive years; (c) blatant disregard of the orders of the PAB, such as but not limited to the breaking of seal, padlocks and other similar devices, or operating despite the existence of an order for closure, discontinuance or cessation of operation; and (d) irreparable or grave damage to the environment as a consequence of any violation or omission of the provisions of this Act.

Offenders shall be punished with imprisonment of not less than six (6) years but not more than ten (10) years at the discretion of the court. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

Chapter 7

Final Provisions

Section 49. Potential Loss or Shifts of Employment. - The Secretary of Labor is hereby authorized to establish a compensation, retraining and relocation program to assist workers laid off due to a company's compliance with the provisions of this Act.

Section 50. Appropriations. - An amount of Seven hundred fifty million pesos (Php750,000,000.00) shall be appropriated for the initial implementation of this Act, of which, the amount of Three hundred million pesos (Php300,000,000.00) shall be appropriated to the Department; Two hundred million pesos (Php200,000,000.00) to the DTI; One hundred fifty million pesos (Php150,000,000.00) to the DOTC; and, One hundred million pesos (Php100,000,000.00) to the DOE.

Thereafter, the amount necessary to effectively carry out the provisions of this Act shall be included in the General Appropriations Act.

Section 51. Implementing Rules and Regulations. - The Department in coordination with the Committees on Environment and Ecology of the Senate and House of Representatives, respectively and other concerned agencies, shall promulgate the implementing rules and regulations for this Act, within one (1) year after the enactment of this Act. Provided, That rules and regulations issued by other government agencies and instrumentalities for the prevention and/or abatement of pollution not inconsistent with this Act shall supplement the rules and regulations issued by the Department, pursuant to the provisions of this Act.

The draft of the implementing rules and regulations shall be published and be the subject of public consultations with affected sectors.

There shall be a mandatory review of the implementing rules and regulations and standards set pursuant to the provisions of this Act.

Section 52. Report to Congress. - The Department shall report to Congress, not later than March 30 of every year following the approval of this Act, the progress of the pollution control efforts and make the necessary recommendations in areas where there is need for legislative action.

Section 53. Joint Congressional Oversight Committee. - There is hereby created a joint congressional oversight committee to monitor the implementation of this Act. The committee shall be composed of five (5) senators and five (5) representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The oversight committee shall be co-chaired by a senator and a representative designated by the Senate President and the Speaker of the House of Representatives, respectively.

The mandate given to the joint congressional oversight committee under this Act shall be without prejudice to the performance of the duties and functions by the respective existing oversight committees of the Senate and the House of Representatives.

Section 54. Separability of Provisions. - If any provision of this Act or the application of such provision to any person or circumstances is declared unconstitutional, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

Section 55. Repealing Clause. - Presidential Decree No. 1181 is hereby repealed. Presidential Decree Nos. 1152, 1586, Presidential Decree No. 984 are partly modified. All other laws, orders, issuance, rules and regulations inconsistent herewith are hereby repealed or modified accordingly.

Section 56. Effectivity. - This Act shall take effect fifteen (15) days from the date of its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,

(Sgd) MANUEL B. VILLAR, JR.
Speaker of the House
of Representatives

(Sgd) MARCELO B. FERNAN
President of Senate

This Act, which is a consolidation of Senate Bill No. 1255 and House Bill No. 6216 was finally passed by the Senate and the House of Representatives on May 13, 1999 and May 10, 1999, respectively.

(Sgd) ROBERTO P. NAZARENO.
Secretary General
House of Representatives

(Sgd) HEZEL P. GACUTAN
Secretary of the Senate

Approved: 23 June 1999

(Sgd) JOSEPH EJERCITO ESTRADA
President of the Philippines

IRR of RA 8749

IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 8749

PHILIPPINE CLEAN AIR ACT OF 1999

Pursuant to the provisions of Section 51 of Republic Act No. 8749, otherwise known as the "Philippine Clean Air Act of 1999," and by virtue of Executive Order No. 192, Series of 1987, the Department of Environment and Natural Resources hereby adopts and promulgates the following rules and regulations:

PART I GENERAL PROVISIONS

RULE I PRELIMINARY PROVISIONS

Section 1. Title. - These Rules shall be known and cited as the "Implementing Rules and Regulations of the Philippine Clean Air Act of 1999."

Section 2. Purpose. - The purpose of these Rules is to provide guidelines on the operationalization of the Philippine Clean Air Act of 1999.

Section 3. Scope. - These Rules shall lay down the powers and functions of the Department of Environment and Natural Resources, the Department of Transportation and Communication, the Department of Trade and Industry, the Department of Energy and all other concerned agencies, the rights and obligations of stakeholders and the rights and duties of the people with respect to the Air Quality Management and Control Program.

Section 4. Construction. - These Implementing Rules and Regulations shall be liberally construed to carry out the national policy of balancing development and environmental protection through the pursuance of the framework of sustainable development. Sustainable development shall refer to development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

RULE II DECLARATION OF STATE POLICY

Section 1. Declaration of Policy. - It is the policy of the State to protect and advance the right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

It is also the policy of the State to attain and maintain a balance between development and environmental protection.

Finally, it is the policy of the State to maintain a quality of air that protects human health and welfare.

RULE III

AIR QUALITY PRINCIPLES

Section 1. Air Quality Principles. -

- a. The State shall promote and protect the global environment to attain sustainable development while recognizing the primary responsibility of local government units to deal with environmental problems.
- b. The State recognizes that the responsibility of cleaning the habitat and environment is primarily area-based and that air quality management and control is most effective at the level of airsheds.
- c. The State recognizes the principle that "polluters must pay" and the important role of economic instruments in air quality management and control.
- d. The State recognizes that a clean and healthy environment is for the good of all and should therefore be a concern of all.

RULE IV

AIR QUALITY POLICIES

Section 1. Air Quality Policies. - It is the policy of the State to:

- a. Formulate a comprehensive national program of air pollution management that shall be implemented by the government through proper delegation and effective coordination of functions and activities;
- b. Encourage cooperation and self-regulation among citizens and industries through the application of market-based instruments;
- c. Focus primarily on pollution prevention rather than on control and provide for a comprehensive management program for air pollution;
- d. Promote public information and education and to encourage the participation of an informed and active public in air quality planning and monitoring; and
- e. Formulate and enforce a system of accountability for short and long-term adverse

environmental impact of a project, program or activity. This shall include the setting up of a funding or guarantee mechanism for clean-up and environmental rehabilitation and compensation for personal damages.

RULE V RIGHTS

Section 1. Recognition of Rights. - Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:

- a. The right to breathe clean air;
- b. The right to utilize and enjoy all natural resources according to the principles of sustainable development;
- c. The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
- d. The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health;
- e. The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;
- f. The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act;
- g. The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and
- h. The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

RULE VI DEFINITION OF TERMS

Section 1. Definitions. - The following terms as used in these Implementing Rules and Regulations

shall be defined as follows:

"Act" refers to Republic Act No. 8749, otherwise known as the "Philippine Clean Air Act of 1999";

"Air pollutant" means any matter found in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, and the inert gases all in their natural or normal concentrations, that is detrimental to health or the environment, which includes but not limited to smoke, dust, soot, cinder, fly ash, solid particles of any kind, gases, fumes, chemical mists, contaminated steam and radioactive substances;

"Air pollution" means any alteration of the physical, chemical and biological properties of the atmosphere, or any discharge thereto of any liquid, gaseous or solid substances that will or is likely to create or to render the air resources of the country harmful, detrimental, or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes;

"Air quality performance rating" refers to a rating system to be developed by the Department through the Bureau. The air quality performance ratings will be grouped by industry, and will compare emissions data for industrial sources to the relevant National Ambient Air Quality Standards and the relevant National Emissions Standards for Source Specific Air Pollutants.

"Airshed" refers to areas with common weather or meteorological conditions and sources of air pollution which affect the interchange and diffusion of pollution in the surrounding atmosphere. "Ambient air quality" refers to the atmosphere's average purity in a broad area as distinguished from discharge measurements taken at the source of pollution or the present characteristic or nature of the surrounding atmosphere;

"Ambient air quality guideline values" refers to the concentration of air over specified periods classified as short-term and/or long-term which are intended to serve as goals or objectives for the protection of health and/or public welfare. These values shall be used for air quality management purposes such as determining time trends, evaluating stages of deterioration or enhancement of the air quality. In general, used as a basis for taking positive action in preventing, controlling, or abating health impacts from air pollution;

"Ambient air quality standard" means the concentration of an air pollutant which, in order to protect public health and/or public welfare, shall not be exceeded in the breathing zone, at any time. Standards are enforceable and must be complied with by the owner or person in-charge of an industrial operation, process or trade;

"Authority to Construct" refers to the legal authorization granted by the Bureau to install a new source or modify an existing source.

"Best Available Control Technology" refers to approaches, techniques or equipment which when used, result in lower air emissions but in a cost-effective manner. BACT results in lower emission

rates than those specified in the National Emission Standards for Source Specific Air Pollutants

"Bio-medical waste" refers to pathological wastes, pharmaceutical wastes, chemical wastes and sharps defined as follows:

"Pathological wastes" include all human tissue (whether infected or not) such as limbs, organs, fetuses and body fluid; animal carcasses and tissue from laboratories, together with all related swabs and dressings;

"Pharmaceutical wastes" include pharmaceutical products; drugs and chemicals that have been returned from wards; have been spilled or soiled; are expired or contaminated; or are to be discarded on any reason;

"Chemical wastes" include discarded solid, liquid or gaseous chemicals from housekeeping and disinfecting procedures;

"Bureau" or "EMB" refers to the Central Office of the Environmental Management Bureau and its Regional Offices under the Department;

"Cease and Desist Order" refers to the ex parte Order directing the discontinuance of the operation resulting in the emission or discharge of pollutants exceeding the emission standards or whenever such emission or discharge constitutes imminent threat to human, animal or plant life, public health or public safety. Non-compliance with an undertaking or agreement submitted to the Department shall likewise be a ground for issuance of a CDO;

"Certificate of Conformity" refers to the certificate issued by the Department to a vehicle manufacturer/assembler or importer certifying that a particular new vehicle or vehicle type meets the requirements provided under this Act and its Implementing Rules and Regulations;

"Completely Built-up Unit (CBU)" refers to vehicles imported into the country either brand new or used and ready for operation;

"Compliance Plan" refers to a plan submitted to the Bureau for approval which details how an existing stationary air emissions source will be brought into compliance. The owner of the facility must submit the plan within two months of notification of non-compliance by the Bureau. The plan must include a schedule that will be enforceable.

"Compression Ignition Engine" means an internal combustion engine in which atomized fuel temperature is raised through compression, resulting in ignition, e.g., diesel engines;

"Completely Knocked-Down" (CKD) refers to new parts and components and/or engines that are imported in disassembled condition for purposes of assembly. It may include not only parts and components but also sub-assemblies and assemblies, e.g., engines, transmissions, axle assemblies, chassis and body assemblies;

"Continuous Emission Monitoring System" means the total equipment, required under these

Implementing Rules and Regulations or as directed by the Bureau, used to sample and condition (if applicable), analyze, and provide a permanent record of emissions or process parameters. Such record shall be the basis of the firm's compliance with the emission standards. Further, it may be an approved monitoring system for continuously measuring the emission of a pollutant from an affected source or facility and as such, may be used in computing annual emission fees;

"Criteria Pollutants" are air pollutants for which National Ambient Air Quality Guideline Values have been established;

"Department" refers to the Department of Environment and Natural Resources;

"Detoxification process" refers to the process of diminishing or removing the poisonous quality of any substance using chelating agents to prevent or reverse toxicity particularly for those substances (e.g., heavy metals) that are cumulative or persistent in the body;

"Director" means the Director of the Bureau;

"Eco-profile" shall refer to the geographic-based instrument for planners and decision-makers which presents an evaluation of the environmental quality and carrying capacity of an area. It is the result of the integration of various primary and secondary data and information on natural resources and anthropogenic activities on the land which are evaluated by various environmental risk assessment and forecasting methodologies. This will enable the Department to anticipate the type of development control that is necessary in the planning area;

"Emission" means any measurable air contaminant, pollutant, gas stream or unwanted sound from a known source which is passed into the atmosphere;

"Emission averaging" is a technique whereby a facility having more than one source of a given pollutant may, under certain circumstances and with EMB approval, reduce emissions from one or more sources sufficiently so that the average of all the facility's source emissions is equal to or below the applicable standard for a particular pollutant. Emission averaging is computed on an annual potential ton per year basis.

"Emission Charge" refers to a fee corresponding to the quality, quantity, volume and toxicity of emissions from an industrial or mobile source;

"Emission Credits" are generated by sources that reduce their annual mass emissions below the equivalent minimum regulatory level by either installing and operating pollution control devices or by using other Bureau approved methods. The equivalent minimum regulatory level is based upon the lowest annual emissions in tons that results when the source operates at its permitted emission rate for its typical annual operating hours. Sources that are subject to different allowable emission rates, such as National Emission Standards and Ambient Air Quality Standards, must estimate the minimum regulatory level on the standard that provides the lowest annual allowable tonnage. An emission credit is equal to one ton of an air pollutant;

"Emission factor" refers to a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. Emission factors may be used to calculate emission fees, as indicated in Rule VI, Section V. These factors are usually expressed as the weight of pollutant divided by a unit weight, volume, distance, or duration of the activity emitting the pollutant (e. g., kilograms of particulate emitted per megagram of coal burned). Such factors facilitate estimation of emissions from various sources of air pollution. In most cases, these factors are simply averages of all available data of acceptable quality. The general equation for emission estimation is: $E = A \times EF \times (1 - ER/100)$ where: E = emissions; A = activity rate; EF = emission factor; and ER = overall emission reduction efficiency, %. ER is further defined as the product of the control device destruction or removal efficiency and the capture efficiency of the control system. When estimating emissions for a long time period (e. g., one year), both the device and the capture efficiency terms should account for upset periods as well as routine operations.

"Emissions Trading" refers to a market-based approach to air pollution control which allows for transferring emission credits between different facilities for use as a form of regulatory compliance;

"Episode" means a series of short-term air pollution events that significantly alter the ambient air quality of an affected area;

"Equivalent Method" refers to any technique or procedure for sampling and/or analyzing an air pollutant which has been approved by the Bureau and demonstrated to have a consistent and quantitatively known relationship with the designated standard method;

"Existing Source" means any source already erected, installed, and in operation; or any source for which construction has been offered for bidding or actual construction has commenced prior to the date of effectivity of these Implementing Rules and Regulations. Any existing source which in the opinion of the Department has undergone a modification after the date of adoption of an applicable rule and regulation, shall be reclassified and considered a new source;

"Governing Board" refers to a multi-sectoral body created under Section 9 of the Act to effectively carry out and implement the air quality action plan of an airshed;

"Greenhouse gases" refers to those gases such as carbon dioxide, methane, and oxides of nitrogen, chloroflouro-carbons, and the others that can potentially or can reasonably be expected to induce global warming;

"Gross Vehicle Mass or Weight" means the gross vehicle mass or weight as declared by the vehicle manufacturer;

"Guideline" means an official recommendation or guidance on the protection of human beings or receptors in the environment from the adverse effects of air pollutants;

"Hazardous substances" refers to those substances which present either: (1) short-term acute hazards such as acute toxicity by ingestion, inhalation, or skin absorption, corrosivity or other

skin or eye contact hazard or the risk of fire explosion; or (2) long-term toxicity upon repeated exposure, including carcinogenicity (which in some cases may result in acute exposure but with a long latent period), resistance to the detoxification process, or the potential to pollute underground or surface waters;

"Imported Used/Second-Hand Vehicle" means any used or second-hand motor vehicle imported and registered in the country of origin;

"Incinerator" refers to a facility, equipment, furnace or other similar structure which burns municipal, bio-medical or hazardous wastes, which process emits toxic and poisonous fumes;

"Infectious waste" refers to soiled surgical dressings, swabs and other contaminated waste from treatment areas; materials which have been in contact with persons or animals suffering from infectious diseases; cultures and stocks of infectious agents from laboratory work; dialysis equipment; apparatus and disposable gowns, aprons, gloves, towels, etc; waste from dialysis treatment area; waste from patients in isolation wards; all materials which may contain pathogens in sufficient concentration or quality that exposure to could result in disease;

"Installation" means any structure, equipment, facility or appurtenances thereto, operation of which may be a source of pollution or a means to control the same;

"In-Use Vehicle" means a motor vehicle duly registered with the LTO;

"Light Duty Vehicles" are motor vehicles whose gross vehicle weight is equal to or less than 3,500 kgs. This also refers to *"Light Commercial Vehicles;"*

"Lowest Achievable Emission Rate" refers to any technology or combination of technology and process controls that results in the lowest possible emissions of a given air pollutant. Cost is not a consideration in determining applicable LAER for a given source; however, technical feasibility is. The technology must be reasonably demonstrated to be appropriate and reliable for each application;

"Mandatory Inspection" refers to the interval between testing and the tests performed, as partial pre-condition for the renewal of registration of in-use motor vehicles;

"Manufacturer or Assembler" means any entity or person who manufactures or assembles motor vehicles, for eventual use in the Philippines;

"Medical waste" means any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals;

"Medium/Heavy Duty Vehicles" refers to motor vehicles whose gross vehicle weight is greater than 3,500 kgs;

"Mobile source" means any vehicle/machine propelled by or through oxidation or reduction reactions, including combustion of carbon-based or other fuel, constructed and operated principally for the conveyance of persons or the transportation of property or goods, that emit air pollutants as a reaction product;

"Modification" means any physical change or alteration in the method of operation of an existing source which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that source, or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously permitted. The following are exempted from the said definition:

Routine maintenance, repair and replacement shall not be considered physical changes if not intended to extend the useful life beyond the equipment manufacturer's design;

An increase in the production rate providing the facility is permitted to operate at the increased level and that such increase does not exceed the designed capacity of the existing source; and
An increase in hours of operation provided that the facility is permitted to operate for the increase in hours.

"Motorcycle" refers to any two-wheeled motor vehicle with at least one headlight, taillight and stoplight, and one or more saddle seats. For purposes of these rules, motorcycles shall include motorcycles with attached cars also known as "tricycles".

"Motor Vehicle" means any vehicle propelled by a gasoline or diesel engine or by any means other than human or animal power constructed and operated principally for the conveyance of persons or the transportation of goods;

"Motor Vehicle Registration" refers to the official recording of a motor vehicle by the Land Transportation Office (LTO) subject to the conformance of the vehicle to the safety and emission standards provided under Section 21 of the Act, including the pre-evaluation of the documents/requirements pursuant to Section 5 of Republic Act 4136, as amended, otherwise known as the Land Transportation Code;

"Municipal waste" refers to the waste materials generated from communities within a specific locality;

"National Ambient Air Quality Guideline Values" are limits on criteria air pollutant concentrations published by the Department, intended to be protective of public health, safety, and general welfare.

"National Motor Vehicle Inspection and Maintenance Program" refers to the set of projects and other activities and efforts all designed to reduce the damaging impact of air pollution and unsafe vehicles on health and safety of the people, through adoption of standards for emission and vehicle safety, and a series of measures to ensure compliance with them;

"New Motor Vehicle" means a vehicle constructed entirely from new parts that has never been sold or registered with the DOTC or with the appropriate agency or authority, and operated on

the highways of the Philippines, any foreign state or country;

"New Source" means any plant, equipment, or installation in any trade, business or establishment which generates, emits or disposes air emissions into the atmosphere and constructed after the date of effectivity of these Implementing Rules and Regulations. This includes any existing stationary source transferred or moved to a different location or site for the purpose of installation, operation or use after such date;

"Normal Cubic Meter" (Ncm) means the volume of dry gas which occupies a cubic meter measured at twenty five degrees Celsius (25o) at an absolute pressure equivalent to seven hundred sixty (760) mm Hg;

"Octane Rating" or the "Anti-Knock Index" (AKI) means the rating of the anti-knock characteristics of a grade or type of automotive gasoline as determined by dividing by two (2) the sum of the Research Octane Number (RON), plus the Motor Octane Number (MON), the octane requirement, with respect to automotive gasoline for use in a motor vehicle or a class thereof, whether imported, manufactured, or assembled by a manufacturer, refers to the minimum octane rating or such automotive gasoline which such manufacturer recommends for the efficient operation of such motor vehicle, or substantial portion of such class, without knocking;

"Opacity" means the amount of light obscured by particle pollution in the atmosphere;

"Operator" means a person or entity that manages a transport business but not necessarily a vehicle owner;

"Owner" means the person or entity identified as the motor vehicle owner in the motor vehicle registration or by a valid deed of sale;

"Ozone Depleting Substances" (ODS) refers to those substances that significantly deplete or otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment such as, but not limited to, chlorofluorocarbons, halons, and the like;

"Particulate Matter" or "Suspended Particulates" means any material, other than uncombined water, which exists in a finely divided form as a liquid or solid;

"Permit" refers to the legal authorization to engage in or conduct any construction, operation, modification or expansion of any installation, operation or activity which will be reasonably be expected to be a source of pollution;

"Permit to Operate" refers to the legal authorization granted by the Bureau to operate or maintain any installation for a specified period of time;

"Permit Condition" refers to a statement or stipulation issued with a permit, compliance with which is necessary for continued validity of the permit;

"Persistent Organic Pollutants" (POPs) means organic compounds that persist in the environment, bio-accumulative through the food web, and pose a risk of causing adverse effects to human health and the environment. These compounds resist photolytic, chemical and biological degradation, and include but are not limited to dioxin, furan, Polychlorinated Biphenyls (PCBs), organochlorine pesticides, such as aldrin, dieldrin, DDT, hexachlorobenzene, lindane, toxaphene and chlordane;

"Poisonous and toxic fumes" means any emission and fumes which do not conform to internationally accepted standards, including but not limited to World Health Organization (WHO) guideline values;

"Pollution control device" refers to any device or apparatus that is used to prevent, control, or abate the pollution of air caused by emissions from identified sources at levels within the air pollution standards established by the Department;

"Pollution control technology" refers to pollution control devices, production processes, fuel combustion processes or other means that effectively prevent or reduce emissions or effluents;

"Potential to emit" refers to the annual mass emissions that would result from a source when operating 8,760 hours per year. Actual emissions are based on the actual hours of operation per year;

"Rebuilt Motor Vehicle" means a locally assembled vehicle using new or used engine, major parts or components

"Reference Mass or Weight" means the mass or weight of the vehicle in running order with a full fuel tank and including the set of tools and spare wheel, plus 100 kilograms but does not include the mass or weight of the passengers and driver;

"Regional Director" means the Regional Director of any Regional Office;

"Regional Office" means one of the Regional Offices of the Bureau;

"Ringelmann Chart" means the chart described in the U.S. Bureau of Mines, Information Circular No. 8333 and No. 7718, and used for measuring smoke opacity;

"Semi-Knocked Down (SKD)" refers to parts and components and/or engines that are imported in partially assembled condition for assembly purposes. This includes semi-assembled vehicles and cars without tires and batteries;

"Siga" means the traditional small scale method of burning of wastes resulting from cleaning the backyard such as fallen leaves, twigs, stems, and other similar matter from plants and trees in the backyard where the burning is done;

"Smoke Opacity Meter (or Opacimeter)" means an instrument which determines the smoke

opacity in exhaust gases emitted by the engine system.

"Spark-Ignition Engine" means an internal combustion engine in which the air/fuel mixture is ignited by a spark plug, e.g., a gasoline engine;

"Standard of performance" means a standard for emission of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, taking into account the cost of achieving such reduction and any non-air quality health and environment impact and energy requirement as determined by the Department through the Bureau;

"Stationary source" refers to any building or fixed structure, facility or installation that emits or may emit any air pollutant;

"Useful Life of Vehicles and Engines" refers to the period of time a vehicle and/or engine can be used, and meet standards of road worthiness and engine emissions;

"Vehicle Type" means a category of power-driven vehicles which do not differ in such essentials as reference mass or weight, engine type, number of cylinders, body configuration, manner of transmission, fuel used and similar characteristics.

PART II

NATIONAL AMBIENT AIR QUALITY GUIDELINES

RULE VII

NATIONAL AIR QUALITY

Section 1. National Ambient Air Quality Guideline Values

- (a) Pursuant to Section 12 of Republic Act 8749, the initial set of National Ambient Air Quality Guideline Values necessary to protect public health and safety and general welfare shall be as follows:

Table 1
National Ambient Air Quality Guideline Values

Pollutants	Short Term ^a			Long Term ^b		
	m g/Ncm	ppm	Averaging Time	m g/Ncm	ppm	Averaging Time
Suspended Particulate Matter ^c	230 ^d 150 ^f		24 hours 24 hours	90	90	1 year ^g 1 year ^g
TSP PM-10						
Sulfur Dioxide ^c	180	0.07	24 hours	80	0.03	1 year
Nitrogen Dioxide	1500.	08	24 hours			
Photochemical Oxidants as Ozone	140 60	0.07 0.03	1 hour 8 hours			
Carbon Monoxide	35 mg/Ncm	30 9	1 hour 8 hours			
Lead ^g	1.5 mg/Ncm	3 months ^g	1.0			1 year

^a Maximum limits represented by ninety-eight percentile (98%) values not to exceed more than once a year.

^b Arithmetic mean.

^c SO₂ and Suspended Particulate matter are sampled once every six days when using the manual methods. A minimum of twelve sampling days per quarter or forty-eight sampling days each year is required for these methods. Daily sampling may be done in the future once continuous analyzers are procured and become available.

^d Limits for Total Suspended Particulate Matter with mass median diameter less than 25-50 m m.

^e Annual Geometric Mean.

^f Provisional limits for Suspended Particulate Matter with mass median diameter less than 10 m m and below until sufficient monitoring data are gathered to base a proper guideline.

¶ Evaluation of this guideline is carried out for 24-hour averaging time and averaged over three moving calendar months. The monitored average value for any three months shall not exceed the guideline value.

(b) The applicable methods for sampling and measurement of the above pollutants are as follows:

TSP	-	High Volume - Gravimetric, USEPA 40 CFR, Part 50, Appendix B
PM-10	-	High Volume with 10 micron particle-size inlet; Gravimetric, USEPA 40 CFR, Part 50, Appendix J
Sulfur Dioxide	-	Gas Bubbler and Pararosaniline Method (West and Gaeke Method), or Flame Photometric Detector, USEPA 40CFR, Part 50, Appendix A
Nitrogen Dioxide	-	Gas Bubbler Griess-Saltzman, or Chemiluminescence Method, USEPA 40 CFR, Part 50, Appendix F
Ozone	-	Neutral Buffer Potassium Iodide (NBKI), or Chemiluminescence Method, USEPA 40 CFR, Part 50, Appendix D
Carbon Monoxide	-	Non-dispersive Infra-red Spectrophotometry (NDIR), USEPA 40 CFR, Part 50, Appendix C
Lead	-	High Volume and Atomic Absorption Spectrophotometry, USEPA 40 CFR, Part 50, Appendix G

(c) An analyzer based on the principles and methods cited above will be considered a reference method only if it has been designated as a reference method in accordance with 40 CFR, Part 53.

(d) Other equivalent methods approved by the Bureau may be adopted.

Section 2. Review of Air Quality Guideline Values. - The Department through the Bureau shall, on a routine basis, in coordination with other concerned agencies and programs such as the National Research and Development Program for the Prevention and Control of Air Pollution, review the list of Hazardous Air Pollutants and Guideline Values and recommend to the Secretary

of the Department the revision thereof whenever necessary to protect public health and safety, and general welfare, consistent with the requirements of Rule XVII, Section 3.

Section 3. Publication of Revised Values. - Upon approval by the Secretary, the revised Ambient Air Quality Guideline Values shall be published in one (1) newspaper of general circulation and shall be posted on a public Internet website.

Section 4. Air Quality Indices. - The Department through the Bureau, and in conjunction with the Department of Health (DOH) may formulate a pollution standard index of air quality to protect public health, safety and general welfare. Implementation and enforcement of corrective actions contained in the index will be at the local government unit (LGU) level. Annex A contains the air quality indices and recommended actions that each LGU may opt to follow.

PART III MAINTENANCE OF ATTAINMENT AREAS

RULE VIII ATTAINMENT AREAS - GENERAL

Section 1. Designation of Attainment Areas. - The Bureau shall delineate areas where the existing ambient air quality is at or below (that is, complies with) National Ambient Air Quality Guideline Values given in Part II, and shall designate such areas as "attainment areas." Designation of attainment areas will be based on monitoring data collected using the reference methods in Part II and/or other relevant information, including meteorological data, and data covering existing nearby sources. The Department through the Bureau will designate attainment and non-attainment areas, and will review and revise these designations from time to time as relevant data become available.

Section 2. Review of Area Designation. - The Bureau shall revise area designations as additional data, whether monitoring, source or general knowledge, become available. Results from reviews of area designations will be made available for public comment.

RULE IX EXISTING SOURCES IN ATTAINMENT AREAS

Section 1. Standards. - Existing sources must comply with National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

Section 2. Non-compliance. - Sources not in compliance with Section 1 above must submit a Compliance Plan to the Bureau for approval, which details how the source will be brought into compliance. The owner of the facility must submit the plan within two (2) months of notification

of non-compliance by the Bureau. The plan must include a schedule that will be enforceable and may provide for as long as eighteen (18) months to meet the applicable standards after notice of non-compliance by the Bureau. The Bureau may grant an extension of up to twelve (12) months for good-faith actions from the source owner.

Section 3. Emission Averaging and Emission Trading. - Compliance plans submitted under Section 2 above may include use of emission averaging and emission trading as approved by the Bureau and described in Rules XXI and XXII, respectively.

Section 4. Modification of Sources. - Any existing source in an attainment area making a change or modification to its process or production which results in an increase of POTENTIAL emissions equal to or greater than the following shall be considered significant and subject to Rule X for the affected pollutant(s).

Carbon Monoxide	100 tons per year
Nitrogen Oxides	40 tons per year
Sulfur Dioxide	40 tons per year
TSP	25 tons per year
PM10	15 tons per year
Volatile Organic Compounds	40 tons per year
Hydrogen Sulfide	10 tons per year

RULE X

NEW/MODIFIED SOURCES IN ATTAINMENT AREAS

Section 1. Standards. - New or modified sources must comply with National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

Section 2. Best Available Control Technology. - Sources subject to this Rule shall, in addition to meeting the requirements of Section 1 of this Rule, install and operate Best Available Control Technology for each regulated pollutant with the potential to be emitted in quantities equal to or greater than 100 tons per year. Selection of the appropriate control technology will be made in consultation and with the approval of the Bureau but in no case shall it result in non-compliance with requirements of Section 1. Installation of the control equipment will be at the time of source construction or modification.

Section 3. Increment Consumption. - No new source may be constructed or existing source modified if emissions from the proposed source or modification will, based on computer dispersion modeling, result in;

Exceedance of the National Ambient Air Quality Guideline Values; or .

An increase in existing ambient air levels above the levels shown below:

PM-10, annual arithmetic mean arithmetic mean	17 micrograms per cubic meter
PM-10, 24-hr maximum	30 micrograms per cubic meter
Sulfur Dioxide, annual arithmetic mean	20 micrograms per cubic meter
Sulfur Dioxide, 24-hr maximum	91 micrograms per cubic meter
Nitrogen Dioxide, annual arithmetic mean	25 micrograms per cubic meter

In the case of multiple point sources at a single facility, the net emissions from all affected sources shall be included in a single increment analysis.

Section 4. Emission Averaging and Emission Trading. - Sources subject to provision of this Rule shall not be eligible for emission averaging however they may generate emission credits for purposes of an acceptable emission trading program.

Section 5. Continuous Emission Monitoring. - New and modified sources shall install and operate, according to manufacturer specifications, continuous emission monitoring systems (CEMS) for each applicable pollutant listed in Section 4, Rule IX that the source has the POTENTIAL to emit in quantities equal to or greater than 100 tons per year. TSP and PM-10 fractions are not differentiated for purposes of this section; therefore, applicability will be determined by the total particulate matter expected to be emitted for new sources, or as collected by 40 CFR Part 60, Appendix A, Method 5 for modified sources. CEMS shall be applied as follows:

All sources subject to this section: Sources shall install and operate a CEMS for carbon dioxide and oxygen that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 3. Additionally, each source shall, as appropriate meet the following requirements;

- a. Particulate matter: Sources shall install and operate a CEMS for opacity that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 1. The owner shall have the additional requirement of establishing a calibration curve showing the relationship between opacity as measured by the CEMS and mass particulate emission rate as determined by Method 5. The calibration curve shall cover the full range of reasonably expected operating conditions and/or process rates of the source and shall consist of at least three data points, one at maximum permitted operations, one at maximum design capacity, and one at 80% of the

maximum permitted rate. The Bureau may waive one test point if the permitted rate and maximum design capacity rate are the same.

- b. Sulfur Dioxide and Nitrogen Oxides: Sources shall install and operate a CEMS for these parameters that meet criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 2.
- c. Carbon Monoxide: Sources shall install and operate a CEMS for this parameter that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 4 or 4A.
- d. Hydrogen Sulfide: Sources shall install and operate a CEMS for this parameter that meets criteria provided in USEPA 40 CFR Part 60 Appendix B, Performance Specification 7.

The CEMS requirements under this Section shall not apply to refinery flares, as well as to volatile organic compounds, unless a specific provision requires CEMS for volatile organic compounds is included in the facility's permit to operate.

PART IV MANAGEMENT OF NON-ATTAINMENT AREAS

RULE XI NON-ATTAINMENT AREAS - GENERAL

Section 1. Designation of Non-Attainment Areas. - The Bureau shall designate and delineate areas where the existing ambient air quality is not in conformance with National Ambient Air Quality Guideline values given in Part II as "non-attainment areas." Designation of non-attainment areas will be based on monitoring data collected using the reference methods in Part II or as may be reasonably expected from existing nearby sources and meteorological conditions. Special consideration will be given to populated areas where greater numbers of people may be exposed to unhealthy air. The Department through the Bureau will designate attainment and non-attainment areas, and will review and revise these designations from time to time as relevant data becomes available.

An area may be designated as non-attainment for one or more criteria pollutants, and may be an attainment area for the remaining criteria pollutants.

Section 2. Review of Area Designation. - The Bureau shall revise and/or confirm area designations as additional data, whether monitoring, sampling, source specific or general knowledge, becomes available. Results from reviews of area designations will be made available for public comment/review.

RULE XII

EXISTING SOURCES IN NON-ATTAINMENT AREAS

Section 1. Standards. - Existing sources must comply with all National Emission Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

Section 2. Non-compliance. - Sources not in compliance with Section 1 above must submit a Compliance Plan to the Bureau for approval which details how the source will be brought into compliance. The owner of the facility must submit the plan within two (2) months of notification of non-compliance by the Bureau. The plan must include a schedule that will be enforceable and may provide for as long as eighteen (18) months to meet the applicable standards after notice of non-compliance by the Bureau. Extensions or grace periods will not be allowed in non-attainment areas.

Should the source failed to comply with its commitment within the specified period in the compliance plan, the Bureau shall impose penalties and fines to be computed retroactive from the time the notification of non-compliance was served.

Section 3. Emission Averaging and Emission Trading. Existing sources located in non-attainment areas will be allowed to use emission averaging for compliance purposes however, they will not be allowed to participate in emission trading for the pollutant or pollutants for which the area is designated as a non-attainment area, except as a generator (not user) of emission reduction credits.

Section 4. Modification of Sources. - Any existing source located in a non-attainment area and making a change in process or production which increases POTENTIAL emissions from the source of the pollutant for which the area is designated non-attainment, shall be classified as modified and subject to Rule XIII. Equipment overhaul, refurbishment, or upgrade to extend the life of the equipment beyond its normal useful life is considered to be a modification if it result in the increase of POTENTIAL emissions for purposes of this Section.

Section 5. Emission Fee Surcharge. - Sources subject to the non-attainment provisions will be assessed a 50% surcharge (i.e., 150% of base) on the annual emission fees for the pollutant(s) for which the area is designated non-attainment.

Section 6. Penalty and Fine Surcharge. - Sources subject to the non-attainment provisions will be subject to a 100% surcharge (i.e., 200% of base) for any penalties or fines relating to a violation of the non-attainment provisions.

RULE XIII

NEW/MODIFIED SOURCES IN NON-ATTAINMENT AREAS

Section 1. Standards. - New or modified sources must comply with all National Emission

Standards for Source Specific Air Pollution and Ambient Air Quality Standards pertaining to the source.

Section 2. Lowest Achievable Emission Rate. - New and modified sources (as defined in Section 4 of Rule XII) shall install and operate air pollution control technology which will provide the lowest achievable emission rate (LAER) of the pollutant for which the area is designated non-attainment. The affected firm will propose technologies it believes will meet the intent of this regulation. The Bureau will approve the use of lowest achievable emission rate control technologies on a case-by-case basis.

Section 3. Emission Offsets. - New and modified sources must provide offsets in existing actual emission within the non-attainment area in a ratio of 1:1.2 to the POTENTIAL emission level of the proposed new or modified source. The offsets may be made from any existing source in the non-attainment area but must be actual, demonstrable, enforceable and permanent. The proposed offsets are subject to approval by the Bureau.

Section 4. Emission Averaging and Emission Trading. - New and modified sources subject to the non-attainment provisions may not use emission trading or emission averaging for compliance purposes.

Section 5. Continuous Emission Monitoring. - New and modified sources must install and operate, according to manufacturer specifications, continuous emission monitoring devices for each pollutant for which the area is in non-attainment and which the source emits. Application, installation and operation of the CEMS shall meet criteria provided in Rule X Section 5.

Section 6. Emission Fee, Penalty and Fine Surcharge. - Sections 5 and 6 of Rule XII above shall apply to new and modified sources in non-attainment areas.

PART V

AIR QUALITY MANAGEMENT SYSTEM

RULE XIV

AIR QUALITY MANAGEMENT INFORMATION SYSTEM

Section 1. Ambient Air Monitoring Network. - The Bureau shall, within two (2) years from the effectivity of these Rules, design and establish an Ambient Air Monitoring Network for the assessment of ambient air quality. The Ambient Air Monitoring Network shall be expanded gradually to cover the entire country.

Section 2. Emissions Inventory. - The Bureau shall, within three (3) years from the date of effectivity of these Rules, and every three (3) years thereafter, make an inventory of emissions from stationary, mobile and area sources. Where possible, the Bureau shall coordinate with the Governing Boards

Section 3. Air Quality Database. - The Bureau and the National Statistical Coordination Board shall design the Air Quality Database which shall be computerized and stored in a manner accessible to the public and shall contain data collected from the Ambient Air Monitoring Network and the Emissions Inventory. The Bureau shall maintain and update the Air Quality Database.

Section 4. National Air Quality Status Report. - The Bureau, shall prepare the Annual National Air Quality Status Report which shall contain:

- (a) A summary of the extent of air pollution in the country, per type of pollutant and per type of source;
 - (b) An analysis and evaluation of the current state, trends and projections of air pollution;
 - (c) An identification of critical areas, activities, or projects which will need closer monitoring or regulation;
 - (d) Recommendations for necessary executive and legislative action; and
 - (e) Other pertinent qualitative and quantitative information concerning the extent of air pollution and the air quality performance rating of industries in the country.
- Upon approval by the Secretary of the Department of Environment and Natural Resources, the National Air Quality Status Report shall be submitted to the Office of the President and to Congress on or before March 31 of every year and shall cover the preceding calendar year. The National Air Quality Status Report and other related reports shall be made available to the public.

RULE XV AIRSHEDS

Section 1. Authority. - The Secretary of the Department, upon the recommendation of the Bureau, shall divide the geo-political regions of the country into airsheds.

Section 2. Designation of Airsheds. - Designation of airsheds shall be on the basis of, but not limited to, areas with similar climate, meteorology and topology which affect the interchange and diffusion of pollutants in the atmosphere, or areas which share common interest or face similar development programs, prospects or problems. Designation of airsheds shall be revised as additional data, needs or situations arise. For a more effective air quality management, a system of planning and coordination shall be established and a common action plan shall be formulated for each airshed.

Section 3. Initial Designation of National Airsheds. - The Department through the Bureau will designate attainment and non-attainment areas, and will review and revise these designations from time to time as relevant data become available.

Section 4. Governing Board. - Pursuant to Section 9 of the Act, a Governing Board will be created for each airshed to effectively carry out the formulated action plans.

Section 5. Composition and Organizational Set-up of the Board.- Each Governing Board shall be headed by the Secretary of the Department as chairman. The members shall be as follows:

- (a) Provincial Governors from areas belonging to the airshed;
- (b) City/Municipal Mayors from areas belonging to the airshed;
- (c) A representative from each concerned government agency;
- (d) Representatives from people's organizations;
- (e) Representatives from non-government organizations; and
- (f) Representatives from the private sector.

There shall be two Deputy Chairpersons, namely, the Department Regional Executive Director and Regional Director in the region where the airshed is located. It is expected that the ratio of the number of Board representatives from government agencies to those from non-government agencies or organizations will be on the order of 60/40.

Section 6. Functions of the Board. - Each Governing Board shall perform the following functions within its jurisdiction (airshed):

- (a) Formulation of policies and standard-setting;
- (b) Preparation of a common action plan;
- (c) Coordination of functions among its members; and
- (d) Submission and publication of an annual Air Quality Status Report for each airshed.

Section 7. Executive Committee. - An Executive Committee will be formed consisting of seven persons; Chairperson, 2 Deputy Chairs and 4 members elected by the at large governing board. Where possible, members of the Committee will be selected for their expertise in the subject area. Representatives will be selected from the appropriate region.

Section 8. Technical Working Groups. - Technical working groups will be formed to ensure broad based participation in the work of the Governing Boards.

Section 9. Technical-Administrative Secretariat. - Each Governing Board will assign a dedicated, full-time technical-administrative secretariat with a separate budget.

Section 10. Meetings. - The Department will provide basic funding for the conduct of regular meetings of the Governing Boards.

Section 11. Governing Rules. - Governing rules shall be formulated by and for the individual Governing Boards. These governing rules shall be submitted for review and approval to the Department.

Section 12. Re-designation of Airshed Boundaries. - Upon consultation with appropriate local government authorities, the Secretary of the Department, upon recommendation of the Bureau, shall, from time to time, revise the designation of airsheds utilizing eco-profiling techniques and undertaking scientific studies.

RULE XVI

AIR QUALITY MANAGEMENT FUND

Section 1. Air Quality Management Fund. - An Air Quality Management Fund to be administered by the Environmental Management Bureau as a special account in the National Treasury is hereby established to finance containment, removal, and clean-up operations of the Government in air pollution cases, guarantee restoration of ecosystems and rehabilitate areas affected by the acts of violators of this Act, to support research, enforcement and monitoring activities and capabilities of the relevant agencies, as well as to provide technical assistance to the relevant agencies. Such fund may likewise be allocated per airshed for the undertakings herein stated.

Section 2. Uses of Fund. - The Air Quality Management Fund will be used for activities that are in direct support of objectives outlined in the Air Quality Action Plan and Control Action Plan of the airsheds. One-third of the Fund will be reserved for national purposes while the remaining two-thirds will be allocated among the airsheds. This can mean support, grant, finance or otherwise assist activities such as, but not limited to:

- (a) purchase of equipment related to air quality monitoring, reporting or management;
- (b) running costs for special campaigns: monitoring, enforcement or public awareness raising;
- (c) costs for special events related to air quality monitoring, enforcement etc.;
- (d) funding of temporary staff positions in accredited organizations, of persons who have a TOR directly related to implementation of AQAP;
- (e) research on air related issues; and
- (f) running costs of Governing Boards and their Technical Secretariats

Section 3. Sources for the Air Quality Management Fund. - Sources for the Air Quality Management Fund shall include:

- (a) air emission charges for industrial facilities;
- (b) air emission charges from motor vehicles.;
- (c) fines and penalties for non-compliance with environmental standards. This relates to

both vehicular and industrial related air pollution;

(d) grants from both private sector and donor organizations.; and

(e) a limited percentage (5-10%) of the proceeds of the Program Loan for the Metro Manila Air Quality Improvement Project.

Section 4. Decision Making on the Use of the Air Quality Management Fund. - The Department is responsible for allocating funds from the Air Quality Management Fund. It will formulate a detailed set of criteria (project design, project management, project reporting and project accounting) on which decision making of requests for support from Air Quality Management Fund will be based. Individual Governing Boards shall follow these criteria in allocating those funds that are put at their disposal by the Department. Individual Governing Boards shall set up special committees for this purpose with members drawn from both the government, private sector and civil society members of each Governing Board.

In order to promote transparency and accountability the Department will formulate business standards, which will describe the scrutiny mechanisms of proposals as well as maximum response times. The Department will ensure the publication of an Annual Report which specifies income and expenditure of the Air Quality Management Fund, together with a summary of initiatives supported and refused. This Annual Report will be available within two months after the budget year used by the Air Quality Management Fund

Section 5. Air Emission Fees For Stationary Sources and For Mobile Sources. - The air emission fee will initially be determined by the amount of revenue necessary to assure the successful implementation of the Clean Air Act as described in these implementing rules and regulations. The necessary revenue will be based on relevant agency's budgets. This cost will then be apportioned to stationary and mobile source owners based on estimated annual mass emissions. The base air emission fee may be adjusted in later years as new data becomes available regarding the success of individual components of the Clean Air Act.

RULE XVII

AIR POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

Section 1. National Research and Development Program for the Prevention and Control of Air Pollution. - The Bureau, in coordination with the Department of Science and Technology (DOST), other agencies, the private sector, the academe, NGOs and POs, shall, establish a National Research and Development Program for the Prevention and Control of Air Pollution.

Section 2. Development of Industry-Wide Applicable Methods. - The Bureau shall give special emphasis to research on and the development of improved methods having industry-wide application for the prevention and control of air pollution.

Section 3. Development of Air Quality Guidelines. - The National Research and Development Program for the Prevention and Control of Air Pollution shall develop air quality guidelines and

air quality guideline values in addition to internationally-accepted standards. It shall consider the socio-cultural, political and economic implications of air quality management and pollution control. The National Research and Development Program for the Prevention and Control of Air Pollution shall be established by the Department through the Bureau, in coordination with the Department of Science and Technology, other agencies, the private sector, the academe, NGOs and POs.

RULE XVIII EMISSION QUOTAS

Section 1. Emission Quotas. - The Bureau may allow each regional industrial center that is designated as a special airshed to allocate emission quotas to pollution sources within its jurisdiction that qualify under an environmental impact assessment system programmatic compliance program pursuant to the implementing rules and regulations of Presidential Decree No. 1586.

Prior to implementation thereof, the Department shall consider, among others, the emissions inventory and the mass rate of emission standards.

PART VI AIR POLLUTION CLEARANCES AND PERMITS FOR STATIONARY SOURCES

RULE XIX PERMIT REGULATIONS

Section 1. Permits Required. - All sources of air pollution subject to these Implementing Rules and Regulations must have a valid Permit to Operate. Existing sources must obtain a permit issued by the Director unless exempted by Executive Order. New or modified sources must first obtain an Authority to Construct, issued by the Director.

Section 2. Filing Fees for Applications. - A fee to be determined by the Department through Bureau shall be paid upon the filing of any of the following applications:

- a. Authority to Construct;
- b. Permit to Operate;
- c. Transfer of an existing and valid Permit to Operate by reason of transfer of location of the installation or change of permittee, or both;

- d. Revision of any existing and valid Authority to Construct or Permit to Operate involving alteration or replacement of the installation;
- e. Renewal of an expired Authority to Construct or Permit to Operate;
- f. Any other application for a permit not otherwise enumerated above.
Filing fees for applications which have been denied shall not be refunded nor applied to subsequent applications.

Section 3. Authority to Construct. - All proposed or planned source construction or modification requires an Authority to Construct which must be approved by the Bureau before construction or modification activities take place. Applications shall be filed in four (4) copies and supported by the official receipt of the filing fees and by such documents, information and data as may be required by the Bureau, including the following:

- a. An engineering report covering the plant description and operations, the estimated types, concentrations and quantities of all emissions to the atmosphere, the proposed control facilities, the emission rate and annual mass emission objectives, the design criteria for air pollution control equipment to be used, and other relevant information. The design criteria, if warranted, shall be based on the results of laboratory and pilot plant scale studies. The design efficiencies of the proposed air control equipment and the quantities and types of pollutants in the final emissions shall be indicated. Where confidential records are involved, the Bureau may limit the full disclosure of the same after discussions with the applicant;
- b. The plans and specifications of the installation and its control facilities (in standard size of 50 cm by 90 cm) duly certified by a registered professional mechanical engineer, sanitary engineer or chemical engineer or a combination of any two or all of them as may be required by the Bureau depending upon the nature of the construction, operation or activity sought to be covered by the Authority to Construct. The plans shall clearly show in adequate detail the proposed arrangement, location and size of the pollution control equipment or facilities, including their accessories, cross-sections and construction details. The specifications shall be in sufficient detail so that, when read in conjunction with the plans, they clearly reveal the proposed means and methods for the control of pollution and their expected performance efficiency;
- c. The project proponent shall conduct an air quality impact analysis using Bureau-approved computer dispersion models and techniques. The impact analysis shall estimate the resulting ambient air concentrations for all significant pollutants from the facility, and shall include the existing ambient air concentrations as a baseline. The impact analysis will be used by the Bureau, together with other relevant information, to determine if the proposed construction or modification will result in a violation of an applicable air quality standard;

DENR AO No. 2002-22 (CCO)

ADMINISTRATIVE ORDER
No. 2002 - 22

SUBJECT : Deletion of Footnote No. 3 of DAO #2000-18 (Chemical
Control Order for Ozone Depleting Substances)

In view of the provisions of paragraph (a) of (1) of Section 3.2.5 of Department Administrative Order No. 18, Series of 2000 ("DAO #2000-18) that the annual imports for the years 1999 to 2010 shall not exceed the corresponding percentages of the "1996 recorded imports by weight," and so as to preclude erroneous interpretations of the foregoing of DAO 2000-18, Footnote #3 of the said, DAO, which states that "the 1996 levels were only estimated consumption based on available data. An allowance of 75% is added to consider unaccounted imports," is hereby deleted.

The deletion of the said Footnote No. 3 is further justified by the lack of technical, legal and factual bases therefore, and the clear commitment of the Philippines to the Montreal Protocol on Substances that deplete the Ozone Layer.

The heretofore Footnote No. 4, onwards, are hereby renumbered accordingly.

All orders, rules and regulations inconsistent with or contrary to the provisions of this order are hereby repealed or modified accordingly.

This Order shall take effect 15 days after publication in the Official Gazette or in at least (2) newspaper of general circulation.

HEHERSON T. ALVAREZ
Secretary

Subject:	CHEMICAL CONTROL ORDER FOR OZONE DEPLETING SUBSTANCES (ODS)
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Pursuant to the provisions of Executive Order No. 192, Series of 1987, Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990), Section 30 of Republic Act No. 8749 (The Philippine Clean Air Act of 1999) and Resolution No. 25 dated 10 March 1993 of the Senate of the Republic of the Philippines ratifying the Montreal Protocol on Substances that Deplete the Ozone Layer as adjusted and amended by the Second Meeting of the Parties in London, 27-29 June 1990 and further amended by the Third Meeting of the Parties in Nairobi, 19-21 June 1991, the Department hereby promulgates the following Chemical Control Order, hereinafter referred to as CCO:

Section 1. DECLARATION OF POLICY. It is the policy of the State to regulate, restrict or prohibit the import, export, use, manufacture, transport, processing, storage, possession or sale of ozone-depleting substances to abate or minimize their risks and hazards to the stratospheric ozone, public health, and the environment.

Section 2. COVERAGE. This CCO covers the ban, limit and/or regulate the use, manufacture, import, export, transport, processing, storage, possession or sale of the following chemical substances, to wit:

2.1 Groups I and II of Annex A, and Groups I, II, and III of Annex B of the Montreal Protocol. Regardless of source, these substances listed below can be in forms defined under Article I, paragraph 4 of the Montreal Protocol as clarified under Decision I/12A of the First Meeting of the Parties and Decision II/4 of the Second Meeting of the Parties, herein enclosed as Appendix I.

In general, these substances can be existing alone or in mixtures, can be contained in bulk for transport and/or storage, part of a use system or equipment, or used and/or contained in a manufactured product, to wit:

ANNEX A: CONTROLLED SUBSTANCES

Group Group I	Substance	Ozone-Depleting Potential ¹
CFCI ³	CFC-11	1.0

¹ ODP is an index pertaining to the extent to which a chemical product may cause ozone depletion using the reference level of 1, which is the ODP assigned to CFC-11 and CFC-12. It is calculated from mathematical models that take into account factors such as the stability of the product, the rate of diffusion, the quantity of depleting atoms per molecule, and the effect of ultraviolet light and other radiation on the molecules.

CF ₂ Cl ₂	CFC-12	1.0
C ₂ F ₃ Cl ₃	CFC-113	0.8
C ₂ F ₄ Cl ₂	CFC-114	1.0
C ₂ F ₅ Cl	CFC-115	0.6
Group Group II	Substance	Ozone-Depleting Potential
CF ₂ BrCl	halon-1211	3.0
CF ₃ Br	halon-1301	10.0
C ₂ F ₄ Br ₂	halon-2402	6.0

ANNEX B: CONTROLLED SUBSTANCES

Group Group I	Substance	Ozone-Depleting Potential
CF ₃ Cl	CFC-13	1.0
C ₂ FCl ₅	CFC-111	1.0
C ₂ F ₂ Cl ₄	CFC-112	1.0
C ₃ FCl ₇	CFC-211	1.0
C ₃ F ₂ Cl ₆	CFC-212	1.0
C ₃ F ₃ Cl ₅	CFC-213	1.0
C ₃ F ₄ Cl ₄	CFC-214	1.0
C ₃ F ₅ Cl ₃	CFC-215	1.0
C ₃ F ₆ Cl ₂	CFC-216	1.0
C ₃ F ₇ Cl	CFC-217	1.0
Group II		
CCl ₄	carbon tetrachloride	1.1
Group III		
C ₂ H ₃ Cl ₃	1,1,1,-trichloroethane/ methyl chloroform	0.1

2.2 The substances listed below as Annex C and Annex E are not covered by Section 3 of this CCO until such time that the Senate of the Philippines ratifies the amendments and adjustments to the Montreal Protocol starting on the agreements

of the Fourth Meeting of the Parties (Copenhagen, 23-25 November 1992) onwards.

However, any importation of these substances is subject to Pre-Shipment Importation Clearance as required under Section 6 hereof except for Group I of Annex E (methyl bromide) which is being regulated by the Fertilizer and Pesticide Authority of the Department of Agriculture.

ANNEX C

Group Group I	Substance	# of Isomers	Ozone-Depleting Potential ²
CHFCI ₂	HCFC-21	1	0.04
CHF ₂ Cl	HCFC-22	1	0.055
CH ₂ FCI	HCFC-31	1	0.02
C ₂ HFCI ₄	HCFC-121	2	0.01-0.04
C ₂ HF2CI ₃	HCFC-122	3	0.02-0.08
C ₂ HF3CI ₂	HCFC-123	3	0.02-0.06
CHCl ₂ CF ₃	HCFC-123	-	0.02
C ₂ HF ₄ Cl	HCFC-124	2	0.02-0.04
CHFCIF ₃	HCFC-124	-	0.022
C ₂ H2FCI ₃	HCFC-131	3	0.007-0.05
C ₂ H ₂ F ₂ Cl ₂	HCFC-132	4	0.008-0.05
C ₂ H ₂ F ₃ Cl	HCFC-133	3	0.02-0.06
C ₂ H ₃ FCI ₂	HCFC-141	3	0.005-0.07
CH ₃ CFCI ₂	HCFC-141b	-	0.11
C ₂ H ₃ F ₂ Cl	HCFC-142	3	0.008-0.07
CH ₃ CF ₂ Cl	HCFC-142b	-	0.065
C ₂ H ₄ FCI	HCFC-151	2	0.003-0.005
C ₃ HFCI ₆	HCFC-221	5	0.015-0.07
C ₃ HF ₂ CI ₅	HCFC-222	9	0.01-0.09

² Where a range of ODP is indicated, the highest value in that range shall be used for the purpose of the Montreal Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.

$C_3HF_3Cl_4$	HCFC-223	12	0.01-0.08
$C_3HF_4Cl_3$	HCFC-224	12	0.01-0.09
$C_3HF_5Cl_2$	HCFC-225	9	0.02-0.07
$CF_3CF_2CHCl_2$	HCFC-225ca	-	0.025
CF_2ClCF_2CHClF	HCFC-225cb	-	0.033
C_3HF_6Cl	HCFC-226	5	0.02-0.10
$C_3H_2FCl_5$	HCFC-231	9	0.05-0.09
$C_3H_2F_2Cl_4$	HCFC-232	16	0.08-0.10
$C_3H_2F_3Cl_3$	HCFC-233	18	0.007-0.23
$C_3H_2F_4Cl_2$	HCFC-234	16	0.01-0.28
$C_3H_2F_5Cl$	HCFC-235	9	0.03-0.52
$C_3H_3FCl_4$	HCFC-241	12	0.004-0.09
$C_3H_3F_2Cl_3$	HCFC-242	18	0.005-0.13
$C_3H_3F_3Cl_2$	HCFC-243	18	0.007-0.12
$C_3H_3F_4Cl$	HCFC-244	12	0.009-0.14
$C_3H_4FCl_3$	HCFC-251	12	0.001-0.01
$C_3H_4F_2Cl_2$	HCFC-252	16	0.005-0.04
$C_3H_4F_3Cl$	HCFC-253	12	0.003-0.03
$C_3H_5FCl_2$	HCFC-261	9	0.002-0.02
$C_3H_5F_2Cl$	HCFC-262	9	0.002-0.02
C_3H_6FCl	HCFC-271	5	0.001-0.03

Group Group I	Substance	# of Isomers	Ozone-Depleting Potential
$CHBr_2$		1	1.00
$CHBr_2$		1	0.74
CHF_2Br	(HBFC-22B1)	1	0.73
CH_2FBr		2	0.0-0.8
C_2HBr_4		3	0.5-1.8
$C_2HF_2Br_3$		3	0.4-1.6

$C_2HF_3Br_2$		2	0.7-1.2
C_2HF_4Br		3	0.1-1.1
$C_2H_2FBr_3$		4	0.2-1.5
$C_2H_2F_2Br_2$		3	0.7-1.6
$C_2H_2F_3Br$		3	0.1-1.7
$C_2H_3FBr_2$		3	0.2-1.1
C_2H_4FBr		2	0.07-0.1
$C_3HFB_r_6$		5	0.3-1.5
$C_3HF_2Br_5$		9	0.2-1.9
$C_3HF_3Br_4$		12	0.3-1.8
$C_3HF_4Br_3$		12	0.5-2.2
$C_3HF_5Br_2$		9	0.9-2.0
C_3HF_6Br		5	0.7-3.3
$C_3H_2FBr_5$		9	0.1-1.9
$C_3H_2F_2Br_4$		16	0.2-2.1
$C_3H_2F_3Br_3$		18	0.2-5.6
$C_3H_2F_4Br_2$		16	0.3-7.5
$C_3H_2F_5Br$		8	0.9-1.4
$C_3H_3FBr_4$		12	0.08-1.9
$C_3H_3F_2Br_3$		18	0.1-3.1
$C_3H_3F_3Br_2$		18	0.1-2.5
$C_3H_3F_4Br$		12	0.3-4.4
$C_3H_4FBr_3$		12	0.03-0.3
$C_3H_4F_2Br_2$		16	0.1-1.0
$C_3H_4F_3Br$		12	0.07-0.8
$C_3H_5FBr_2$		9	0.04-0.4
$C_3H_5F_2Br$		9	0.07-0.8
C_3H_6FBr		5	0.02-0.7

ANNEX E

Group I			
CH ₃ Br		Methyl bromide	0.6

Section 3. CONTROL MEASURES AND PHASE-OUT SCHEDULES

3.1 BAN ON THE MANUFACTURE OF SUBSTANCES LISTED UNDER SECTION 2.1 AND THEIR USE IN THE MANUFACTURE OF PRODUCTS

3.1.1 Starting 01 January 2000, no person, natural or juridical, will be allowed to locally manufacture these substances in whatever quantity, either alone or in mixtures. Further, the use of these substances in the manufacture of products shall also be prohibited unless otherwise duly certified as for essential uses by the DENR-EMB pursuant to Section 3.2.2 hereof.

3.1.2 The use of these substances in the manufacture of products that are certified as for essential uses will be allowed only until 31 December 2010. This deadline may be moved forward by the DENR-EMB, motu proprio, as may be deemed necessary.

3.2 PROHIBITIONS AND CONTROLS OF IMPORTATION

3.2.1 This CCO affirms the previous ban on imports in any amount of the following substances whether alone or in mixtures:

- a. CFC 11 and CFC 12 banned for importation for use on new equipment and/or products starting 01 January 1999. Importation of these substances will only be allowed to service existing products and/or equipment.
- b. CFC 113 since January 1997 and

CFC 114 and CFC 115 since 01 January 1999.

- c. Group II Annex A since 01 January 1999
- d. Group I Annex B starting 01 January 2000
- e. Group II Annex B since 01 January 1997

For mixtures or blends containing any of the substances above, the ban will be imposed starting 01 January 2000.

3.2.2 The DENR-EMB will accept importation of these substances solely for essential uses (medical application such as in metered dose inhalers, laboratory and analytical uses, quarantine and pre-shipment) and for the servicing requirements of existing equipment/products.

3.2.3 Consistent with Section 3.2.1(a) hereof, individual annual import quota per substance of Group I of Annex A shall be determined by the DENR-EMB for each registered importer.

3.2.4 In case of mixtures or blends containing any of the substances under Group I of Annex A and/or Group I of Annex B, the calculation of import quota shall be based on the percent content by weight of these substances.

3.2.5 The 1996 estimated consumption (based on the Updated Philippine Country Program) shall be used as baseline level³. The annual import quota is non-cumulative⁴. The total annual imports shall strictly follow the phase-out schedule below:

- a. At the year ending 31 December 1999, imports shall not exceed ninety

³ the 1996 levels were only estimated consumption based on available data. An allowance of 75% is added to consider unaccounted imports.

⁴ at the end of every calendar year, any remainder of the allowable quota for a particular substance is deemed consumed.

- per cent (90%) of 1996 recorded imports by weight;
- b. At the year ending 31 December 2000, imports shall not exceed eighty per cent (80%) of 1996 recorded imports by weight;
 - c. At the year ending 31 December 2001, imports shall not exceed seventy-five per cent (75%) of 1996 recorded imports by weight;
 - d. At the year ending 31 December 2002, imports shall not exceed seventy per cent (70%) of 1996 recorded imports by weight;
 - e. At the year ending 31 December 2003, imports shall not exceed sixty five per cent (65%) of 1996 recorded imports by weight.
 - f. At the year ending 31 December 2004, imports shall not exceed sixty per cent (60%) of 1996 recorded imports by weight.
 - g. At the year ending 31 December 2005, imports shall not exceed fifty per cent (50%) of 1996 recorded imports by weight.
 - h. At the year ending 31 December 2006, imports shall not exceed forty five per cent (45%) of 1996 recorded imports by weight.
 - i. At the year ending 31 December 2007, imports shall not exceed fifteen per cent (15%) of 1996 recorded imports by weight.
 - j. At the year ending 31 December 2008, imports shall not exceed ten per cent (10%) of 1996 recorded imports by weight.
 - k. At the year ending 31 December 2009, imports shall not exceed five per cent (5%) of 1996 recorded imports by weight.
 - l. At the year ending 31 December 2010, imports shall not exceed five per cent (5%) of 1996 recorded imports by weight.

3.2.6 Beginning 01 January 2011, all kinds of importation of substances (alone or in mixtures) under Section 2.1 hereof either for servicing or for essential uses as provided under Section 3.2.2 will be absolutely prohibited. The DENR-EMB, through the issuance of an appropriate policy instrument, may accelerate the phaseout schedules for servicing and essential uses as may be deemed necessary.

3.2.7 With regard to applications for Pre-Shipment Importation Clearances for Group I of Annex A substances received by the DENR-EMB before the closing of regular office hours on 31 December 2010, only those where actual shipment is undertaken on or before 30 June 2011 may be approved.

3.3 CONTROL MEASURES ON IMPORTS OR SUBSTANCES UNDER SECTION 2.1 CONTAINED IN USE SYSTEM OR EQUIPMENT

3.3.1 In case these substances are contained in a use system or equipment, the control measures for importation under Section 3.2 hereof does not apply.

3.3.2 After the conduct of appropriate studies in coordination with the Bureau of Customs and Department of Trade and Industry, the DENR shall issue separate procedures not later than 1 year after the effectivity of this CCO, by which to realize the target reductions in imports of these use systems and equipment. However, these use systems or equipment shall not be imported beyond 31 December 2010

Section 4. REGISTRATION OF IMPORTERS

4.1 Any person, natural or juridical, who imports ozone-depleting substances (regardless of source as allowed under the agreements of the Montreal Protocol) in any

of the forms mentioned under Sections 2 hereof, and with respect to any industry or activity listed under APPENDIX II must be duly registered with the DENR-EMB. A Certificate of Registration may be granted only upon showing proof of the following:

4.1.1 Understanding and appreciation of the role of these substances in depleting the stratospheric ozone, and its consequences.

4.1.2 Capability to take effective measures, including the necessary equipment, technology, training and infrastructure, for the purpose of effectively handling ozone-depleting substances, minimizing their emissions, and ultimately phasing out their use by replacing with substitutes/alternatives duly recognized and certified by the DENR-EMB.

4.1.3 Did not violate any provisions of RA 6969 and its implementing rules and regulations and other pertinent environmental laws and regulations.

4.2 Application for registration must include the following information, to wit:

4.2.1 Duly accomplished registration form;

4.2.2 Copy of the Environmental Compliance Certificate issued by the appropriate office of the DENR, if warranted;

4.2.3 Whether the applicant is an Importer-Distributor or an Importer -End-user;

4.2.4 Certified copy of the SEC, CDA or DTI Registration and updated list of its officers; and,

4.2.5 Such other information and / or

documents as may be required by the DENR-EMB.

4.3 Certificates of Registration are valid only for one year. It is therefore required that the same be renewed every year.

4.4 The foregoing requirements for registration do not preclude other requirements and conditions already prescribed by Administrative Order 98-58.

4.5 In case an importer is also a service provider, the Certificate of Registration will suffice and is deemed accredited pursuant to Section 5 hereof, provided that the services offered are so declared in the registration form.

4.6 The DENR-EMB shall, upon evaluation of application, determine the annual quota per substance for every importer pursuant to Section 3.2 hereof.

4.7 Violation of the provisions of this CCO, DAO 92-29, DAO 98-58, RA 6969 and other relevant environmental laws and regulations shall constitute grounds for the cancellation of the certificate of registration.

Section 5. ACCREDITATION OF DEALERS, RETAILERS AND SERVICE PROVIDERS

5.1 There is hereby a system of accreditation established to determine the capability of any person, natural or juridical, in handling ozone-depleting substances who provides the servicing requirements for individuals and industries using these substances in any of the forms and with respect to any industry or activity listed under APPENDIX II. The DENR-EMB shall grant a certificate of accreditation to applicants only upon showing proof of the following:

5.1.1 Understanding and appreciation

of the role of these substances in depleting the stratospheric ozone, and its consequences.

5.1.2 Capability to take effective measures, including the necessary equipment, technology, training and infrastructure, for the purpose of effectively handling ozone-depleting substances, minimizing their emissions and ultimately phasing out their use by replacing with substitutes/alternatives duly recognized and certified by the DENR-EMB.

5.2 Application for accreditation must include the following information, to wit:

5.2.1 Duly accomplished accreditation form;

5.2.2 Copy of the Environmental Compliance Certificate issued by the appropriate office of the DENR, if warranted;

5.2.3 Certified copy of the SEC, CDA, or DTI Registration and updated list of its officers; and,

5.2.4 Such other information and/or documents as may be required by the DENR-EMB,

5.3 Certificates of Accreditation are valid only for one year. It is therefore required that the same be renewed every year.

5.4 The foregoing requirements for accreditation do not preclude other requirements and conditions already prescribed by Administrative Order 98-58.

Section 6. PRE-SHIPMENT IMPORTATION CLEARANCE

6.1 Under allowable circumstances, any person, natural or juridical, duly registered

with the DENR-EMB who engages in the importation of ozone-depleting substances listed under Section 2 pursuant to Section 3 hereof, must secure importation clearance from the DENR-EMB prior to the entry of these substances in any area within the Philippine Territory. As such, any shipment not covered by an importation clearance shall be deemed illegal import and shall be confiscated and forfeited in favor of the Government.

6.2 Applications for importation clearance must observe the following, to wit:

6.2.1 For alternative or substitute substances for halons, the applicant shall secure a certification from the Bureau of Products Standards (DTI-BPS) on the conformance of the same to established product standards.

6.2.2 Any application for importation clearance for substances under Section 2 must be within the prescribed quota pursuant to Section 3.2.3 hereof.

6.2.3 Duly accomplished application forms shall only be received for processing after payment of prescribed application fees and charges.

6.2.4 Application forms are accomplished in two (2) copies — i.e., the original copy shall be filed with the DENR-EMB for assessment and evaluation, and duplicate copy which serve as reference document of the applicant.

6.2.5 Application forms shall only be processed until the following information are provided, to wit:

- a. Commercial name or the trade/brand name of the substance as usually promoted/marketed by the manufacturers;
- b. Generic name of the substance;

- c. Name of the manufacturing company;
- d. Port of loading or the country or port immediately before the substance enters into the Philippine territory;
- e. Exporting company or any entity that transacts or brokers the chemical substance from the manufacturer to the importing company;
- f. Current inventories of the substance that is the subject of the application for importation clearance, including the area/building within which the same is stored either for further transshipment or distribution.

6.2.6 All accomplished application forms must include the following documents:

- a. Proof that application fees are paid;
- b. Copy of the Material Safety Data Sheet (MSDS) from the manufacturing firm every time an importer applies for clearance of a new chemical;
- c. Photocopy of the Pro-forma Invoice;
- d. Description of the applicant's handling procedure, safety precautions and emergency response for the chemical;
- e. Original accomplished copy of the Record of Actual Arrival of Shipment accompanied by a photocopy of the Bill of Lading issued by the Carrier (shipping/transport contractor) of the most recent importation of the chemical made by the applicant⁵;
- f. Summary of Transactions of the most recent importation clearance issued on the same chemical applied for (not applicable to new importers); and,
- g. List of Intended Buyers and/or End-Users.

6.3 Pursuant to Section 3 hereof, importers

⁵ This requirement is not applicable to first-time importer.

shall distribute these substances only to accredited Service Providers pursuant to Section 5 hereof or those entities utilizing these substances for essential uses duly certified by the DENR-EMB.

6.4 Clearances shall only be issued on a per substance per shipment basis.

6.5 Clearances shall be issued in three copies, one each for the DENR, the Bureau of Customs, and the importer.

6.6 The validity of Pre-Shipment Importation Clearance must not exceed six consecutive calendar months from the date of issuance. Any transaction not covered under the terms and conditions of the Pre-Shipment Importation Clearance shall be considered a violation of this CCO.

Section 7. RECORDS KEEPING. Those issued various importation clearance must keep records of all transactions. These records are requisites for applying subsequent clearances or must be submitted to the DENR-EMB annually whichever is earlier. However, the same shall be available for inspection any time, upon request, by an authorized officer of the DENR-EMB or by other authorized government agency.

Section 8. CONFIDENTIAL BUSINESS INFORMATION

8.1 Any person, natural or juridical, submitting a report under this CCO may assert a business confidentiality claim for all or part of the report, pursuant to Section 40(1) of DAO 92-29. It is the burden of the reporting person to justify the confidentiality claim. The Department may consider that the information is confidential and treat the reported information accordingly.

8.2 When confidentiality is not applied for, the report shall be considered as a public document, provided that any disclosure of information subject to this section and Sections 40(1) and 40(2) of DAO 92-29, shall be done only in cases allowed under Section 40(3) of the same.

Section 9. FINES AND PENALTIES. Any person, natural or juridical, who violates any provision of this CCO, shall be administratively and criminally liable pursuant to Sections 43 and 44 of DAO 92-29 and Section 13, 14 and 15 of RA 6969.

Section 10. SEPARABILITY CLAUSE. If any provision of this CCO is declared void or unconstitutional, by a competent court, the other provisions hereof shall continue to be in force and effect as if the section or provision so declared void or unconstitutional had never been incorporated herein.

Section 11. EFFECTIVITY. This CCO shall take effect 15 days after its publication in the Official Gazette or in at least two- (2) newspaper of general circulation.

(Sgd.) ANTONIO CERILLES
Secretary
February 23, 2000

APPENDIX I

(Footnote to Paragraph 4, Article 1 of the Montreal Protocol)

The First Meeting of the Parties decided in Dec. 1/12A to agree to the following clarification of the definition of controlled substances (in bulk) in Article I, paragraph 4 of the Montreal Protocol:

- a. Article I of the Montreal Protocol excludes from consideration as a "controlled substance" any listed substance, whether alone or in a mixture, which is in a manufactured product other than a container used for transportation or storage;
- b. Any amount of a controlled substance or a mixture of controlled substances which is not part of use system containing the substance is a controlled substance for the purpose of the Protocol (i.e. a bulk chemical);
- c. If a substance or mixture must first be transferred from a bulk container to another container, vessel or piece of equipment in order to realize its intended use, the first container is in fact utilized only for storage and/or transport, and the substance or mixture so packaged is covered by Article I, paragraph 4 of the Protocol;
- d. If, on another hand, the mere dispensing of the product from container constitutes the intended use of the substance, then that container is itself part of use system and the

substance contained in it is therefore excluded from definition;

e. Example of use systems to be considered as products for the purposes of Article I, paragraph 4 are inter alia;

- i. An aerosol can;
- ii. A refrigerator or a refrigerating plant, air conditioner or air-conditioning plant, heat pump, etc.;
- iii. A polyurethane prepolymer or any foam containing, or manufactured with, a controlled substance;
- iv. A fire extinguisher (wheel or hand-operated) or a installed container incorporating a release device (automatic or hand-operated);

f. bulk containers for shipment of controlled substances and mixtures containing controlled substances to user include (numbers being illustrative), inter alia;

- i. Tanks installed on board ship;
- ii. Rail tank cars (10-10 metric tons);
- iii. Road tankers (up to 20 metric tons);
- iv. Cylinders from 0.4 kg. to one metric ton;
- v. Drums (5-300 Kg.);

g. Because containers of all sizes are used for either bulk or manufactured products, distinguishing on the basis of size is not consistent with the definition in the Protocol. Similarly, since containers for bulk or manufactured products can be designed to be rechargeable or not rechargeable, - rechargeability is not sufficient for a consistent definition;

h. If the purpose of the container is used as the distinguishing characteristic as in the Protocol definition, such CFC or Halon-containing products as aerosol spray cans and fire extinguishers, whether of the portable or the flooding type, would therefore be exclude, because it is the mere release from such containers which constitute the intended use.

The Second Meeting of the Parties decided in Dec. II/4 to clarify the definition of "controlled substance" in paragraph 4 of Article I of the Protocol so that it is understood to include the isomers of such substances except as specified in the relevant Annex

APPENDIX II
List of Industries and Activities
(Derived from Annex D of the Montreal Protocol)

Industry	Activity
Dry cleaning	Service, operation, and installation and decommissioning
Motor vehicle air conditioning	Service and installation
Commercial and industrial refrigeration	Service, installation and decommissioning and air conditioning
Domestic refrigeration/air-conditioning	Service
Fixed flooding fire protection	Service, design, installation, commissioning and decommissioning
Portable fire extinguisher	Service, and decommissioning

DAO 98-58 Priority Chemical List (PCL)

DENR ADMINISTRATIVE ORDER

No. 58

Series of 1998

Subject:	PRIORITY CHEMICALS LIST
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Pursuant to Section 19, Chapter IV, Title II of DENR Administrative Order 29, the Implementing Rules and Regulations of the Republic Act 6969, the Toxic Substances, Hazardous Wastes, and Nuclear Wastes Control Act of 1990 (hereinafter, RA 6969), the Department hereby promulgates the following Priority Chemicals List (PCL):

- | | |
|--------------------------------|--------------------------------------|
| 1. 1,1,1, -Trichloroethane | 15. Ethylene Oxide |
| 2. 1,2 Diphenylhydrazine | 16. Halons |
| 3. Arsenic Compounds | 17. Hexachlorobenzene |
| 4. Asbestos | 18. Hexachloroethane |
| 5. Benzene | 19. Lead Compounds |
| 6. Beryllium Compounds | 20. Mercury Compounds |
| 7. Cadmium Compounds | 21. Mirex |
| 8. Carbon Tetrachloride | 22. Polychlorinated Biphenyls (PCBs) |
| 9. Chlorofluoro Carbons (CFCs) | 23. Phosgene |
| 10. Chloroform | 24. Pentachlorophenol |
| 11. Chlorinated Ethers | 25. Polybrominated Biphenyls (PBBs) |
| 12. Chromium Compounds | 26. Selenium |
| 13. Cyanide Compounds | 27. Tributyltin |
| 14. Ethylene Dibromide | 28. Vinyl Chloride |

Users, importers, and manufacturers of these chemicals are hereby required to comply with the following requirements:

1. Completion and submission to the Environmental Quality Division (EQD) of the Environmental Management Bureau (EMB) of a Hazardous Wastes Registration Form;
2. Completion and submission to the EQD, EMB of the PCL Biennial Report. The First Biennial Report should be submitted from September 1 to December 31, 1998. Subsequent Biennial Reports shall be submitted within fifteen (15) days from the end of each calendar year; and
3. Registration and Biennial Reports must be in a form prescribed by the Department and accompanied with the payment of prescribed fees.

Inquiries regarding the Chemical Abstract Services (CAS) numbers of, and the list of synonyms for these priority chemicals shall be directed to Environmental Quality Division, Environmental Management Bureau 99-101 Topaz Building, Kamias Road, Quezon City.

Violations of the provisions of this Order shall result in the imposition of a fine of not less than ten thousand pesos (PhP10,000.00) but not more than fifty thousand pesos (PhP50,000.00), without prejudice to institution of criminal proceedings against said violators, in accordance with RA 6969.

This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

(Sgd.) ANTONIO H. CERILLES
Secretary

DENR
Notice to the Public

NOTICE TO THE PUBLIC

The Department of Environment and Natural Resources announces that effective January 1, 1999, the ban on the importation and consumption of CHLOROFLUOROCARBONS (CFCs), and HALONS, identified as among the major ozone-depleting substances (ODS), for the production of new equipment is hereby imposed. This is in compliance with the Philippine's commitment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

As such, the importation and consumption of Chlorofluorocarbons (CFCs) for servicing old equipment may only be allowed until the year 2010.

The implication for the restriction in importation is the reduction of the volume of imports by not lower than 10% of the 1996 levels. The year 1996 is the designated production freeze schedule for developing countries. Since the Philippines is not a producer of ODS, this is understood as 100% freeze on the importation of ODSs for new equipment.

Below is the Philippine Ozone Depleting Substances Phase-out Schedule as mandated by Republic Act 6969 or the Regulation and Control of Chemicals and Hazardous Waste Act:

SUBSTANCE	YEAR
CFC-11 (new)	1998
CFC-11 (service)	2010
CFC-12 (new)	1998
CFC-12 (service)	2010
CFC-113	1996
CFC-114	1998
CFC-115	1998
Halon 1211	1998
Halon 1301	1998
Carbon Tetrachloride	1996
Methyl Chloroform/ 1,1,1 TCA	1996

The term new refers to CFCs being used in the production of new equipment/appliances. The term service refers to CFCs being used in servicing old equipment containing the said substance.

This Phase Out Schedule has been presented to the importers/industries as early as 1993

Failure to comply with the above provisions shall be construed as violation of RA 6969.

ANTONIO H. CERILLES
Secretary

PD 1464 Tariff and Custom Code

A DECREE TO CONSOLIDATE AND CODIFY ALL THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES

WHEREAS, the Tariff and Customs Code of the Philippines known as Republic Act No. 1937 has been amended by several Presidential Decrees dating back to the year 1972;

WHEREAS, there exist in the said Code a substantial number of provisions rendered obsolete by subsequent issuances of amendatory laws, decrees and executive orders thereby making it imperative to consolidate, codify and integrate such amendatory laws, decrees and executive orders to harmonize their provisions for the proper guidance of the public and efficient administration thereof;

WHEREAS, there likewise exist in the said Code certain provisions which are impractical in application, thus, necessitating revision in order to infuse flexibility, keep pace with the changing needs and demands of trade and commerce as well as strengthen the punitive force of the law against smuggling and other forms of customs fraud.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby order and decree as follows:

Section 1. Codification of all Tariff and Customs Laws. - All tariff and customs laws embodied in the present Tariff and Customs Code and various laws, presidential decrees and executive orders including new amendments thereto made in this Decree, are hereby consolidated into a single Code to be known as the Tariff and Customs Code of 1978 which shall form an integral part of this Decree.

Section. 2. Effectivity. - The provisions of the Tariff and Customs Code of 1978 shall take effect immediately without prejudice, however, to effectivity dates of the various laws, decrees and executive orders which have so far amended the provisions of the Tariff and Customs Code of the Philippines: Provided, however, that the tariff rates indicated in the previous executive orders are now hereby considered statutory rates, except those which have been reduced to the zero level, in which case the rates previous to the reduction will be considered the statutory rates.

DONE in the City of Manila, this 11th day June, in the year of Our Lord, nineteen hundred and seventy-eight.

TARIFF AND CUSTOMS CODE OF THE PHILIPPINES

(As Amended by Executive Orders Nos.. 1, 2, 5, 8, 61, 94, 115, 116 & 148, Series of 1994)

TITLE I IMPORT TARIFF

Section 100. Imported Articles Subject to Duty. - All articles, when imported from any foreign country into the Philippines, shall be subject to duty upon each importation, even though previously exported from the Philippines, except as otherwise specifically provided for in this Code in other laws.

Sec. 101. Prohibited Importations. - The importation into the Philippines of the following articles is prohibited:

(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law.

(b) Written or printed articles in any form containing any matter advocating or inciting treason, or rebellion, or insurrection, sedition or subversion against the Government of the Philippines, or forcible resistance to any law of the Philippines, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines.

(c) Written or printed articles, negatives or cinematographic film, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character.

(d) Articles, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or gives directly or indirectly information where, how, or by whom unlawful abortion is produced.

(e) Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other articles when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof.

(f) Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof, and lists of drawings therein.

(g) Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof, the stamps, brands or marks or which do not indicate the actual fineness of quality of said metals or alloys.

(h) Any adulterated or misbranded articles of food or any adulterated or misbranded drug in violation of the provisions of the "Food and Drugs Act."

(i) Marijuana, opium, pipes, coca leaves, heroin or any other narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medicinal purposes only.

(j) Opium pipes and parts thereof, of whatever material.

(k) All other articles and parts thereof, the importation of which prohibited by law or rules and regulations issued by competent authority. (As amended by Presidential Decree No. 34)

Sec. 102. Abbreviations. - The following abbreviations used in this Code shall represent the terms indicated:

ad val.	For ad valorem.
e.g.	For 'exempli gratia' meaning 'for example'.
i.e.	For 'id est' meaning 'that is'
hd.	For head.
kg	For kilogramme.
kgs.	For kilogrammes.
l	For litre.
g.w.	For gross weight.
l.w.	For legal weight.
n.w.	For net weight.

Sec. 103. General Rules for the Interpretation of the Harmonized System. - Classification of goods in the Nomenclature shall be governed by the following principles:

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classifications shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to

include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following Rules shall apply in respect to the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specifically shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. The Rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of the Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

Sec. 104. All Tariff Sections, Chapters, headings and subheadings and the rates of import duty under Section 104 of Presidential Decree No. 34 and all subsequent amendment issues under Executives Orders and Presidential Decrees are hereby adopted and form part of this Code.

There shall be levied, collected, and paid upon all imported articles the rates of duty indicated in the Section under this Section except as otherwise specifically provided for in this Code: provided, that the maximum rate shall not exceed one hundred per cent *ad valorem*.

The rates of duty herein provided or subsequently fixed pursuant to Section four hundred one of this Code shall be subject to periodic investigation by the Tariff Commission and may be revised by the President upon recommendation of the National Economic and Development Authority.

The rates of duty herein provided shall apply to all products whether imported directly or indirectly of all foreign countries, which do not discriminate against Philippine export products. An additional 100% across-the-board duty shall be levied on the products of any foreign country which discriminates against Philippine export products.

The tariff Sections, Chapters, headings and subheadings and the rate of import duty under Section one hundred four of this Code shall be as follows:

Sec. 105. Conditionally-Free Importations. - The following articles shall be exempt from the payment of import duties upon compliance with the formalities prescribed in, or with, the regulations which shall be promulgated by the Commissioner of Customs with the approval of the Secretary of Finance; Provided, That any article sold, bartered, hired or used for purposes other than that they were intended for without prior payment of the duty, tax or other charges which would have been due and payable at the time of entry if the article had been entered without the benefit of this section, shall be subject to forfeiture and the importation shall constitute a fraudulent practice against customs revenue punishable under Section Thirty-six hundred and two, as amended of this Code: Provided, further, That a sale pursuant to a judicial order or in liquidation of the estate of a deceased person shall be subject to the preceding proviso, without prejudice to the payment of duties, taxes and other charges: Provided, finally, That the President may upon recommendation of the Secretary of Finance, suspend, disallow or completely withdraw, in whole or in part, any of the conditionally-free importation under this section:

- a. Aquatic products (e.g., fishes, crustaceans, mollusks, marine animals, seaweeds, fish oil, roe), caught or gathered by fishing vessels of Philippine registry: Provided, That they are imported in such vessels or in crafts attached thereto: And provided, further, That they have not been landed in any foreign territory or, if so landed, they have been landed solely for transshipment without having been advanced in condition;

- b. Equipment for use in the salvage of vessels or aircrafts, not available locally, upon identification and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry: Provided, That the Collector of Customs may extend the time for exportation or payment of duties, taxes and other charges for a term not exceeding six (6) months from the expiration of the original period;
- c. Cost of repairs, excluding the value of the article used, made in foreign countries upon vessels or aircraft documented, registered or licensed in the Philippines, upon proof satisfactory to the Collector of Customs (1) that adequate facilities for such repairs are not afforded in the Philippines, or (2) that such vessels or aircrafts, while in the regular course of her voyage or flight was compelled by stress of weather or other casualty to put into a foreign port to make such repairs in order to secure the safety, seaworthiness or airworthiness of the vessel or aircraft to enable her to reach her port of destination;
- d. Articles brought into the Philippines for repair, processing or reconditioning to be re-exported upon completion of the repair, processing or reconditioning: Provided, That the Collector of Customs shall require the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry;
- e. Medals, badges, cups and other small articles bestowed as trophies or prizes, or those received or accepted as honorary distinction;
- f. Personal and household effects belonging to residents of the Philippines returning from abroad including jewelry, precious stones and other articles of luxury which were formally declared and listed before departure and identified under oath before the Collector of Customs when exported from the Philippines by such returning residents upon their departure therefrom and during their stay abroad; personal and household effects including wearing apparel, articles of personal adornment (except luxury items), toilet articles, portable appliances and instruments and similar personal effects, excluding vehicles, watercrafts, aircrafts, and animals purchased in foreign countries by residents of the Philippines which were necessary, appropriate and normally used for the comfort and convenience in their journey and during their stay abroad upon proof satisfactory to the Collector of Customs that same have been in their use abroad for more than six (6) months and accompanying them on their return, or arriving within a reasonable time which, barring unforeseen circumstances, in no case shall exceed ninety (90) days before or after the owners' return: Provided, That the personal and household effects shall neither be in commercial quantities nor intended for barter, sale or hire and that the total dutiable value of which shall not exceed two thousand pesos (P2,000.00): Provided further, That the returning residents have not previously received the benefit under this section within one year from and after the last exemption granted: Provided furthermore, That a fifty (50) percent ad valorem duty across the board shall be levied and collected

on the personal and household effects (except luxury items) in excess of two thousand pesos (P2,000.00): And provided, finally, That the personal and household effects (except luxury items) of a returning resident who has not stayed abroad for six (6) months shall be subject to fifty (50) per cent ad valorem duty across the board, the total dutiable value of which does not exceed two thousand pesos (P2,000.00); any excess shall be subject to the corresponding duty provided in this Code;

g. Wearing apparel, articles of personal adornment, toilet articles, portable tools and instruments, theatrical costumes and similar effects accompanying travelers, or tourists, or arriving within a reasonable time before and after their arrival in the Philippines, which are necessary and appropriate for the wear and use of such persons according to the nature of the journey, their command and convenience: Provided, That this exemption shall not apply to articles intended for other persons or for barter, sale or hire: Provided, further, That the Collector of Customs may, in his discretion, require either a written commitment or a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within three (3) months from the date of acceptance of the import entry: And Provided finally, That the Collector of Customs may extend the time for exportation or payment of duties, taxes and other charges for a term not exceeding three (3) months from the expiration of the original period;

g-1. Personal and household effects and vehicles belonging to foreign consultants and experts hired by, and/or rendering service to, the government, and their staff or personnel and families, accompanying them or arriving within a reasonable time before or after their arrival in the Philippines, in quantities and of the kind necessary and suitable to the profession, rank or position of the person importing them, for their own use and not for barter, sale or hire provided that, the Collector of Customs may in his discretion require either a written commitment or a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges upon the articles classified under this subsection; conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months after the expiration of their term or contract; And Provided, finally, That the Collector of Customs may extend the time for exportation or payment of duties, taxes and other charges for term not exceeding six (6) months from the expiration of the original period;

h. Professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects belonging to persons coming to settle in the Philippines or Filipinos and/or their families and descendants who are now residents or citizens of other countries, such parties hereinafter referred to as Overseas Filipinos, in quantities and of the class suitable to the profession, rank or position of the persons importing them, for their own use and not for barter or sale, accompanying such persons, or arriving within a reasonable time, in the discretion of the Collector of Customs, before or after the arrival of their owners, which shall not be later than February 28, 1979 upon the production of evidence satisfactory to the Collector

of Customs that such persons are actually coming to settle in the Philippines, that change of residence was bonafide and that the privilege of free entry was never granted to them before or that such person qualifies under the provisions of Letters of Instructions 105, 163 and 210, and that the articles are brought from their former place of abode, shall be exempt from the payment of customs duties and taxes: Provided, That vehicles, vessels, aircrafts, machineries and other similar articles for use in manufacture, shall not be classified hereunder;

i. Articles used exclusively for public entertainment, and for display in public expositions, or for exhibition or competition for prizes, and devices for projecting pictures and parts and appurtenances thereof, upon identification, examination, and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry; Provided, That the Collector of Customs may extend the time for exportation or payment of duties, taxes and other charges for a term not exceeding six (6) months from the expiration of the original period; and technical and scientific films when imported by technical, cultural and scientific institutions, and not to be exhibited for profit: Provided, further, That if any of the said films is exhibited for profit, the proceeds therefrom shall be subject to confiscation, in addition to the penalty provided under Section Thirty-six hundred and ten as amended, of this Code;

j. Articles brought by foreign film producers directly and exclusively used for making or recording motion picture films on location in the Philippines, upon their identification, examination and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry, unless extended by the Collector of Customs for another six (6) months; photographic and cinematographic films, undeveloped, exposed outside the Philippines by resident Filipino citizens or by producing companies of Philippine registry where the principal actors and artists employed for the production are Filipinos, upon affidavit by the importer and identification that such exposed films are the same films previously exported from the Philippines. As used in this paragraph, the terms "actors" and "artists" include the persons operating the photographic cameras or other photographic and sound recording apparatus by which the film is made;

k. Importations for the official use of foreign embassies, legations, and other agencies of foreign governments: Provided, That those foreign countries accord like privileges to corresponding agencies of the Philippines;

Articles imported for the personal or family use of the members and attaches of foreign embassies, legations, consular officers and other representatives of foreign governments: Provided, That such privilege shall be accorded under special agreements between the Philippines and the countries which they represent: And Provided, further, That the privilege

may be granted only upon specific instructions of the Secretary of Finance in each instance which will be issued only upon request of the Department of Foreign Affairs;

l. Imported articles donated to, or for the account of, any duly registered relief organization, not operated for profit, for free distribution among the needy, upon certification by the Department of Social Services and Development or the Department of Education, Culture and Sports, as the case may be;

m. Containers, holders and other similar receptacles of any material including kraft paper bags for locally manufactured cement for export, including corrugated boxes for bananas, mangoes, pineapples and other fresh fruits for export, except other containers made of paper, paperboard and textile fabrics, which are of such character as to be readily identifiable and/or reusable for shipment or transportation of goods shall be delivered to the importer thereof upon identification, examination and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges within six (6) months from the date of acceptance of the import entry;

n. Supplies which are necessary for the reasonable requirements of the vessel or aircraft in her voyage or flight outside the Philippines, including articles transferred from a bonded warehouse in any collection district to any vessel or aircraft engaged in foreign trade, for use or consumption of the passengers or its crew on board such vessel or aircrafts as sea or air stores; or articles purchased abroad for sale on board a vessel or aircraft as saloon stores or air store supplies: Provided, That any surplus or excess of such vessel or aircraft supplies arriving from foreign ports or airports shall be dutiable;

o. Articles and salvage from vessels recovered after a period of two (2) years from the date of filing the marine protest or the time when the vessel was wrecked or abandoned, or parts of a foreign vessel or her equipment, wrecked, abandoned in Philippine waters or elsewhere: Provided, That articles and salvage recovered within the said period of two (2) years shall be dutiable;

p. Coffins or urns containing human remains, bones or ashes, used personal and household effects (not merchandise) of the deceased person, except vehicles, the value of which does not exceed ten thousand pesos (P10,000.00), upon identification as such;

q. Samples of the kind, in such quantity and of such dimension or construction as to render them unsalable or of no appreciable commercial value; models not adapted for practical use; and samples of medicines, properly marked "sample-sale punishable by law," for the purpose of introducing a new article in the Philippine market and imported only once in a quantity sufficient for such purpose by a person duly registered and identified to be engaged in that trade: Provided, That importations under this subsection shall be previously authorized by the Secretary of Finance: Provided, however, That importation of sample medicine shall be previously authorized by the Secretary of Health that such samples are new medicines not available in the Philippines: Provided, finally, That samples not previously authorized and/or properly marked in accordance with this section shall be levied the corresponding tariff duty.

Commercial samples, except those that are not readily and easily identifiable (e.g., precious and semi-precious stones, cut or uncut, and jewelry set with precious stones), the value of any single importation of which does not exceed ten thousand pesos (P10,000.00) upon the giving of a bond in an amount equal to twice the ascertained duties, taxes and other charges thereon, conditioned for the exportation of said samples within six (6) months from the date of the acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges. If the value of any single consignment or such commercial samples exceeds ten thousand pesos (P10,000.00), the importer thereof may select any portion of same not exceeding in value of ten thousand pesos (P10,000.00) for entry under the provision of this subsection, and the excess of the consignment may be entered in bond, or for consumption, as the importer may elect;

r. Animals (except race horses), and plants for scientific, experimental, propagation, botanical, breeding, zoological and national defense purposes: Provided, That no live trees, shoots, plants, moss, and bulbs, tubers and seeds for propagation purposes may be imported under this section, except by order of the Government or other duly authorized institutions: Provided, further, That the free entry of animals for breeding purposes shall be restricted to animals of recognized breed, duly registered in the book of record established for that breed, certified as such by the Bureau of Animal Industry: Provided, furthermore, That certificate of such record, and pedigree of such animal duly authenticated by the proper custodian of such book of record, shall be produced and submitted to the Collector of Customs, together with affidavit of the owner or importer, that such animal is the animal described in said certificate of record and pedigree: And Provided, finally, That the animals and plants are certified by the National Economic and Development Authority as necessary for economic development;

s. Economic, technical, vocational, scientific, philosophical, historical, and cultural books and/or publications: Provided, That those which may have already been imported but pending release by the Bureau of Customs at the effectivity of this Decree may still enjoy the privilege herein provided upon certification by the Department of Education, Culture and Sports that such imported books and/or publications are for economic, technical, vocational, scientific, philosophical, historical or cultural purposes or that the same are educational, scientific or cultural materials covered by the International Agreement on Importation of Educational Scientific and Cultural Materials signed by the President of the Philippines on August 2, 1952, or other agreements binding upon the Philippines.

Educational, scientific and cultural materials covered by international agreements or commitments binding upon the Philippine Government so certified by the Department of Education, Culture and Sports.

Bibles, missals, prayer books, Koran, Ahadith and other religious books of similar nature and extracts therefrom, hymnal and hymns for religious uses;

t. Philippine articles previously exported from the Philippines and returned without having

been advanced in value or improved in condition by any process of manufacture or other means, and upon which no drawback or bounty has been allowed, including instruments and implements, tools of trade, machinery and equipment, used abroad by Filipino citizens in the pursuit of their business, occupation or profession; and foreign articles previously imported when returned after having been exported and loaned for use temporarily abroad solely for exhibition, testing and experimentation, for scientific or educational purposes; and foreign containers previously imported which have been used in packing exported Philippine articles and returned empty if imported by or for the account of the person or institution who exported them from the Philippines and not for sale, barter or hire subject to identification: Provided, That any Philippine article falling under this subsection upon which drawback or bounty has been allowed shall, upon re-importation thereof, be subject to a duty under this subsection equal to the amount of such drawback or bounty.

u. Aircraft, equipment and machinery, spare parts commissary and catering supplies, aviation gas, fuel and oil, whether crude or refined, and such other articles or supplies imported by and for the use of scheduled airlines operating under Congressional franchise: Provided, That such articles or supplies are not locally available in reasonable quantity, quality and price and are necessary or incidental for the proper operation of the scheduled airline importing the same;

v. Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals, and transportation and communication facilities imported by and for the use of new mines and old mines which resume operations, when certified to as such by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Mines, for a period ending five (5) years from the first date of actual commercial production of saleable mineral products: Provided, That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mine; and aircrafts imported by agro-industrial companies to be used by them in their agriculture and industrial operations or activities, spare parts and accessories thereof;

w. Spare parts of vessels or aircraft of foreign registry engaged in foreign trade when brought into the Philippine exclusively as replacements or for the emergency repair thereof, upon proof satisfactory to the Collector of Customs that such spare parts shall be utilized to secure the safety, seaworthiness or airworthiness of the vessel or aircraft, to enable it to continue its voyage or flight;

x. Articles of easy identification exported from the Philippines for repair and subsequently reimported upon proof satisfactory to the Collector of Customs that such articles are not capable of being repaired locally: Provided, That the cost of the repairs made to any such article shall pay a rate of duty of thirty per cent ad valorem;

y. Trailer chassis when imported by shipping companies for their exclusive use in handling

containerized cargo, upon posting a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges due thereon to cover a period of one year from the date of acceptance of the entry, which period for meritorious reasons may be extended by the Commissioner of Customs from year to year, subject to the following conditions:

1. That they shall be properly identified and registered with the Land Transportation Commission;
2. That they shall be subject to customs supervision fee to be fixed by the Collector of Customs and subject to the approval of the Commissioner of Customs;
3. That they shall be deposited in the Customs zone when not in use; and
4. That upon the expiration of the period prescribed above, duties and taxes shall be paid, unless otherwise re-exported.

The provisions of Sec. 105 of Presidential Decree No. 34, dated October 27, 1972, to the contrary notwithstanding any officer or employee of the Department of Foreign Affairs, including any attache, civil or military, or member of his staff assigned to a Philippine diplomatic mission abroad by his Department or any similar officer or employee assigned to a Philippine consular office abroad, or any personnel of the Reparations Mission in Tokyo or AFP military personnel detailed with SEATO or any AFP military personnel accorded assimilated diplomatic rank on duty abroad who is returning from a regular assignment abroad, for reassignment to his Home office, or who dies, resigns, or is retired from the service, after the approval of this Decree, shall be exempt from the payment of all duties and taxes on his personal and household effects, including one motor car which must have been ordered or purchased prior to the receipt by the mission or consulate of his order of recall, and which must be registered in his name: Provided, however, That this exemption shall apply only to the value of the motor car and to aggregate assessed value of said personal and household effects the latter not to exceed thirty per centum (30%) of the total amount received by such officer or employee in salary and allowances during his latest assignment abroad but not to exceed four years; And Provided, finally, That the officer or employee concerned must have served abroad for not less than two years.

The provisions of general and special laws, including those granting franchises, to the contrary notwithstanding, there shall be no exemptions whatsoever from the payment of customs duties except those provided for in this Code; those granted to government agencies, instrumentalities or government-owned or controlled corporations with existing contracts, commitments, agreements, or obligations (requiring such exemption) with foreign countries; international institutions, associations or organizations entitled to exemption pursuant to agreements or special laws; and those that may be granted by the President upon prior recommendation of the National Economic and Development Authority in the interest of national economic development.

Sec. 106. Drawbacks. - a. On Fuel Used for Propulsion of Vessels. - On all fuel imported

into the Philippines used for propulsion of vessels engaged in trade with foreign countries, or in the coastwise trade, a refund or tax credit shall be allowed not exceeding ninety-nine (99) per cent of the duty imposed by law upon such fuel, which shall be paid or credited under such rules and regulations as may be prescribed by the Commissioner of Customs with the approval of the Secretary of Finance.

b. On Petroleum Oils and Oils Obtained from Bituminous Minerals, Crude Eventually Used for Generation of Electric Power and for the Manufacture of City Gas. - On petroleum oils and oils obtained from bituminous materials, crude oils imported by non-electric utilities, sold directly or indirectly, in the same form or after processing, to electric utilities for the generation of electric power and for the manufacture of city gas, a refund or tax credit shall be allowed not exceeding fifty per cent (50%) of the duty imposed by law upon such oils, which shall be paid or credited under such rules and regulations as may be prescribed by the Commissioner of Customs with the approval of the Secretary of Finance.

c. On Articles Made from Imported Materials. - Upon exportation of articles manufactured or produced in the Philippines, including the packing, covering, putting up, marking or labeling thereof either in whole or in part of imported materials for which duties have been paid, refund or tax credit shall be allowed for the duties paid on the imported materials do used including the packing, covering, putting up, marking or labeling thereof, subject to the following conditions:

1. The actual use of the imported materials in the production or manufacture of the article exported with their quantity, value, and amount of duties paid thereon, having been established;
2. The duties refunded or credited shall not exceed one hundred (100) per cent of duties paid on imported materials used;
3. There is no determination by the National Economic and Development Authority of the requirement for certification on non-availability of locally-produced or manufactured competitive substitutes for the imported materials used at the time of importation;
4. The exportation shall be made within one (1) year after the importation of materials used and claim of refund or tax credit shall be filed within six (6) months from the date of exportation;
5. When two or more products result from the use of the same imported materials, an apportionment shall be made on its equitable basis.

For every application of a drawback, there shall be paid to and collected by the Bureau of Customs as filing, processing and supervision fees the sum of Five Hundred Pesos (P500.00) which amount may be increased or decreased when the need arises by the Secretary of Finance upon the recommendation of the Commissioner of Customs.

d. Payment of Partial Drawbacks. - The Secretary of Finance may, upon recommendation of the Commissioner of Customs, promulgate rules and regulations allowing partial payments of drawbacks under this section.

e. Payment of the Drawbacks. - Claims for refund or tax credit eligible for such benefits shall be paid or granted by the Bureau of Customs to claimants within sixty (60) days after receipt of properly accomplished claims: Provided, That a registered enterprise under Republic Act Numbered Fifty-one hundred and eighty-six or Republic Act Numbered Sixty-one hundred and thirty-five which has previously enjoyed tax credit based on customs duties paid on imported raw materials and supplies, shall not be entitled to drawback under this section, with respect to the same importation subsequently processed and re-exported; Provided, further, That is as a result of the refund or tax credit by way of drawback of customs duties, there would necessarily result a corresponding refund or credit of internal revenue taxes on the same importation, the Collector of Customs shall likewise certify the same to the Commissioner of Customs who shall cause the said refund or tax credit of internal revenue taxes to be paid, refunded or credited in favor of the importer, with advice to the Commissioner of Internal Revenue.

TITLE II

ADMINISTRATIVE PROVISIONS

PART I

BASES OF ASSESSMENT OF DUTY

Sec. 201. - Basis of Dutiable Value. - The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the cost (fair market value) of same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade in the principal markets of the exporting country on the date of exportation to the Philippines (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the cost (fair market value) nearest to the date of exportation, including the value of all container, covering and/or packings of any kind and all other expenses, costs and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.

Where the fair market value or price of the article cannot be ascertained thereat or where there exists a reasonable doubt as to the fairness of such value or price, then the fair market value or price in the principal market in the country of manufacture or origin, if it is not the country of exportation, or in a third country with the same stage of economic development as the country of exportation shall be used.

When the dutiable value of the article cannot be ascertained in accordance with the preceding paragraphs or where there exists a reasonable doubt as to the cost (fair market value) of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained by the Commissioner Of Customs from the reports of the Revenue or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty-four Hundred and Sixty-six or other Philippine diplomatic officers or Customs Attaches and from such other information that may be available to the Bureau of Customs. Such values shall be published by the Commissioner of Customs from time to time.

When the dutiable value cannot be ascertained as provided in the preceding paragraphs, or where there exists a reasonable doubt as to the dutiable value of the imported article declared in the entry, it shall be domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines or on the date the duty become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade, minus:

- (a) not more than twenty-five (25) per cent thereof for expenses and profits; and
- (b) duties and taxes paid thereon. (as amended by E.O. 156)

Sec. 202. Bases of Dutiable Weight. - On articles that are subject to the specific rate of duty, based on weight, the duty shall be ascertained as follows:

(a) When articles are dutiable by the gross weight, the dutiable weight thereof shall be the weight of same, together with the weight of all containers, packages, holders and packing, of any kind, in which said articles are contained, held or packed at the time of importation.

(b) When articles are dutiable by the legal weight thereof shall be the weight of same, together with the weight of the immediate containers, holders and/or packing in which such articles are usually contained, held or packed at the time of importation and/or, when imported in retail packages, at the time of their sale to the public in usual retail quantities:

Provided, That when articles are packed in single container, the weight of the latter shall be included in the legal weight.

(c) When articles are dutiable by the net weight, the dutiable weight thereof shall be only the actual weight of the articles at the time of importation, excluding the weight of the immediate and all other containers, holders or packing in which such articles are contained, held or packed.

(d) Articles affixed to cardboard, cards, paper, wood or similar common material shall be dutiable together with the weight of such holders.

(e) When a single package contains imported articles dutiable according to different weights, or to weight and value, the common exterior receptacles shall be prorated and

the different proportions thereof treated in accordance with the provisions of this Code as to the dutiability or non-dutiability of such packing.

Sec. 203. Rate of Exchange. - For the assessment and collection of import duty upon imported articles and for other purposes, the value and prices thereof quoted in foreign currency shall be converted into the currency of the Philippines at the current rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines.

Sec. 204. Effective Date of Rates of Import Duty. - Imported articles shall be subject to the rate or rates of import duty existing at the time of entry, or withdrawal from warehouse, in the Philippines, for consumption.

On and after the day when this Code shall go into effect, all articles previously imported, for which no entry has been made, and all articles previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subject to the rates of any duty imposed by this Code and to any other duty, upon the entry, or withdrawal thereof from warehouse, for consumption.

On article abandoned or forfeited to, or seized by, the government, and then sold at public auction, the rates of duty and the tariff in force on the date of the auction shall apply: Provided, That duty based on the weight, volume and quantity of articles shall be levied and collected on the weight, volume and quantity at the time of their entry into the warehouse or the date of abandonment, forfeiture and/or seizure.

Sec. 205. Entry, or Withdrawal from Warehouse, for Consumption. - Imported articles shall be deemed "entered" in the Philippines for consumption when the specified entry form is properly filed and accepted, together with any related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid at the time of making such entry have been paid or secured to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry.

Imported articles shall be deemed "withdrawn" from warehouse in the Philippines for consumption when the specified form is properly filed and accepted, together with any related documents required by any provisions of this Code and/or regulations to be filed with such form at the time of withdrawal, by the customs official designated to receive the withdrawal entry and any duties, taxes, fees and/or other lawful charges required to be paid at the time of withdrawal have been deposited with the customs official designated to receive such payment.

PART 2

SPECIAL DUTIES

Sec. 301. Dumping Duty.—

a. Whenever the Secretary of Finance (hereinafter called the "Secretary") has reason to believe, from invoices or other documents or newspapers, magazines or information made available by any government agency or interested party, that a specific kind or class of foreign article, is being imported into, or sold or is likely to be sold in the Philippines, at a price less than its fair value, the importation and sale of which might injure, or retard the establishment of, or is likely to injure, an industry producing like goods in the Philippines, he shall so advise the Tariff Commission (hereinafter called the "Commission"), and shall instruct the Collector of Customs to require an anti-dumping bond of twice the dutiable value of the imported article coming from the specific country.

b. The Commission, upon receipt of the advice from the Secretary shall conduct an investigation to:

1. Verify if the kind or class of article in question is being imported into, or sold or is likely to be sold in the Philippines at a price less than its fair value;

The fair value of an article shall be its home consumption price, excluding internal excise tax.

If the fair value of an article cannot be determined, the following rules shall apply:

i. If the home consumption price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, or if the quality of like to similar articles sold by the producers for home consumption is negligible in relation to the quality sold for exportation to countries other than the Philippines as to be an inadequate basis for comparison, then the fair value of the articles shall be based from the export price of like articles sold to countries other than the Philippines, or

ii. If the country of export is a state-controlled economy, then the fair value of like articles shall be the home consumption price of like articles in a proxy country at the same stage of economic development which is a proven or established competitive producer of the article under consideration.

iii. In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the fair value shall be the home consumption in the country of origin or the country of export whichever is higher.

iv. If the fair value of such or like articles cannot be determined in accordance with the preceding paragraphs then, the fair value of the article under consideration shall be its cost of production as determined or calculated from reasonably available data.

2. Determine if, as a result thereof, an industry producing like goods in the Philippines, is being injured or is likely to be injured or is retarded from being established by reason of the importation or sale of that kind or class of article into the Philippines: Provided, That a finding that an article is being imported into the Philippines at a price less than its fair market value shall be deemed prima facie proof of injury, or retarding the establishment of an industry producing like goods in the Philippines: And provided, further, That in determining whether the domestic industry has suffered is being threatened with injury, the Commission shall determine whether the wholesale prices at which the domestic products are sold are reasonable, taking into account the cost of raw materials, labor, overhead, a fair return on investment and the overall efficiency of the industry; and

3. Ascertain the difference, if any, between the purchase price and the fair market value of the article. The Commission shall submit its findings to the Secretary within sixty (60) days after the submission of the memoranda of the parties which shall not be later than fifteen (15) days after the termination of the public hearing.

c. The Secretary shall, within sixty (60) days after receipt of the report of the Commission, decide whether the article in question is being imported in violation of this section and shall give due notice of such decision and shall direct the Commissioner of Customs to cause the dumping duty, to be levied, collected and paid, as prescribed in this section, in addition to any other duties, taxes and charges as prescribed in this section, addition to any other duties, taxes and charges imposed by law on such article, and on the articles of the same specific kind or class subsequently imported under similar circumstances coming from the specific country.

d. The "Dumping Duty" as provided for in sub-section "c" hereof shall be equal to the difference between the actual purchase price and the fair value of the article as determined in the dumping decision. All importations of like articles within sixty (60) days immediately preceding the filing of the protest are covered by the investigation. However, in cases of subsequent importations of the same kind or class of article from the specific country named in the protest, the dumping duty shall be equal to the difference between the actual purchase price and the fair value actually existing at the time of importation as determined by the Tariff Commission from the supporting documents submitted or from other reliable sources.

e. Pending investigation and final decision of the case, the article in question, and

articles of the same specific kind or class subsequently imported under similar circumstances, shall be released to the owner, importer, consignee or agent upon the giving of a bond in an amount equal to twice the estimated dutiable value thereof.

f. Any aggrieved party may appeal only the amount of the dumping duty to the Court of Tax Appeals in the same manner and within the same period provided for by law in the case of appeal from decision of the Commissioner of Customs.

g. (1) The article, if it has not been previously released under bond as provided for in subsection "e" hereof, shall be released after payment by the party concerned of the corresponding dumping duty in addition to any ordinary duties, taxes, and charges, if any, or re-exported by the owner, importer, consignee or agent, at his option and expense, upon the filing of a bond in an amount equal to twice the estimated dutiable value of the article, conditioned upon presentation of landing certificate issued by a consular officer of the Philippines at the country of destination; or

(2) If the article has been previously released under bond, as provided in subsection "e" hereof, the party concerned shall be required to pay the corresponding dumping duty in addition to any ordinary duties, taxes and charges, if any.

h. Any investigation to be conducted by the Commission under this section shall include a public hearing or hearings where the importer, consignee or agent, of the imported article, the local producers of a like article, other parties directly affected, and such other parties as in the judgment of the Commission are entitled to appear, shall be given an opportunity to be heard and to present evidence bearing on the subject matter.

i. The established dumping duty shall be subject to adjustment based on the prevailing home consumption price or the exporter's sales price to third country or the home consumption price of a proxy country or in the absence thereof, the cost of production. The Commission shall conduct quarterly examination and/or verification of the fair value to determine the necessity of adjustment. Should the Secretary, upon receipt of the report of the Commission, find that there is a need for an adjustment he shall direct the commissioner of Customs to effect the necessary adjustment in dumping duty.

The Philippines Finance Attache or, in the absence thereof, the Commercial Attache or, in the absence thereof, the diplomatic officer and/or consular officer abroad shall be advised by the Secretary of any article covered by dumping decision. The concerned Attache or the Officer shall submit quarterly report on home consumption prices, or in the absence thereof, the cost of production, of said articles to the Secretary and the Commission, thru the department head.

j. Whenever the Commission, on its own motion or upon the application of any interested party, finds that any of the conditions which necessitated the imposition of the dumping duty has ceased to exist, it shall submit the necessary recommendation to the Secretary for the discontinuance or modification of such dumping duty. Any decision or order made under this section by the Secretary shall be published in the Official Gazette and/or in a newspaper of general circulation.

k. Any dumping decision promulgated by the Secretary shall be effective for a period of five years from the time of its promulgation except upon the representation of the interested party of the necessity to continue the implementation of said decision, in which case the Secretary shall advise the Commission to conduct an investigation to determine whether the conditions in paragraphs b-1 and b-2 still exist. The action for extension shall be brought before the Secretary at least six (6) months before the expiration of the period.

The findings of the Commission shall be submitted to the Secretary at least three (3) months before the expiration of the period.

[All industries protected by any dumping decision for five years or more from the time of its promulgation may apply for extension to the Secretary within six (6) months from effectivity of this Decree. The decision shall be deemed terminated upon failure to file the application within the period so provided.]

l. The Secretary and the Commission shall promulgate all rules and regulations necessary to carry out their respective functions under this Section.

Sec. 302. Countervailing Duty. -

a. Whenever any article is directly or indirectly granted any bounty, subsidy or subvention upon its production, manufacture or exportation in the country of origin and/or exportation, and the importation of which has been determined by the Secretary, after investigation and report of the Commission, as likely to injure an established industry, or prevent or considerably retard the establishment of an industry in the Philippines, there shall be levied a countervailing duty equal to the ascertained or estimated amount of such bounty, subsidy or subvention: Provided, That the injury criterion to a domestic industry shall be applied only in case of imports from countries which adhere to the GATT Code on Subsidies and Countervailing Duties; Provided further, That the exemption of any exported article from duty or tax imposed on like articles when destined for consumption in the country of origin and/or exportation or the refunding of such duty or tax, shall not be deemed to constitute a grant of a bounty, subsidy or subvention within the meaning of this subsection: Provided, furthermore, That should an article be allowed drawback by the country of origin and/or exportation, only the ascertained or estimated excess of the amount of the drawback over the total amount of the duties and/or internal taxes, if any, shall constitute a bounty, subsidy or subvention: Provided, finally, That petitions for imposition of countervailing duty shall be filed with the Secretary of Finance. Upon finding of a prima facie case of bounty, subsidy or subvention enjoyed by the imported article and injury to, or likelihood of injury to a domestic industry, the Secretary shall refer the case to the Tariff Commission for investigation and shall instruct the Commissioner of Customs to require the filing of countervailing bonds for importations entered during the pendency of countervailing proceedings;

b. The Secretary shall, after receipt of the reports of the Commission, decide whether

the article in question is granted any bounty, subsidy or subvention and if so, fix the countervailing duty equal to the ascertained or estimated bounty, subsidy or subvention. He shall give due notice of his decision and shall direct the Commissioner of Customs to cause the countervailing duty to be levied, collected and paid in addition to any ordinary duties, taxes and charges imposed by law on such articles and on articles of the same specific kind or class subsequently imported under similar circumstances;

c. Pending investigation and final decision of the case, the article in question shall not be released from customs custody to the owner except upon the filing of a bond equal to the ascertained or estimated amount of bounty, subsidy or subvention as provisionally determined by the Secretary of Finance;

d. The article, if not previously released under bond as provided for in this section, shall be released after payment by the party concerned of the corresponding countervailing duty in addition to any ordinary duties, taxes and charges, if any, or re-exported upon the filing of a bond in an amount twice the estimated dutiable value of the article, conditioned upon the presentation of a landing certificate issued by a consular officer of the Philippines at the country of destination. If the article has been previously released under bond, the party concerned shall be required to pay the corresponding countervailing duty in addition to ordinary duties, taxes and other charges, if any;

e. Whenever the Commission, on its motion or upon application of any interested party, finds that the condition which necessitated the imposition of the countervailing duty has ceased to exist, it shall submit the necessary recommendations to the Secretary for the discontinuance of the imposition of that duty. Any order made under this section by the Secretary shall be published in the Official Gazette and/or in a newspaper of general circulation;

f. Any countervailing decision promulgated by the Secretary shall be effective for a period of five (5) years from the time of its promulgation except upon the representation of the interested party of the necessity to continue the implementation of said decision, in which case the Secretary shall advise the Commission to conduct an investigation to determine whether the conditions in paragraph "a" still exist. The action for extension shall be brought before the Secretary at least six (6) months before the expiration of the period.

The findings of the Commission shall be submitted to the Secretary at least three (3) months before the expiration of the period.

g. The Secretary and the Commission shall promulgate all rules and regulations necessary to carry out their respective functions under this section.

Sec. 303. Marking of Imported Articles and Containers. -

a. Marking of Articles. – Except as hereinafter provided, every article of foreign origin

(or its container, as provided in subsection "b" hereof) imported into the Philippines shall be marked in any official language of the Philippines and in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the Philippines the name of the country of origin of the article. The Commissioner of Customs shall, with the approval of the department head, issue rules and regulations to -

1. Determine the character of words and phrases or abbreviation thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labelling or by any other reasonable method, and a conspicuous place on the article or container where the marking shall appear.
2. Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and
3. Authorize the exception of any article from the requirements of marking if -
 - a. Such article is incapable of being marked;
 - b. Such article cannot be marked prior to shipment to the Philippines without injury;
 - c. Such article cannot be marked prior to shipment to the Philippines, except at an expense economically prohibitive of its importation;
 - d. The marking of a container of such article will reasonably indicate the origin of such article;
 - e. Such article is a crude substance;
 - f. Such article is imported for use by the importer and not intended for sale in its imported or any other form;
 - g. Such article is to be processed in the Philippines by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed or permanently concealed;

- h. An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation must necessarily know the country of origin of such article even though it is not marked to indicate its origin;
- i. Such article was produced more than twenty years prior to its importation into the Philippines; or
- j. Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller or shipper to avoid compliance with this section.

b. Marking of Containers. - Whenever an article is excepted under subdivision (3) of subsection "a" of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Commissioner of Customs with the approval of the department head, shall be marked in such manner as to indicate to an ultimate purchaser in the Philippines the name of the country of origin of such article in any official language of the Philippines, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection "a"

c. Marking Duty for Failure to Mark. - If at the time of importation any article (or its container, as provided in subsection "b" hereof), is not marked in accordance with the requirements of this section, there shall be levied, collected and paid upon such article a marking duty of 5 per cent ad valorem, which shall be deemed to have accrued at the time of importation, except when such article is exported or destroyed under customs supervision and prior to the final liquidation of the corresponding entry.

d. Delivery Withheld Until Marked. - No imported article held in customs custody for inspection, examination or appraisalment shall be delivered until such article and/or its containers, whether released or not from customs custody, shall have been marked in accordance with the requirements of this section and until the amount of duty estimated to be payable under subsection "c" of this section shall have been deposited. Nothing in this section shall be construed as excepting any article or its container from the particular requirements of marking provided for in any provision of law.

e. The failure or refusal of the owner or importer to mark the articles as herein required within a period of thirty days after due notice shall constitute as an act of abandonment of said articles and their disposition shall be governed by the provisions of this Code relative to abandonment of imported articles.

Sec. 304. Discrimination by Foreign Countries. -

a. The President, when he finds that the public interest will be served thereby, shall by proclamation specify and declare new or additional duties in an amount not exceeding one hundred (100) per cent ad valorem upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country -

1. Imposes, directly or indirectly, upon the disposition or transportation in transit through or re-exportation from such country of any article wholly or in part the growth or product of the Philippines, any unreasonable charge, exaction, regulation or limitation which is not equally enforced upon the like articles of every foreign country; or

2. Discriminates in fact against the commerce of the Philippines, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction or prohibition, in such manner as to place the commerce of the Philippines at a disadvantage compared with the commerce of any foreign country.

b. If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the Philippines, as aforesaid, but has, after the issuance of a proclamation as authorized in subsection "a" of this section, maintained or increased its said discrimination against the commerce of the Philippines, the President is hereby authorized, if he deems it consistent with the interests of the Philippines, to issue a further proclamation directing that such product of said country or such article imported in its vessels as he shall deem consistent with the public interests, shall be excluded from importation into the Philippines.

c. Any proclamation issued by the President under this section shall, if he deems it consistent with the interest of the Philippines, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement or amend any such proclamation.

d. All articles imported contrary to the provisions of this section shall be forfeited to the Government of the Philippines and shall be liable to be seized, prosecuted and condemned in like manner and under the same regulations, restrictions and provisions as may from time to time be established for the recovery, collection, distribution and remission or forfeiture to the government by the tariff and customs laws. Whenever the provision of this section shall be applicable to importations into the Philippines of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto, whether such articles are imported directly or indirectly.

e. It shall be the duty of the Commission to ascertain and at all times to be informed

whether any of the discrimination against the commerce of the Philippines enumerated in subsections "a" and "b" of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the Commission to bring the matter to the attention of the President, together with recommendations.

f. The Secretary of finance shall make such rules and regulations as are necessary for the execution of such proclamation as the President may issue in accordance with the provisions of this section.

PART 3

FLEXIBLE TARIFF

Sec. 401. *Flexible Clause.* –

a. In the interest of national economy, general welfare and/or national security, and subject to the limitations herein prescribed, the President, upon recommendation of the National Economic and Development Authority (hereinafter referred to as NEDA), is hereby empowered: (1) to increase, reduce or remove existing protective rates of import duty (including any necessary change in classification). The existing rates may be increased or decreased to any level, in one or several stages but in no case shall the increased rate of import duty be higher than a maximum of one hundred (100) per cent ad valorem; (2) to establish import quota or to ban imports of any commodity, as may be necessary; and (3) to impose an additional duty on all imports not exceeding ten (10%) per cent ad valorem whenever necessary; Provided, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One Hundred and Four of this Code, including those subsequently granted pursuant to this section.

b. Before any recommendation is submitted to the President by the NEDA pursuant to the provisions of this section, except in the imposition of an additional duty not exceeding ten (10) per cent ad valorem, the Commission shall conduct an investigation in the course of which they shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, produce evidence and to be heard. The Commission shall also hear the views and recommendations of any government office, agency or instrumentality concerned. The Commission shall submit their findings and recommendations to the NEDA within thirty (30) days after the termination of the public hearings.

c. The power of the President to increase or decrease rates of import duty within the limits fixed in subsection "a" shall include the authority to modify the form of duty. In modifying the form of duty, the corresponding ad valorem or specific equivalents of the duty with respect to imports from the principal competing foreign country for the most recent representative period shall be used as bases.

d. The Commissioner of Customs shall regularly furnish the Commission a copy of all customs import entries as filed in the Bureau of Customs. The Commission or its duly authorized representatives shall have access to, and the right to copy all liquidated customs import entries and other documents appended thereto as finally filed in the Commission on Audit.

e. The NEDA shall promulgate rules and regulations necessary to carry out the provisions of this section.

f. Any Order issued by the President pursuant to the provisions of this section shall take effect thirty (3) days after promulgation, except in the imposition of additional duty not exceeding ten (10) per cent ad valorem which shall take effect at the discretion of the President.

Sec. 402. Promotion of Foreign Trade. –

a. For the purpose of expanding foreign markets for Philippine products as a means of assistance in the economic development of the country, in overcoming domestic unemployment, in increasing the purchasing power of the Philippine peso, and in establishing and maintaining better relations between the Philippines and other countries, the President, is authorized from time to time:

(1) To enter into trade agreements with foreign governments or instrumentalities thereof; and

(2) To modify import duties (including any necessary change in classification) and other import restrictions, as are required or appropriate to carry out and promote foreign trade with other countries: Provided, however, That in modifying import duties or fixing import quota the requirements prescribed in subsection "a" of Section 401 shall be observed: Provided, further, That any modification of import duties and any fixing of import quotas made pursuant to this agreement on ASEAN Preferential Trading Arrangements ratified on August 1, 1977 shall not be subject to the limitations of afore said section "a" of Section 401.

b. The duties and other import restrictions as modified in subsection "a" above, shall apply to articles which are the growth, produce or manufacture of the specific country, whether imported directly or indirectly, with which the Philippines has entered into a trade agreement: Provided, That the President may suspend the application of any concession to articles which are the growth, produce or manufacture of such country because of acts (including the operations of international cartels) or policies which in his opinion tend to defeat the purposes set in this section; and the duties and other import restrictions as negotiated shall be in force and effect from and after such time as specified in the Order.

c. Nothing in this section shall be construed to give any authority to cancel or reduce in any manner any of the indebtedness of any foreign country to the Philippines or any claim of the Philippines against any foreign country.

d. Before any trade agreement is concluded with any foreign government or instrumentality thereof, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the Commission which shall seek information and advice from the Department of Agriculture, Department of Natural Resources, Department of Trade and Industry, Department of Tourism, the Central Bank of the Philippines, the Department of Foreign Affairs, the Board of Investments and from such other sources as it may deem appropriate.

e. (1) In advising the President, as a result of the trade agreement entered into, the Commission shall determine whether the domestic industry has suffered or is being threatened with injury and whether the wholesale prices at which the domestic products are sold are reasonable, taking into account the cost of raw materials, labor, overhead, a fair return on investment, and the overall efficiency of the industry.

(2) The NEDA shall evaluate the report of the Commission and submit recommendations to the President.

(3) Upon receipt of the report of the findings and recommendations of the NEDA, the President may prescribe such adjustments in the rates of import duties, withdraw, modify or suspend, in whole or in part, or institute such other import restrictions as the NEDA recommends to be necessary in order to fully protect domestic industry and the consumers, subject to the condition that the wholesale prices of the domestic products concerned shall be reduced to, or maintained at, the level recommended by the NEDA unless for good cause shown, an increase thereof, as recommended by NEDA, is authorized by the President. Should increases be made without such authority, the NEDA shall immediately notify the President, who shall allow the importation of competing products in such quantities as to protect the public from the unauthorized increase in wholesale prices.

f. This section shall not prevent the effectivity of any executive agreement or any future preferential trade agreement with any foreign country.

g. The NEDA and the Commission are authorized to promulgate such reasonable procedure, rules and regulations as they may deem necessary to execute their respective functions under this section.

PART 4

TARIFF COMMISSION

Sec. 501. Chief Officials of the Tariff Commission. - The Officials of the Tariff Commission shall be the Chairman and two (2) Member Commissioners to be appointed by the President of the Philippines.

Sec. 502. Qualifications. - No person shall be eligible for appointment as Chairman and Tariff Commissioners unless they are natural-born citizens of the Philippines, of good moral character and proven integrity, and who by experience and academic training are possessed of qualifications requisite for developing expert knowledge of tariff problems. They shall not, during their tenure in office, engage in the practice of any profession, or intervene directly or indirectly in the management or control of any private enterprise which may, in any way, be affected by the functions of their office nor shall be, directly or indirectly, financially interested in any contract with the Government, or any subdivision or instrumentality thereof.

Sec. 503. Appointment and Compensation of Officials and Employees. - All employees of the Commission shall be appointed by the Chairman in accordance with the Civil Service Law except the private secretaries to the Chairman, Commissioners and Executive Director.

The Tariff Commission shall be reorganized in accordance with the requirements of its reorganized functions and responsibilities. The Chairman of the Commission, subject to the approval of the Director-General of the National Economic and Development Authority, shall determine the new positions-designations and salary scales of the officials and employees of the Commission by taking into account the degree of responsibilities of each position: Provided, That the Office of Compensation and Position Classification shall be furnished a copy of the new plantilla of positions incorporating the new designations to be automatically included in its manual of positions: Provided, further, That the reorganization shall not in any way affect whatever benefits the officials and employees of the Commission are allowed under existing law and/or authority.

Sec. 504. Official Seal. - The Commission is authorized to adopt an official seal.

Sec. 505. Functions of the Commission. - The Commission shall investigate -

(a) the administration of, and the fiscal and industrial effects of, the tariff and customs laws of this country now in force or which may hereafter be enacted;

(b) the relation between the rates of duty on raw materials and the finished or partly finished products;

(c) the effects of ad valorem and specific duties and of compounds specific and ad valorem duties;

- (d) all questions relative to the arrangement of schedules and classification of articles in the several sections of the tariff law;
- (e) the tariff relations between the Philippines and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates;
- (f) the volume of importations compared with domestic production and consumption;
- (g) conditions, causes and effects relating to competition of foreign industries with those of the Philippines, including dumping and cost of production;
- (h) in general, to investigate the operation of customs and tariff laws, including their relation to the national revenues, their effect upon the industries and labor of the country, and to submit reports of its investigation as hereinafter provided; and
- (i) the nature and composition of, and the classification of, articles according to tariff commodity classification and heading number for customs revenue and other related purposes which shall be furnished to NEDA, Board of Investments, Central Bank of the Philippines, and Secretary of Finance.

Sec. 506. Assistance to the President and Congress of the Philippines. - In order that the President and the Congress may secure information and assistance, it shall be the duty of the Commission to -

- (a) Ascertain conversion costs and costs of production in the principal growing, producing or manufacturing centers of the Philippines, whenever practicable;
- (b) Ascertain conversion costs and costs of production in the principal growing, producing or manufacturing centers of foreign countries of articles imported into the Philippines whenever such conversion costs or costs of production are necessary for comparison with those in the Philippines;
- (c) Select and describe representative articles imported into the Philippines similar to, or comparable with, those locally produced; select and describe articles of the Philippines similar to, or comparable with, such imported article; obtain and file samples of articles so selected whenever advisable;
- (d) Ascertain import costs of such representative articles so selected;
- (e) Ascertain the grower's, producer's or manufacture's selling prices in the principal growing, producing, or manufacturing centers in the Philippines, of the articles of the Philippines, so selected;
- (f) Ascertain all other facts which will show the difference in, or which affect competition

between, articles of the Philippines and those imported in the principal markets of the Philippines;

(g) Ascertain conversion costs and costs of production including effects of tariff modifications or import restrictions on prices in the principal growing, producing or manufacturing centers in the Philippines, whenever practicable; and

(h) Submit annual reports of these to the President of the Philippines, copy of which shall be furnished to the NEDA, Central Bank of the Philippines, Department of Finance and the Board of Investments.

Sec. 507. Reports of the Commission. - The Commission shall place at the disposal of the President and any member of the Congress of the Philippines or its member thereof all information at its command; shall make such investigation and report as may be required by the President and the Congress of the Philippines and shall report to the President and Congress on the first Monday of December of each year hereafter a statement of methods adopted and a summary of all reports made during the year.

Sec. 508. Access to Documents and Assistance to the Commission. - The Commission or its duly authorized representative shall have access to any document, paper or record, pertinent to the subject matter under investigation, in the possession of any person, firm, co-partnership, corporation or association engaged in the production, importation or distribution of any article under investigation, and shall have the power to summon witnesses, take testimony, administer oaths, and to issue subpoena duces tecum requiring the production of books, papers or documents relating to the matter under investigation. The Commission may also request the views, recommendations and/or assistance of any government office, agency or instrumentality, and such office, agency or instrumentality shall cooperate fully with the Commission.

Sec. 509. Sworn Statements. - The Commission may order the taking of sworn statements at any stage of any proceeding or investigation before it. Such sworn statements may be taken before any person having power to administer oaths.

Sec. 510. Verified Statements. - The Commission is authorized to require any importer, grower, producer, manufacturer or seller to file with the Commission a statement, under oath, giving his selling prices in the Philippines of any article imported, grown, produced, fabricated or manufactured by him.

Sec. 511. Rules and Regulations of the Commission. - The Commission shall adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this Code.

Sec. 512. Appropriation. - In addition to its current appropriation the amount of Six Hundred Thousand is hereby appropriated to carry out the purpose of sections five hundred one and five hundred three of this Code.

TITLE III

EXPORT TARIFF AND PREMIUM DUTY

Sec. 514. **Export Products subject to Duty and Rates.** - There shall be levied, assessed and collected an export duty on the gross F.O.B. value at the time of shipment based on the prevailing rate of exchange, of the following products in accordance with the schedule specified in the column Export Duty.

In addition to the export duties, herein referred to as basic rate, there shall be levied, assessed and collected a premium duty on the difference between the current price as established by the Bureau of Customs and the base price of the products in accordance with the schedule specified under the column Premium Duty; Provided, That should the current price of any export product be below the established base price, then only the basic rate shall be applied: Provided, further, That, initially, the base price upon which the premium duty shall be levied eighty per centum (80%) of the F.O.B. value of exports established by the Bureau of Customs for February 1974. The National Economic and Development Authority shall, from time to time, review and establish such base prices taking into account, among others, the cost conditions in various industries.

EXPORT PRODUCTS		EXPORT DUTY 1
Wood Products		
1.	Logs	20%
2.	Lumber	
3.	Veneer	
4.	Plywood	
Mineral Products		
1.	Metallic ores and concentrates	
	a) Copper	
	b) Iron	
	c) Chromite	
2.	Gold	
3.	Non-Metallic	
	a) Clinker, cement	
	b) Portland cement	
4.	Mineral fuel	
	a) Bunker fuel oil	
	b) Petroleum pitch	
5.	Silver	

Plant and Vegetable Products

1. Abaca (stripped hemp, manufactured)
2. Banana
3. Coconut
 - a) Copra
 - b) Coconut oil
 - c) Copra meal/cake
 - d) Dessicated coconut
4. Pineapple
 - a) Pineapple sliced or crushed
 - b) Pineapple juice or juice concentrate
5. Sugar and Sugar Products
 - a) Centrifugal sugar
 - b) Molasses
6. Tobacco
 - a) Tobacco leaf
 - b) Scrap tobacco

Animal Products

1. Shrimp and Prawns

For purposes of computing the duty, the cost of packaging and crating materials shall be deductible from the export value, provided such materials are domestically manufactured using a substantial portion of local raw materials, as determined by the Board of Investments.

Sec. 515. Flexible Clause. - The President, upon recommendation of the National Economic and Development Authority, may subject any of the above products to higher or lower rates of duty provided in this Title, include additional products, exclude or exempt any product from this Title, or additionally subject any product to an export quota. In the exercise of this authority the President shall take into account: (1) the policy of encouraging domestic processing; (2) the prevailing prices of export products in the world market; (3) the advantages obtained by export products from international agreements to which the Philippines is a signatory; (4) the preferential treatment granted to our export products by foreign governments; and (5) the need to meet domestic consumption requirements.

Sec. 516. Assessment and Collection of the Duty. - The duty shall be assessed by the Bureau of Customs and collected by the Bureau thru authorized agent banks of the Central Bank not later than 30 days from the date of shipment.

Sec. 517. Deficiency and Surcharges. - In case the duty is not fully paid at the time specified hereof, the deficiency shall be increased by an amount equivalent to twenty-five per centum (25%) thereof, the total to be collected in the same manner as the duty. Where the deficiency is the result of false or fraudulent statements or representations attributable to the exporter, the surcharge shall be fifty per centum (50%).

Sec. 518. Allotment and Disposition of the Proceeds. - The proceeds of this duty shall accrue to the General Fund and shall be allotted for development projects; except that one per centum (1%) annually shall be set aside for the Export Assistance Fund to be administered by the Board of Investments and expended in accordance with the General Appropriations Act to finance export promotion projects; however, thirty per cent of this 1% shall accrue to the Bureau of Customs which shall constitute as its intelligence fund to be disbursed by the Commissioner of Customs in the implementation of this Title, such as but not limited to the purchase of equipment, hiring of personnel if necessary and for such other operational expenses in the promotion of the export industry.

Sec. 519. Rules and Regulations. - The Commissioner of Customs shall promulgate the rules and regulations necessary for the implementation of this Title, subject to the approval of the Secretary of Finance.

RA 9135 (ammendments of certain provisions of PD 1464)

Republic of the Philippines
Congress of the Philippines
Metro Manila

Eleventh Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fourth day of July, two thousand.

[REPUBLIC ACT NO. 9135]

AN ACT AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 201 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 201. Basis of Dutiable Value. -

(A) Method One. - Transaction Value. - The dutiable value of an imported article subject to an ad valorem rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding:

- 1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:
 - (a) Commissions and brokerage fees (except buying commissions);
 - (b) Cost of containers;
 - (c) The cost of packing, whether for labour or materials;
 - (d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods;

- (e) The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;
- 2) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- 3) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;
- 4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and
- 5) The cost of insurance. All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.

No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section: Provided, That Method One shall not be used in determining the dutiable value of imported goods if:

(a) There are restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

- (i) Are imposed or required by law or by Philippine authorities;
- (ii) Limit the geographical area in which the goods may be resold; or
- (iii) Do not substantially affect the value of the goods.

(b) The sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) Part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions hereof; or

(d) The buyer and the seller are related to one another, and such relationship influenced the price of the goods. Such persons shall be deemed related if:

- (i) They are officers or directors of one another's businesses;
- (ii) They are legally recognized partners in business;
- (iii) There exists an employer-employee relationship between them;
- (iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer;

- (v) One of them directly or indirectly controls the other;
- (vi) Both of them are directly or indirectly controlled by a third person;
- (vii) Together they directly or indirectly control a third person; or
- (viii) They are members of the same family, including those related by affinity or consanguinity up to the fourth civil degree.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Act if they fall within any of the eight (8) cases above.

(B) Method Two. - Transaction Value of Identical Goods. - Where the dutiable value cannot be determined under method one, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued. "Identical goods" shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

(C) Method Three. - Transaction Value of Similar Goods. - Where the dutiable value cannot be determined under the preceding method, the dutiable value shall be the transaction value of similar goods sold for export to the Philippines and exported at or about the same time as the goods being valued, to persons not related to the persons from whom they buy such goods, subject to deductions for the following:

- (1) Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;

- (2) The usual costs of transport and insurance and associated costs incurred within the Philippines in the conditions as imported, the customs value shall, subject to the conditions set forth in the preceding paragraph hereof, be based on the unit price at which the imported goods or identical or similar imported goods sold in the Philippines in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety (90) days after such importation.

If neither the imported goods nor identical nor similar imported goods are sold in the Philippines in the condition as imported, then, if the importer so requests, the dutiable value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the

Philippines who are not related to the persons from whom they buy such goods, subject to allowance for the value added by such processing and deductions provided under Subsections (D)(1), (2), (3) and (4) hereof.

(E) Method Five. - Computed Value. - The dutiable value under this method shall be the computed value which shall be the sum of:

(1) The cost or the value of materials and fabrication or other processing employed in producing the imported goods;

(2) The amount for profit and general expenses equal to that usually reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Philippines;

(3) The freight, insurance fees and other transportation expenses for the importation of the goods;

(4) Any assist, if its value is not included under paragraph (1) hereof; and

(5) The cost of containers and packing, if their values are not included under paragraph (1) hereof.

The Bureau of Customs shall not require or compel any person not residing in the Philippines to produce for examination, or to allow access to, any account or other record for the purpose of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value may be verified in another country with the agreement of the producer and provided they will give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

(F) Method Six. - Fallback Value. - If the dutiable value cannot be determined under the preceding methods described above, it shall be determined by using other reasonable means and on the basis of data available in the Philippines. If the importer so requests, the importer shall be informed in writing of the dutiable value determined under Method Six and the method used to determine such value.

No dutiable value shall be determined under Method Six on the basis of:

(1) The selling price in the Philippines of goods produced in the Philippines;

(2) A system that provides for the acceptance for customs purposes of the higher of two alternative values;

(3) The price of goods in the domestic market of the country of exportation;

- (4) The cost of production, other than computed values, that have been determined for identical or similar goods in accordance with Method Five hereof;
- (5) The price of goods for export to a country other than the Philippines;
- (6) Minimum customs values; or
- (7) Arbitrary or fictitious values.

If in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer shall nevertheless be able to secure the release of the imported goods upon the filing of a sufficient guarantee in the form of a surety bond, a deposit, cash or some other appropriate instrument in an amount equivalent to the imposable duties and taxes on the imported goods in question conditioned upon the payment of customs duties and taxes for which the imported goods may be liable: Provided, however, That goods, the importation of which is prohibited by law shall not be released under any circumstance whatsoever.

Nothing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Subsection (A) hereof.

If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, without prejudice to an importer's right to appeal pursuant to Article 11 of the World Trade Organization Agreement on customs valuation, be deemed that the customs value of the imported goods cannot be determined under Method One. Before taking a final decision, the Collector of Customs shall communicate to the importer, in writing if requested, his grounds for doubting the truth or accuracy of the particulars or documents produced and give the importer a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor."

SEC. 2. Section 1302 of Part 2, Title IV of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"Sec. 1302. Import Entries. - All imported articles, except importations admitted free of duty under Subsection "k", Section one hundred and five of this Code, shall be subject to a formal or informal entry. Articles of a commercial nature intended for sale, barter or hire, the dutiable value of which is Two thousand pesos (P2,000.00) or less, and personal and household effects

or articles, not in commercial quantity, imported in passenger's baggage, mail or otherwise, for personal use, shall be cleared on an informal entry whenever duty, tax or other charges are collectible.

The Commissioner may, upon instruction of the Secretary of Finance, for the protection of domestic industry or of the revenue, require a formal entry, regardless of value, whatever be the purpose and nature of the importation.

A formal entry may be for immediate consumption, or under irrevocable domestic letter of credit, bank guarantee or bond for:

- (a) Placing the article in customs bonded warehouse;
- (b) Constructive warehousing and immediate transportation to other port of the Philippines upon proper examination and appraisal; or
- (c) Constructive warehousing and immediate exportation.

Import entries under irrevocable domestic letter of credit, bank guarantee or bond shall be subject to the provisions of Title V, Book II of this Code.

All importations entered under formal entry shall be covered by a letter of credit or any other verifiable document evidencing payment."

SEC. 3. Section 1407 of Part 3 Title IV of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 1407. Readjustment of Appraisal, Classification or Return. - Such appraisal, classification or return as finally passed upon and approved or modified by the Collector shall not be altered or modified in any manner, except:

- (a) Within one year after payment of the duties, upon statement of error in conformity with Section seventeen hundred and seven hereof, approved by the Collector.
- (b) Within fifteen days after such payment upon request for reappraisal and/or reclassification addressed to the Commissioner by the Collector, if the appraisal and/or classification is deemed to be low.
- (c) Upon request for reappraisal and/or reclassification, in the form of a timely protest addressed to the Collector by the interested party if the latter should be dissatisfied with the appraisal or return.

(d) Upon demand by the Commissioner of Customs after the completion of compliance audit pursuant to the provisions of this Code."

SEC. 4. Section 1603 of Part 5, Title IV of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 1603. Finality of Liquidation. When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of three (3) years from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative."

SEC. 5. A new section to be known as Section 2317 is hereby inserted under Part 2, Title VI of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 2317. Government's Right of Compulsory Acquisition. - In order to protect government revenues against the undervaluation of goods subject to ad valorem duty, the Commissioner of Customs may acquire imported goods under question for a price equal to their declared customs value plus any duties already paid on the goods, payment for which shall be made within ten (10) working days from issuance of a warrant signed by the Commissioner of Customs for the acquisition of such goods.

An importer who is dissatisfied with a decision of the Commissioner of Customs pertaining to this section may, within twenty (20) working days after the date on which notice of the decision is given, appeal to the Secretary of Finance and thereafter if still dissatisfied, to the court of Tax Appeals as provided for in Section 2402 of the Tariff and Customs Code of the Philippines, as amended.

Where no appeal is made by the importer, or upon reaffirmation of the commissioner's decision during the appeals process, the Bureau of Customs or its agent shall sell the acquired goods pursuant to existing laws and regulations.

Nothing in this Section limits or affects any other powers of the Bureau of Customs with respect to the disposition of the goods or any liability of the importer or any other person with respect to an offense committed in the importation of the goods."

SEC. 6. Section 2401 of Part, Title VI of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 2401. Supervision and Control Over Criminal and Civil Proceedings. - Civil and criminal actions and proceedings instituted in behalf of the government under the authority of this Code or other law enforced by the Bureau shall be brought in the name of the government

of the Philippines and shall be conducted by customs but no civil or criminal action for the recovery of duties or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner."

SEC. 7. Section 2606 of Part 5, Title VI of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 2606. Disposition of Surplus from the Proceeds of Sale of Abandoned or Forfeited or Acquired Articles. - Except in the case of the sale of abandoned or forfeited articles, and articles which are not claimed by payment of duties, taxes and other charges and compliance with all legal requirements within the prescribed period, any surplus remaining after the satisfaction of all unlawful charges as aforesaid shall be retained by the Collector for ten (10) days subject to the call of the owner.

Upon failure of the owner to claim such surplus within this period, the Collector shall deposit such amount in a special trust fund which shall be used solely for the purpose of financing the compulsory acquisition of imported goods by the government as provided in Section 2317 hereof.

In all such cases the Collector shall report fully his action in the matter, together with all the particulars, to the Commissioner and to the Chairman on Audit. After one year, the unused amounts in such special trust funds, except for an amount necessary to finance forced government acquisitions before the first auction of the succeeding year, shall be turned over to the Bureau of Treasury as customs receipts."

SEC. 8. A new section to be known as Section 3514 is hereby inserted in Part, 2 Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3513. Requirement to Keep Records. - All importers are required to keep at their principal place of business, in the manner prescribed by regulations to be issued by the Commissioner of Customs and for a period three (3) years from the date of importation, all the records of their importations and/or books of accounts, business and computer systems and all customs commercial data including payment records relevant for the verification of the accuracy of the transaction value declared by the importers/customs brokers on the import entry.

All brokers are required to keep at their principal place of business, in the manner prescribed by regulations to be issued by the Commissioner of Customs and for a period of three (3) years from the date of importation copies of the above mentioned records covering transactions that they handle."

SEC. 9. A new section to be known as Section 3515 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3515. Compliance Audit or Examination of Records. - The importers/customs brokers shall allow any customs officer authorized by the Bureau of Customs to enter during office hours

any premises or place where the records referred to in the preceding section are kept to conduct audit examination, inspection, verification and/or investigation of those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored. For this purpose. A duly authorized customs officer shall be full and free access to all books, records, and documents necessary or relevant for the purpose of collecting the proper duties and taxes.

In addition, the authorized customs officer may make copies of, or take extracts from any such documents. The records or documents must, as soon as practicable after copies of such have been taken, be returned to the person in charge of such documents.

A copy of any such document certified by or on behalf of the importer/broker is admissible in evidence in all courts as if it were the original.

An authorized customs officer is not entitled to enter any premises under this Section unless, before so doing, the officer produces to the person occupying or apparently in charge of the premises written evidence of the fact that he or she is an authorized officer. The person occupying or apparently in charge of the premises entered by an officer shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this Section.

Unless otherwise provided herein or in other provisions of law, the Bureau of Customs may, in case of disobedience, invoke the aid of the proper regional trial court within whose jurisdiction the matter falls. The court may punish contumacy or refusal as contempt. In addition, the fact that the importer/broker denies the authorized customs officer full and free access to importation records during the conduct of a post-entry audit shall create a presumption of inaccuracy in the transaction value declared for their imported goods and constitute grounds for the Bureau of Customs to conduct a re-assessment of such goods.

This is without prejudice to the criminal sanctions imposed by this Code and administrative sanctions that the Bureau of Customs may impose against contumacious importers under existing laws and regulations including the authority to hold delivery or release of their imported articles."

SEC. 10. A new Section to be known as Section 3516 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3516. Scope of the Audit. -

(a) The audit of importers shall be undertaken:

(1) When firms are selected by a computer-aided risk management system, the parameters of which are to be based on objective and quantifiable data and are to be approved by the Secretary of Finance upon recommendation of the Commissioner of Customs. The criteria for selecting firms to be audited shall include, but not be limited to, the following:

- (a) Relative magnitude of customs revenue from the firm;
 - (b) The rates of duties of the firm's imports;
 - (c) The compliance tract records of the firm; and
 - (d) An assessment of the risk to revenue of the firm's import activities.
- (2) When errors in the import declaration are detected;
 - (3) When firms voluntarily request to be audited, subject to the approval of the Commissioner of Customs.
- (b) Brokers shall be audited to validate audits of their importer clients and/or fill information gaps revealed during an audit of their importers clients."

SEC. 11. A new Section to be known as Section 3517 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3517. Documents in Foreign Language. - Where a document in a foreign language is presented to a customs officer in relation to the carrying out of any duty or the exercise of any power of the Bureau of Customs under this Code, said document in a foreign language must be accompanied with a translation in the official language of this country."

SEC. 12. A new Section to be known as Section 3518 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"Sec. 3518. Records to Be Kept by Customs. - The Bureau of Customs shall likewise keep a record of audit results in a database of importer and broker profiles, to include but not be limited to:

- (a) Articles of Incorporation;
- (b) The company structure, which shall include but not be limited to:
 - (1) Incorporators and Board of Directors;
 - (2) Key officers; and
 - (3) Organizational structure;
- (c) Key importations;

(d) Privileges enjoyed;

(e) Penalties; and

(f) Risk category (ies)."

SEC. 13. Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, shall be renamed as "PROVISIONS ON PENALTIES".

SEC. 14. Section 3604 of Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 3604. Statutory Offenses of Officials and Employees. - Every official, agent or employee of the Bureau or of any other agency of the government charged with the enforcement of the provisions of this Code, who is guilty of any delinquency herein below indicated shall be punished with a fine of not less than Five thousand pesos nor more than Fifty thousand pesos and imprisonment for not less than one year nor more than ten years and perpetual disqualification to hold public office, to vote and to participate in any public election:

(a) Those guilty of extortion or willful oppression under color of law;

(b) Those who knowingly demand other or greater sums than are authorized by law or receive any fee, compensation, or reward except as by law prescribed, for the performance of any duty;

(c) Those who willfully neglect to give receipts, as required by law for any sum collection the performance of duty, or who willfully neglect to perform any of the duties enjoined by law;

(d) Those who knowingly demand other or greater sums than are authorized by law or receive any fee, compensation, or reward except as by law prescribed, for the performance of any duty;

(e) Those who willfully make opportunity for any person to defraud the customs revenue or who do or fail to do any act with intent to enable any person to defraud said revenue;

(f) Those who negligently or designedly permit the violation of the law by any other person;

(g) Those who make or sign any false entry or entries in any

book, or make or sign any false certificate or return in any case where the law requires the making by them of such entry, certificate or return;

(h) Those who, having knowledge or information of a violation of the Tariff and Customs Law or any fraud committed on the revenue collectible by the Bureau, fail to report such knowledge or information to their superior official or to report as otherwise required by law;

(i) Those who, without the authority of law, demand or accept or attempt to collect directly or indirectly as payment of otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law; or

(j) Those, without authority of law, disclose confidential information gained during any investigation or audit, or use such information for personal gain or to the detriment of the government, the Bureau or third parties."

SEC. 15. A new section to be known as Section 3610 is hereby inserted in Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3610. Failure to Keep Importation Records and Give Full Access to Customs Officers. - Any person who fails to keep all the records of importations and/or books of accounts, business and computer systems and all customs commercial data in the manner prescribed in Part 2, Section 3514 of this Title shall be punished with a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Two hundred thousand pesos (P200,000.00) and/or imprisonment of not less than two (2) years and one day but not more than six (6) years. This penalty shall likewise be imposed against importers/brokers who deny an authorized customs officer full and free access to such records, books of accounts, business and computer systems, and all customs commercial data including payment records. This is without prejudice to the administrative sanctions that the Bureau of Customs may impose against the contumacious importers under existing laws and regulations including the authority to hold delivery or release of their imported articles."

SEC. 16. A new section to be known as Section 3611 is hereby inserted in Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3611. Failure to Pay correct Duties and Taxes on Imported Goods. - Any person who, after being subjected to post-entry audit and examination as provided in Section 3515 of Part 2, Title VII hereof, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating, aggravating or extraordinary factors that are clearly established by the available evidence:

(a) Negligence - When the deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by a fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss.

(b) Gross Negligence - When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under the statute, it shall be determined to be grossly negligent and punishable by a fine equivalent to not less than two and a half (2 1/2) but not more than four (4) times the revenue loss.

(c) Fraud - When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by a fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss and imprisonment of not less than two (2) years but not more than eight (8) years.

The decision of the Commissioner of Customs, upon proper hearing, to impose penalties as prescribed in this Section may be appealed in accordance with Section 2402 hereof."

SEC. 17. The following provisions of the Tariff and Customs Code of the Philippines, as amended, are renumbered as follows:

(a) Section 3514 of Part 2, Title VII ("Words and Phrases Defined") is renumbered as Section 3519; and

(b) Section 3610 of Part 3, Title VII ("Violations of Tariff and customs Laws and Regulations in General") is renumbered as Section 3612.

SEC. 18. Rules and Regulations. - The Secretary of Finance shall, upon the recommendation of the Commissioner of Customs, promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 19. Repealing Clause. - All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 20. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any two (2) newspapers of general circulation, whichever date comes earlier.

Approved,

(Signed) AQUILINO Q. PIMENTEL, JR.
President of the Senate

(Signed) FELICIANO BELMONTE, JR.
Speaker of the House of Representatives

This Act is a consolidation of House Bill No. 8623 and Senate Bill No. 2196 was finally passed by the House of Representatives and the Senate on February 7, 2001 and February 8, 2001, respectively.

(Signed) LUTGARDO B. BARBO
Secretary of the Senate

(Signed) ROBERTO P. NAZARENO
Secretary General
House of Representatives

Approved: APRIL 27, 2001

(Signed) GLORIA MACAPAGAL-ARROYO
President of the Philippines

PD 1144

PRESIDENTIAL DECREE NO. 1144

**CREATING THE FERTILIZER AND PESTICIDE AUTHORITY AND ABOLISHING
THE FERTILIZER INDUSTRY AUTHORITY**

WHEREAS, it is Government policy to provide adequate assistance to the agricultural sector in line with the national objective of increasing food production;

WHEREAS, fertilizer and pesticides are vital inputs in food production and must be supplied in adequate quantities at reasonable costs;

WHEREAS, improper pesticide usage presents serious risks to users, handlers, and the public in general because of the inherent toxicity of these compounds which are, moreover, potential environmental contaminants;

WHEREAS, there is a need to educate the agricultural sector on the benefits as well as the hazards of pesticide use so that it can utilize pesticides properly to promote human welfare while avoiding dangers to health and environmental pollution;

WHEREAS, the fertilizer and pesticide industries have much in common in terms of clientele, distribution channels, system of application in farmers' fields, and technical supervision by the same farm management technicians under the government's food production program;

WHEREAS, the foregoing consideration make it desirable to have one agency to regulate fertilizer importation, manufacture, formulation, distribution, delivery, sale, transport and storage as well as pesticide labeling, distribution, storage, transportation, use and disposal;

WHEREAS, the Fertilizer Industry Authority was created by Presidential Decree No. 135, dated 22 February 1973, and amended by Presidential Decree Nos. 517 and 669, dated 19 July 1974 and 11 March 1975 respectively, in order to regulate, control and develop the fertilizer industry but does not include the pesticide industry in its jurisdiction;

WHEREAS, there is an urgent need to create a technically-oriented government authority equipped with the required expertise to regulate, control, and develop both the fertilizer and the pesticide industries;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order the following:

SECTION 1. Creation of the Fertilizer and Pesticide Authority. The Fertilizer and Pesticide Authority, hereinafter referred to as the FPA, is hereby created and attached to the Department of Agriculture for the purpose of assuring the agricultural sector of adequate supplies of fertilizer and pesticide at reasonable prices, rationalizing the manufacture and marketing of fertilizer, protecting the public from the risks inherent in the use of pesticides, and educating the agricultural sector in the use of these inputs.

SECTION 2. Abolition of the Fertilizer Industry Authority. The Fertilizer Industry Authority created under Presidential Decree No. 135, dated 22 February 1973, as amended by Presidential Decree 517 and 669, dated 19 July 1974 and 11 March 1975 respectively, is hereby abolished.

The FPA shall assume such appropriations, assets and liabilities and hire such personnel of the FIA as may be determined by its Board of Directors; Provided, that such assumption is made within sixty (60) days from the effectivity of this decree.

SECTION 3. Definitions. For the purpose hereof, the terms herein below shall be understood to mean as follows:

a. "Pesticide" - any substance or product, or mixture thereof, including active ingredients, adjuvants and pesticide formulations, intended to control, prevent, destroy, repel or mitigate directly or indirectly, any pest. The term shall be understood to include insecticide, fungicide, bactericide, nematocide, herbicide, molluscicide, avicide, rodenticide, plant regulator, defoliant, desiccant and the like.

b. "Fertilizer" - includes any substance - solid or liquid - or any nutrient element or elements - organic or inorganic - singly or in combination with other materials, applied directly to the soil for the purpose of promoting plant growth, increasing crop yield or improving their quality.

c. "Other agricultural chemicals" - shall mean chemicals, chemical inputs and chemical compounds not herewith covered by the definition of fertilizer and pesticide but utilized by the agricultural sector.

d. "Handlers" - shall mean exporters, importers, manufacturers, formulators, distributors, suppliers, wholesalers, dealers, repackers, commercial applicators, warehousemen, and retailers of fertilizers, fertilizer inputs, pesticide and other agricultural inputs.

e. "Tolerance Level" - shall mean the maximum amount of pesticides, as determined by the FPA, which may be allowed to remain in any raw agricultural produce at any stage between harvesting and consumption.

f. "Imminent Hazard" - shall mean a situation which exists when the continued use of a pesticide will likely result in unreasonable adverse effects on the public and/or the environment or will involve unreasonable hazards to the survival of a specie declared endangered by the appropriate authorities.

SECTION 4. Board of Directors. The powers and functions of the FPA shall be vested in and exercised by a Board of Directors which shall be composed of the following officials or their representative:

1. Secretary of Agriculture	Chairman
2. Secretary of Industry	Member
3. Secretary of Finance	Member
4. Secretary of Trade	Member
5. Governor, Central Bank	Member
6. President, Philippine National Bank	Member
7. Director, Bureau of Plant Industry	Member
8. Commissioner, Pollution Control Commission	Member
9. Administrator, Food and Drug Administration	Member.

The members of the Board shall elect a Vice-Chairman who shall act as Chairman in case of the absence, inability or temporary incapacity of the Chairman.

SECTION 5. Organization. The FPA is empowered to determine and create its organizational structure in order to achieve its objectives, including the number, positions and salaries of its officers and employees.

The Board is empowered to create the positions of Administrator, Deputy Administrator for Fertilizer, Deputy Administrator for Pesticides, and other subordinate officials as may be required.

The Board shall appoint all the officers of the FPA, establish a compensation scheme including allowances and benefits, working hours and such other conditions of employment as it may deem proper, discipline and/or remove for cause, and exercise such other powers over its personnel as maybe necessary for the efficient operation of the FPA.

SECTION 6. Powers and Functions. The FPA shall have jurisdiction, on over all existing handlers of pesticides, fertilizers and other agricultural chemical inputs. The FPA shall have the following powers and functions:

I, Common to Fertilizers, Pesticides, and Other Agricultural Chemicals

1. To conduct an information campaign regarding the safe and effective use of these products;
2. To promote and coordinate all fertilizer and pesticides research in cooperation with the Philippine Council for Agriculture and Resources Research and other appropriate agencies to ensure scientific pest control in the public interest, safety in the use and handling of pesticides, higher standards and quality of products and better application methods;
3. To call upon any department, bureau, office, agency or instrumentality of the government, including government-owned or controlled corporations, or any officer or employee thereof and on the private sector, for such information or assistance as it may need in the exercise of its powers and in the performance of its functions and duties;
4. To promulgate rules and regulations for the registration and licensing of handlers of these products, collect fees pertaining thereto, as well as the renewal, suspension, revocation, or cancellation of such registration or licenses and such other rules and regulations as may be necessary to implement this Decree;
5. To establish and impose appropriate penalties on handlers of these products for violations of any rules and regulations established by the FPA;
6. To institute proceedings against any person violating any provisions of this Decree and/or such rules and regulations as may be promulgated to implement the provisions of this Decree after due notice and hearing;
7. To delegate such selected privileges, powers or authority as may be allowed by law to corporation, cooperatives, associations or individuals as may presently exist or be organized to assist the FPA in carrying out its functions, and;
8. To do any and all acts not contrary to law or existing decrees and regulations as may be necessary to carry out the functions of the FPA.

II. Fertilizers

1. To make a continuous assessment of the fertilizer supply and demand situation, both domestic and worldwide;
2. To establish and enforce sales quotas, production schedules, distribution areas and such other marketing regulations as may be necessary to assure market stability and viable operations in the industry;
3. To determine and set the volume and prices both wholesale and retail, of fertilizer and fertilizer inputs;

4. To establish and implement regulations governing the import and export of fertilizer and fertilizer inputs, and when necessary, to itself import and/or export such items, including the negotiating and contracting of such imports and exports;
5. To import fertilizer and fertilizer inputs exempt from custom duties, compensating and sales taxes, and all other taxes, and to purchase naphtha locally free from specific taxes and the corresponding duty on the imported crude, and to sell or convey such fertilizer or fertilizer input to any individual association, or corporation likewise exempt from the payment of customs duties and all other taxes;
6. To control and regulate all marketing companies, whether importer, indenter, wholesaler or retailer; by controlling and regulating prices, terms, mark-ups, distribution channels, promotion, storage and other marketing factors in the domestic fertilizer market;
7. To regulate and control quality of the different grades of fertilizer and to set new grades when necessary;
8. To control and regulate all aspects of domestic fertilizer production, including the utilization of idle capacity and the orderly expansion of the industry and to compel the utilization of unused or underutilized capacities of fertilizer companies and to direct any improvements, modifications or repairs as may be necessary to accomplish this;
9. To approve or to reject the establishment of new fertilizer or fertilizer input plants and the expansion or contraction of existing capacities;
10. To obtain complete access to all pertinent information on the operations of the industry, including audited and/or unaudited financial statements, marketing, production, and inventory data;
11. To control and assist in the financing of the importation of fertilizer and fertilizer inputs of production, of inventory and working capital, and of the expansion of the industry;
12. To do all such things as may be necessary to maintain an adequate supply of fertilizers to the domestic market at reasonable prices while maintaining the long term viability of the industry.

III. Pesticides and Other Agricultural Chemicals

1. To determine specific uses or manners of use for each pesticide or pesticide formulation;
2. To establish and enforce tolerance levels and good agricultural practices for use of pesticides in raw agricultural commodities;

3. To restrict or ban the use of any pesticide or the formulation of certain pesticides in specific areas or during certain periods upon evidence that the pesticide is an imminent hazard, has caused, or is causing widespread serious damage to crops, fish or livestock, or to public health and environment;
4. To prevent the importation of agricultural commodities containing pesticide residues above the accepted tolerance levels and to regulate the exportation of agricultural products containing pesticide residue above accepted tolerance levels;
5. To inspect the establishment and premises of pesticide handlers to insure that industrial health and safety rules and anti-pollution regulations are followed;
6. To enter and inspect farmers' fields to ensure that only the recommended pesticides are used in specific crops in accordance with good agricultural practice;
7. To require if and when necessary, of every handler of these products, the submission to the FPA of a report stating the quantity, value of each kind of product exported, imported, manufactured, produced, formulated, repacked, stored, delivered, distributed, or sold;
8. Should there be any extraordinary and unreasonable increases in prices, or a severe shortage in supply of pesticides or imminent dangers or either occurrences, the FPA is empower to impose such controls as may be necessary in the public interest, including but not limited to such restrictions and controls as the imposition of price ceilings, controls on inventories, distribution, and transport, and tax-free importations of such pesticides or raw materials thereof as may be in short supply.

SECTION 7. Power to Issue Rules and Regulations to Implement Decree. The FPA is hereby authorized to issue or promulgate rules and regulations to implement, and carry out the purposes and provision of this Decree.

SECTION 8. Prohibitions Governing Sale and Use of Fertilizers and Pesticides. It shall be unlawful for any handler of pesticides, fertilizer, and other agricultural chemicals or for any farmers, planter or end-user of the same as the case may be:

- a) To engage in any form of production, importation, distribution, storage, and sale in commercial quantities without securing from the FPA a license therefor;
- b) To use any pesticide or pesticide formulation on crops, livestock, and the environment in a manner contrary to good agricultural practices as hereinabove defined;

- c) To deal in pesticides and/or fertilizers which have not been previously registered with FPA or which registration has expired or has been suspended or revoked;
- d) To adulterate pesticides formulation and fertilizer grade;
- e) To impose as a condition for the purchase of fertilizer, the simultaneous purchase of pesticide or other agricultural chemical inputs and vice-versa;
- f) To mislabel or make claims which differ in substance from the representation made in connection with a product's registration or from its actual effectiveness; and
- g) To violate such other rules and regulations as may be promulgated by FPA.

SECTION 9. Registration and Licensing. No pesticides, fertilizer, or other agricultural chemical shall be exported, imported, manufactured, formulated, stored, distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with the FPA or covered by a numbered provisional permit issued by FPA for use in accordance with the conditions as stipulated in the permit. Separate registrations shall be required for each active ingredient and its possible formulations in the case of pesticides or for each fertilizer grade in the case of fertilizer.

No person shall engage in the business of exporting, importing, manufacturing, formulating, distributing, supplying, repacking, storing, commercially applying, selling, marketing, of any pesticides, fertilizer and other agricultural chemicals except under a license issued by the FPA.

The FPA, in the pursuit of its duties and functions, may suspend, revoke, or modify the registration of any pesticide, fertilizer and other agricultural chemicals after due notice and hearing.

SECTION 10. Penalties

- a) Fertilizer - Any person who violates any of the provisions of this Decree or any of the provisions of the rules and regulations issued or promulgated by the FPA on fertilizer shall be punished by imprisonment of not less than 15 years and 1 day or more than 20 years if the amount involved is more than P50,000.00; by imprisonment of not less than 10 years and 1 day or more than 15 years if the amount involved is P10,000.00 or less, as well as a fine ranging from an amount equal to the value involved to three times such value but which shall in no case be less than P5,000.00 nor more than P20,000.00; by a fine or P5,000.00 nor more than P10,000.00 by other violations where the amount involved cannot be determined; Provided, that if falsification of a public or commercial document is committed by reasons or on the occasion of the commission of any of the acts punishable herein, the offender shall be imposed the maximum fine and term of imprisonment as above prescribed. If the violation is committed by a corporation, firm,

partnership, cooperative, association or any other entity, the penalty shall be imposed upon the guilty office or offices and such corporation, firm, partnership, association or entity.

b) Pesticides - Any person who violates any of the provisions of this Decree or any of the provisions of the rules and regulations issued or promulgated by FPA on pesticides, shall be liable to a penal servitude of not in excess of one year or a fine of P5,000.00 but not more than P10,000.00 provided that if the violation is committed by a corporation, firm, partnership, cooperative, association or any other entity, the penalty shall be imposed upon the guilty officials or officers of such entities.

SECTION 11. Appropriation. The sum of One Million and Two Hundred Thousand (P1.2 Million) Pesos shall, in addition to what has been appropriated for the Fertilizer Industry Authority for the Calendar Year 1977, be released out of any funds in the National Treasury not otherwise appropriated. For every calendar year thereafter, such sums as may be necessary for the operations of the FPA shall be included in the General Appropriations Decree.

Any provision of existing law to the contrary notwithstanding, the FPA may impose fees or receive grants, subsidies, donations, or contributions from any entity and retain such funds for its operation.

SECTION 12. Life of FPA. The FPA shall constitute itself immediately and shall continue to exist until and unless abolished by the President of the Philippines.

SECTION 13. Separability Clause. The provisions of this Decree are hereby declared to be separable, and in the event any one or more of such provisions are held unconstitutional, the validity of other provisions shall not be affected.

SECTION 14. Repealing Clause. All laws, decrees, acts, executive orders, ordinances, rules and regulations which are inconsistent with the provisions of the Presidential Decree are hereby repealed, amended or modified accordingly.

SECTION 15. Effectivity. This Decree shall take effect upon approval.

Done in the City of Manila, this 30th day of May, in the year of our Lord nineteen hundred and seventy-seven.

(SGD) FERDINAND E. MARCOS

**FPA Implementing Rules and
Regulations Governing the
Importation,
Manufacture... of Pesticides**

FERTILIZER AND PESTICIDE AUTHORITY

RULES AND REGULATIONS, NO. 1, SERIES 1977

PURSUANT TO PRESIDENTIAL DECREE NO. 1144 PROMULGATED ON MAY 30, 1977, THE FERTILIZER AND PESTICIDE AUTHORITY HEREBY PROMULGATES AND ADOPTS THE FOLLOWING RULES AND REGULATIONS TO GOVERN THE IMPORTATION, MANUFACTURE, FORMULATION, REPACKING, DISTRIBUTION, SALE, STORAGE, AND USE OF PESTICIDES IN THE INTEREST OF IMPROVING AGRICULTURAL PRODUCTION, PROTECTING PUBLIC HEALTH AND ENHANCING ENVIRONMENTAL QUALITY.

FPA Rules and Regulations Governing the Importation, Manufacture, Formulation, Repacking, Distribution, Delivery, Sale, Storage and Use of Pesticides.

ARTICLE I

Coverage and Definitions

SEC. 1. Registration and licensing as provided hereinafter shall be required as conditions precedent to the importation, manufacture, formulation, repacking, distribution, delivery, sale, transport, storage and use of any pesticide.

SEC. 2. Except as may otherwise be indicated, the terms hereinbelow shall be understood to mean as follows:

(a) "Secretary" means the Secretary of Agriculture.

(b) "Authority" means the Fertilizer and Pesticide Authority (FPA) created under Presidential Decree No. 1144.

(c) "Active ingredient" means a substance which gives a formulated product its pesticidal properties.

(d) "Adjuvant" or "Surfactants" means any adhesive deposit builder, emulsifying agent, spreading agent, synergist or wetting agent intended for use as an aid to the application and/or effect of a pesticide.

(e) "Adulterated pesticide" shall apply to any pesticide if:

- (1) The strength or purity of which falls below the professed standards or quality as expressed on the label under which it is sold;
- (2) If the active ingredient(s) and adjuvant(s) have been substituted and/or abstracted wholly or in part for the article.

(f) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(g) "Applicators", etc., shall constitute the following:

- (1) "Certified applicator" means any individual who is certified as authorized to use or supervise the use of any pesticide which is classified for restricted use.
- (2) "Commercial applicator" means any person who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying any pesticide or servicing any device but shall not include a farmer trading work with another.
- (3) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.
- (4) "Under the direct supervision of a certified applicator" shall mean a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(h) "Damaged pesticide" shall apply to any pesticide which has been subjected to any factor that has changed its registered concentration or caused it to decompose or deteriorate as to be ineffective or dangerous in storage or use.

(i) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(j) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying up of plant tissues.

(k) "Good agricultural practice" means the manner of use of a pesticide or pesticide formulations officially recommended by the FPA.

(l) "Inert ingredient" means any substance which serves as a carrier or diluent for the active material but in itself is not pesticidal.

(m) "Ingredient statement" means a statement of the name and percentage of each ingredient, together with the total percentage of the inert ingredients. If the pesticide contains any arsenic in any form, the statement shall include the percentage of total and water soluble arsenic, each calculated as elemental arsenic.

(n) "Imminent hazard" means a situation which exists when the continued use of pesticide will likely result in unreasonable adverse effects on the public and/or the environment or will involve unreasonable hazards to the survival of a species declared endangered by the appropriate authorities.

(o) "Immediate container" refers to the container or package which is immediately after or nearest the pesticide but does not include the package liner.

(p) "Label" means a display of the written printed or graphic matter upon the immediate container of any pesticide and a requirement made by or under authority of this Decree that any word, statement, or other information appearing on the label shall not be considered to be complied with, unless such word, statement other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(q) "License" means the person whom a license to import, manufacture, formulate, repack, distribute, deliver, sell, transport, store or apply any pesticide has been issued pursuant to these rules.

(r) "Misbranded pesticide" shall apply to any pesticide if:

(1) Its label bears any statement, design or graphic representation relative thereto, or to its ingredients, which is false and misleading.

(2) The label fails to clearly and plainly show:

(a) the name and address of the registrant, person or licensee whose name shall appear on the label;

(b) the name, brand or trade mark under which said article is registered and sold; and

(c) the net content

- (3) Its labeling is an imitation of another pesticide that is already registered and whose sale is authorized.
 - (4) Its label bears any reference to registration under these rules, when not so registered.
 - (5) The label accompanying it does not contain any directions or indications for use which are necessary for effective result of which, if complied with, are inadequate for the protection of the public.
 - (6) The label does not contain a warning or precautionary statement as required under Article V, Sec. 1 (g) of these rules to protect injury to human and other vertebrate animals, vegetation and useful invertebrate animals.
 - (7) The label does not bear an ingredient statement on the immediate container and on the outside container or wrapper as the case may be.
 - (8) Any word, statement, or other information required by or under the authority of these rules to appear on the label or labeling is not placed thereon with such prominence as will render it unlikely to be read and understood by any person.
 - (9) In the case of an insecticide, nematicide, fungicide, bactericide or herbicide when used as directed it shall be injurious to man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.
 - (10) In the case of a plant growth regulator used as pesticide, defoliant or desiccant, when used as directed, it shall be injurious to living man or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide: Provided, the physical or physiological effects on plants or parts thereof shall not be deemed to be injurious when this is the purpose for which the plant growth regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations.
- (s) "Other agricultural chemicals" means chemicals, chemical inputs, and chemical compounds not herewith covered by the definition of fertilizer and pesticide but utilized by the agricultural sector.
- (t) "Person" means any individual, agency, partnership, cooperative, association, or corporation.
- (u) "Pest" means any insect, rodent, bird, fish, mollusk, nematode, bacterium, fungus, weed microorganism, virus and/or other kind of plant or animal life which, by its presence in, on or near a structure may injure or damage such structure or the contents thereof, or

may annoy or endanger the health and safety of occupants of said structure, or which, by its presence in, or near a plant or animal may endanger, damage or destroy said plant or animal.

(v) "Pesticide" means any substance or product, or mixture thereof, including active ingredients, adjuvants and pesticide formulations, intended to control, prevent, destroy, repel or mitigate, directly or indirectly, any pest. The term shall be understood to include insecticide, fungicide, bactericide, nematocide, herbicide, molluscicide, avicide, rodenticide, plant regulator, defoliant, desiccant, and the like.

(w) "Pesticide formulation" means any mixed or unmixed product intended to be used for controlling, destroying or repelling any pest or for preventing its growth or mitigating its effects.

(x) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or for otherwise altering the behavior of ornamental or crop plants or the produce thereof but excluding substances intended as plant nutrients, beneficial trace elements, nutritional chemicals, plant inoculants and soil amendments.

(y) "Provisional permit" means a numbered permit issued to allow marketing for use of a pesticide on a limited basis and under stipulated conditions, including safety and health precautions during distribution and use, as regards periods of use, methods of application or otherwise, for the purpose of obtaining information needed before granting a registration.

(z) "Registrant" means the person who has registered any pesticide in accordance with the provisions of these rules.

ARTICLE II

Registration of Pesticides

SEC. 1. No pesticide shall be imported, manufactured, formulated, repacked, distributed, delivered, sold or offered for sale, transported, delivered for transportation, or used unless it has been duly registered with the Authority or covered by a numbered provisional permit issued by the Authority for use in accordance with the conditions stipulated in the permit. Separate registration shall be required for each brand and formulation of pesticides.

SEC. 2. Any person may file an application for registration of a pesticide, which must be in the prescribed form addressed to the Authority and under oath, containing complete and detailed information required, which shall include:

- (a) The proposed trade name of the pesticide;
- (b) A statement of the composition, including all ingredients; and the chemical identities of its active ingredients, including their stability in storage;
- (c) Adequate toxicological data (i.e. oral, dermal and inhalation) concerning the active ingredients;
- (d) Instructions for use, precautionary matters, first aid, claims and other statements, which are proposed for the labeling;
- (e) Reports of official or other accredited experimental stations on biological tests concerning the efficiency and safety of the pesticide, particularly under Philippine conditions;
- (f) Methods of analysis of the formulated compound;
- (g) Methods for determination of its residues; and
- (h) Such samples or information relative to the efficiency or safety of the pesticide as may be required by the Authority.

SEC. 3. The contents of an application, as well as information disclosed in the course of its examination and processing, shall be treated as confidential matters, and shall not be revealed publicly or to any person unless authorized by the applicant in writing.

SEC. 4. The Authority shall, after such notice and hearing as may be deemed necessary by the Authority or requested by the applicant, cause the registration of the pesticide subject of the application and the issuance to the applicant of a certificate thereof, it is adequately shown that:

- (a) Adequate tests by all methods reasonably applicable have shown that such pesticide is effective and safe for use under the conditions prescribed, recommended, or suggested in the proposed label thereof; and
- (b) The methods, facilities and controls used in and for the manufacture, processing, packing and storage of such pesticide are adequate to preserve its identity, strength, quality and purity.

The certificate of registration shall be conspicuously displayed in the place of business of the registrant.

SEC. 5.

- (a) If the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered

should be for restricted uses, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses: Provided, however, that the Administrator may require that its packaging and labeling for restricted uses shall be clearly distinguishable from its packaging and labeling for general uses.

- (b) If the Administrator determined that the pesticide when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, for general use.
- (c) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use;
 - (1) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied only by or under the direct supervision of a certified applicator.
 - (2) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation.

SEC. 6. Each registration shall be in force for a period of three (3) years, unless sooner revoked, subject to renewal for a similar period under the same conditions applicable to original registration

SEC. 7. All pesticides already in the market on the date of issuance of PD 1144 shall be issued provisional registration, Provided, that the required supporting data are submitted to the Authority

within a period of one (1) year and at the expiration of which period they shall be withdrawn from the market unless they are registered in accordance with the procedure herein prescribed: Provided, further that the Authority shall act on an application within six months upon receipt thereof.

ARTICLE III

Licensing of Pesticide Handlers

SEC. 1. No person shall engage in the business of importing, manufacturing, formulating, repacking, distributing, storing or selling any pesticide, except under a license issued by the Authority pursuant to these regulations. A separate license shall be required for each establishment or place of business subject to these rules, to be conspicuously displayed therein.

SEC. 2. License for Commercial Applicators - All commercial applicators of pesticides shall apply for a license, on a form to be supplied by the Authority and shall obtain a commercial applicator's license and be assigned a license number by the Authority before such person shall perform services as a commercial applicator. Each commercial applicator shall obtain a license for each place of business maintained in the Philippines.

Aerial commercial applicators shall register with the Civil Aeronautics Administration as well as the Authority.

The Authority shall require proof of competence and responsibility before issuing a license. Upon receipt of a properly executed application and payment of the required fees, the Authority shall issue a license permitting a person to make commercial applications of pesticides unless the Authority has reason to believe that such issuance will not be in the public interest. A person holding licenses as pest control operator or plant pest and disease control operator issued by the Bureau of Plant Industry before the promulgation of PD 1144 may be exempted from the above requirements and be permitted to engage in the trade after having duly presented an application to this effect with the Authority.

SEC. 3. An application for a license, which must be under oath and addressed to the Authority shall be filed in the prescribed form, containing the complete and detailed information about the applicant required therein, which shall include among others, the initial capital investment of the applicant, the activity for which a license is sought, and the handling and storage facilities of the applicant.

SEC. 4. The Authority shall, after such notice and hearing as may be deemed necessary by the Authority or requested by applicant, cause the issuance of a license to the applicant if it is adequately shown that the activity to be licensed will be conducted in a safe and suitable manner and location.

SEC. 5. Each license shall, unless sooner revoked, be in force for a period of one (1) year, and shall be subject to renewal for a similar period within the first three (3) months of each year under the same conditions applicable to the original license.

ARTICLE IV

Suspension and Revocation of Registration or License

SEC. 1. The Authority may suspend or revoke the registration of any pesticide on any of the following grounds:

- (a) Tests by new methods, or tests by methods not deemed necessarily applicable when such registration becomes effective, show that such pesticide is unsafe for use under the condition of use upon which the application become effective.
- (b) After investigation, the person is found guilty of violating any provision of these rules, without prejudice to appropriate criminal proceedings to be instituted by the Authority or the Secretary.
- (c) After investigation and hearing, such pesticide when used as recommended is found to be injurious, harmful, detrimental, hazardous to animal and plant life, public health and the environment, or is an imminent hazard.
- (d) The application for registration or its renewal contains any false statement of a material fact.

SEC. 2. Any license granted under these rules may be suspended or revoked on any of the following grounds:

- (a) False statement of material fact in the application or in any record, report, or statement which may be required of the license.
- (b) Violation of, or failure to observe any of the terms and provisions of these rules or any reasonable regulation, requirement or order of the Authority or the Secretary.
- (c) Refusal to allow inspection by the Authority or the Secretary or their authorized representatives, as prescribed in these rules.
- (d) Commission of any of the acts prohibited by Sections 1 and 2, Article VIII of these rules.

ARTICLE V

Labelling, Packaging and Advertising of Registered Products

SEC. 1. Every container of pesticide offered for sale, distribution, storage and use shall bear a label printed, stenciled, marked, embossed or impressed on or attached to it, which must, inter alia, include the following:

- (a) A statement of the composition by percentage, including all ingredients and the chemical identity of the active ingredient(s);
- (b) The registration or provisional permit number;
- (c) The name and address of the holder of the registration or provisional permit;
- (d) The common name as recommended and approved by the Authority;
- (e) The net content in metric unit, of the pesticide in the container;
- (f) Adequate directions concerning the manner in which the pesticide is to be used and the time of application;
- (g) Warning and cautionary statements, including the symptoms of poisoning and suitable and adequate safety, health and first aid treatment measures;
- (h) A suitable indication of hazard, including the appropriate pictorial warning for highly toxic substances;
- (i) Instructions concerning the decontamination and safe disposal of used containers;
- (j) Such label claims, if any, as have been accepted by the Authority;
- (k) The lot number and the year of formulation; and
- (l) Such further statements as may be prescribed by any other government instrumentality.

SEC. 2. Each label shall be in English, or any of the major dialects, must be legible and distinct in its meaning and attached to, printed or affixed on one side of the container in such a way that the whole content of the label can be read without detaching the same.

SEC. 3. No label shall be detached, altered, defaced, changed or destroyed, in whole or in part, in a manner that will defeat the purpose of existing rules and regulations.

SEC. 4. No substance shall be added to or taken from any pesticide earlier labelled in accordance with the provisions of these rules, unless properly registered.

SEC. 5. No pesticides shall be repacked by any unlicensed person.

SEC. 6. A pesticide labelled in accordance with these rules which has so decomposed or deteriorated as to be ineffective or dangerous, or which packaged in containers which have deteriorated or have been damaged so as to be dangerous in storage and use, shall not be offered for sale or distribution.

SEC. 7. Pesticides approved and registered by the Authority shall not be advertised in a manner that is false, misleading, and deceptive, and not justified by the conditions of their registration.

SEC. 8. Any written, printed or graphic material relating to and accompanying a pesticide when held, transported, distributed, stored, sold or offered for sale, used in the country, or imported shall include the substance label statements prescribed in Section 1 of this Article.

In case of smallness of container or where there is insufficiency of label space, the accurate statement of the quantity of the content, in terms of weight, measure or numerical count shall appear on the accompanying carton or other outer container or wrapper, provided however, that the immediate container shall bear the name of the pesticide and identifying or control number.

SEC. 9. The registration or provisional permit number shall appear on the label in the official script of the Authority and in characters the size of any other characters used on the label.

ARTICLE VI

Books and Records, Inspection of Licensees

SEC. 1. Establishments and activities licensed under these rules, any importer, manufacturer, formulator, repacker, storer, seller, or distributor of pesticides shall, upon request of the Authority or the Secretary furnish records showing the delivery, movement, or holding of pesticides including the quantity and date of shipment thereof, and in the event of the inability of any person to produce such records, the Authority or the Secretary shall appoint a reputable accounting/auditing firm with fees to be borne by the person, to have access to and be permitted to copy the specific information and records as may be required by the Authority or the Secretary.

ARTICLE VII

Fees

SEC. 1. Under these rules, fees shall be charged according to the following payments:

- (a) For filing an application for the registration of a Pesticide, P100.00.
- (b) For annual filing of an application for a license to import, manufacture, formulate, repack, wholesale or retail pesticides, P100.00.
- (c) For each certificate of registration of a pesticide, P200.00 per active ingredient per formulation and for renewal thereof, P100.00 per active ingredient per formulation.
- (d) For annual license issued to import, manufacture, formulate, repack or wholesale pesticides, or its renewal:

- SCHEDULE 1. P1,000.00 yearly (Operating Capital over P1,000,000.00.)
- SCHEDULE 2. P500.00 yearly (Operating Capital of more than P500,000.00 but not over P1,000,000.00.)
- SCHEDULE 3. P300.00 yearly (Operating Capital of P500,000.00 and below.)

- (e) For Commercial Pest Control Operators and Certified Applicators, an annual license fee of P100.00.
- (f) For Commercial Aerial Applicators, an annual license fee of P500.00.

ARTICLE VIII

Prohibited Acts and Penalties

SEC. 1. The following acts are prohibited by these rules:

- (a) To import, manufacture, formulate, store, distribute, give, sell or offer for sale, transport, deliver for transportation or use any pesticide:
 - (1) Which has not been previously registered pursuant to these rules, or the registration of which has expired or been suspended or revoked.
 - (2) Which is adulterated or misbranded.
 - (3) If any of the claim made for it, or if any of the directions for its use, differ in substance from the representation made in connection with its registration.
 - (4) Which contains any substance or substances in quantities highly toxic to man or animals unless its label bears:
 - (aa) Information required in Article II of these rules;
 - (bb) Skull and crossbones;
 - (cc) The word "poison" prominently in bold letter on a background of distinctly contrasting color;
 - (dd) A statement of an antidote for the pesticide; and
 - (ee) Instructions for safe disposal of the container.
 - (5) Which has not been distinctly colored or discolored in the case of arsenic compounds such as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, sodium fluoride, sodium flousilicate and barium flousilicate.

(b) To engage in the importation, manufacture, storage, formulation, repacking, distribution and sale of pesticides without securing from the Authority a license thereof.

(c) To detach, alter, deface, destroy, mutilate, obliterate, change or remove, in whole or in part, any label or labelling provided for in these rules, or to add any substance to, or take any substance from, any pesticide if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(d) To give a guarantee that the pesticide was lawfully registered at the time of sale and delivery, and that the pesticide complies with all the requirements of these rules, when it is not so registered or when it has not complied with such requirements.

(e) To use for selfish advantage or to disclose, other than to the Authority or the Secretary in respect to official functions, or to the course in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulae of products required in Article II of these rules.

(f) To forge, falsify, counterfeit, simulate, or falsely represent or to use without authority any mark, stamp, tag, label or other identifying device authorized or required by regulations promulgated under these rules.

(g) To use without authorization in advertising or sales promotion references to any report or analysis made pursuant to Article II of these rules.

(h) To deliberately apply any pesticide in such a way as to endanger or damage seriously the health, welfare or property of any person or pollute or cause pollution of public waters.

(i) To fraudulently weaken or adulterate a pesticide.

(j) To fraudulently make use of or alter official certificates of pesticide analysis.

(k) To make unauthorized disposition of pesticides held under custody pursuant to these rules.

(l) To increase prices of pesticides or pesticide formulations without prior approval of the Authority.

SEC. 2. Whenever necessary in the interest of public or environmental safety, the Authority may, from time to time, issue circulars prohibiting the use or sale or delivery for actual use of certain pesticides without authorization as may required therein.

SEC. 3. Any person who shall violate any of the provisions of these rules and regulations shall be subject to judicial prosecution.

(a) Any person who comes under any of the following items shall be liable to a penal servitude not in excess of one (1) year or a fine not in excess of P5,000.00.

(1) A person who acted in violation of the provisions of SECTIONS 1, 4, 6, 7, 8, 9 of ARTICLE V; and subsections (a), (b), (c), (f), (g), (h), (i) of SECTION 1 of ARTICLE VIII and SECTION 3 of ARTICLE IX.

(b) Any person who comes under any of the following items shall be liable to a penal servitude not in excess of six (6) months or a fine not in excess of P3,000.00.

(1) A person who acted in violation of SECTIONS 2, 3, and 5 of ARTICLE V; SUBSECTIONS (d), (e), (i), (k), and (l) of SECTION 1 under ARTICLE VIII; and SECTION 5 of ARTICLE IX.

SEC. 4. Whenever necessary to prevent or control serious injury or damage to plant or animal life, public health and the environment, any pesticide prohibited under these rules or in respect of which there is reasonable ground to believe a violation of Section 1 and Section 2 of this Article has been committed may be summarily impounded by the Authority or the Secretary to await final proceedings and disposition.

ARTICLE IX

Miscellaneous Provisions

SEC. 1. All licenses issued pursuant to these rules, including any right, title or interest in them, shall be strictly non-transferable.

SEC. 2. The Authority, may, in its discretion, issue a provisional certificate of registration or license pending final action on an application for registration or license, to allow marketing or use of a pesticide on a limited basis and under stipulated conditions, including safety and health precautions during distribution and use, as regards period of use, methods of application or otherwise.

SEC. 3. Any change in label claims or composition of registered pesticide which is significant in point of health or effectiveness shall be subject to the prior approval of the Authority and require a new certificate of registration and the payment anew of corresponding fees.

SEC. 4. These rules shall not apply to the following:

(a) Articles intended solely for export to any foreign country and prepared and packed according to the specifications or directions of the foreign purchaser on condition that the foreign purchaser certifies that fulfillment of the order is not contrary to laws of the importing country and provided further that their manufacture, formulation and packaging are carried out in conformity with laws governing the prevention of accidents and the protection of health in the country of manufacture.

(b) Articles in transit, provided that their labelling and packaging are subject to laws governing national and international transport.

(c) Articles produced or used solely for experimental or research purposes.

SEC. 5. Every wholesaler of pesticides shall submit to the Authority within the month of January of each year, a complete list of their retail outlets, notifying the Authority promptly of any changes therein during the year.

SEC. 6. The Authority may set reasonable profit margins for pesticides and may, in its discretion, require importers, manufacturers, distributors, and formulators, to submit pertinent data.

SEC. 7. The Central Bank, Bureau of Customs, and other government agencies, subdivisions and instrumentalities, national or local, having anything to do officially with the importation, manufacture, distribution, storage, sale and use of pesticides are hereby strictly enjoined, before passing upon matters coming within their cognizance respecting pesticides, to see to it that these rules have been observed and complied with. The various Collectors of Customs shall notify the Authority of the arrival in the country of every shipment of pesticides.

SEC. 8. These rules and regulations shall take effect thirty (30) days after publication in the Official Gazette.

PPA MC 46-2001 Monitoring of Chemicals under PCL

TO : All PDO's, PMO's, Cargo Handling Contractors, Importers,
Shipping Lines and All Others Concerned

SUBJECT : Monitoring of Chemicals under the Priority Chemicals

List (PCL)

1. AUTHORITY/REFERENCE

- 1.1 Section 6 (a) (iii) of Presidential Decree no. 857
- 1.2 PPA Memorandum Circular No. 28-85 entitled "Guidelines on the Handling and Storage of dangerous Goods"
- 1.3 Republic Act 6969 entitled "Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990"
- 1.4 Section 30 of Republic Act no. 8749 entitled "Philippine Clean Air Act of 1999"
- 1.5 Department of Environment and Natural resources (DENR) Administrative Order No. 98-58 (Priority Chemicals List)
- 1.6 Department of Environment and Natural Resources (DENR) Administrative Order No. 2000-18 entitled "Chemical Control Order (CCO) for Ozone Depleting Substances"

2. SCOPE

This circular shall be applied and implemented in all government and private ports under the jurisdiction of the Philippine Ports Authority.

3. OBJECTIVES

- 3.1 To properly monitor the movement of environmentally hazardous chemicals passing through the ports.
- 3.2 To assist the DENR in the implementation of laws concerning the importation and transportation of chemicals particularly those covered by R.A. 6969 and R.A. 8749

3.3 To establish a database for chemicals hazardous to the environment.

4. MONITORING GUIDELINES

4.1 The following chemicals are under the Priority Chemicals List (PCL):

- 4.1.1 Arsenic Compounds
- 4.1.2 Asbestos
- 4.1.3 Benzene
- 4.1.4 Beryllium Compounds
- 4.1.5 Cadmium Compounds
- 4.1.6 Carbon Tetrachloride
- 4.1.7 Chlorofluorocarbons (CFCs)
- 4.1.8 Chloroform
- 4.1.9 Chlorinated Ethers
- 4.1.10 Chromium Compounds
- 4.1.11 Cyanide Compounds
- 4.1.12 Diphenylhydrazine
- 4.1.13 Ethylene Dibromide
- 4.1.14 Ethylene Oxide
- 4.1.15 Halons
- 4.1.16 Hexachlorobenzene
- 4.1.17 Hexachloroethane
- 4.1.18 Lead Compounds
- 4.1.19 Mercury Compounds
- 4.1.20 Mirex
- 4.1.21 Pentachlorophenol
- 4.1.22 Phosgene
- 4.1.23 Polybrominated Biphenyls (PBBs)
- 4.1.24 Polychlorinated Biphenyls (PCBs)
- 4.1.25 Selenium
- 4.1.26 Tributyltin
- 4.1.27 Trichloroethane
- 4.1.28 Vinyl Chloride

4.2 For every arrival of any of the chemicals above-mentioned, the PMO concerned shall record in a logbook indicating the following information list: the name, volume, weight and consignee/ importer including the address and name of vessel. A monthly summary report shall be submitted to the Office of the Assistant General Manager for Operations within five (5) working days of the following month, using the attached Form.

4.3 Imported equipment in bulk (i.e. vehicle with air condition, refrigerator, air conditioning unit, cylinder) containing and/or using Ozone Depleting Substances (ODS) such as Chlorofluorocarbons (CFCs) shall likewise be monitored and recorded in the logbook to include the chemical content, if practicable.

4.4 The Clearing Officer (Marine personnel) shall furnish the Safety Officer a copy of the manifest and shall likewise coordinate with the latter in the preparation of the monthly report.

4.5 The PPA Committee on Safety, Health and Environment shall consolidate the reports and transmit the gathered information to the DENR-EMB on or before the 15th day of every month.

5. SEMINARS/TRAININGS

To familiarize and enhance the capability of the Safety and Clearing Officers in identifying the chemicals under the Priority Chemicals List (PCL), appropriate seminars/trainings shall be conducted by the PPA Training Center in coordination with the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR).

6. EFFECTIVITY

This Circular shall take effect immediately.

ALFONSO G. CUSI
General Manager

PHILIPPINE PORTS AUTHORITY
PORT MANAGEMENT OFFICE - _____
Month and Year: _____

FOR : The Assistant General Manager for Operations

SUBJECT : MONTHLY SUMMARY REPORT ON OZONE DEPLETING SUBSTANCES/PRIORITY CHEMICALS LIST

Submitted hereunder is the list of chemicals considered Ozone Depleting Substances (ODS) and those under the Priority Chemical List (PCL)

DATE	VESSEL	VOY NO.	CHEMICAL NAME (Desc.) & EQUIPMENT using ODS and its chemical content	QUANTITY (Kg./cu.m.)	SHIPPER	CONSIGNEE	ADDRESS	REMARKS

Prepared by: _____

Safety Officer _____

Bureau of Customs: Creation of Enviromental Protection Unit

Department of Finance
Bureau of Customs

Intelligence Enforcement Group
ENVIRONMENTAL PROTECTION UNIT

This Unit was first established on September 6, 1996 pursuant to the instruction of the then Commissioner of Customs Guillermo L. Parayno, Jr. and embodied under Customs Special Order No. 12-96 its creation was brought about by the pressing concerns on environmental safety by the member countries of the World Trade Organization (WTO) and the World Customs Organization (WCO).

The members of the Unit were originally from the ESS and were directly under the Office of the Director, ESS. Its functions include the monitoring surveillance, detection and spot-checking of hazardous and recyclable materials. However, Bureau's role in controlling the importation of ozone depleting substances and other hazardous commodities diminished considerably. Since the Bureau is crucial in the implementation of the Philippine commitment there is a need to renew and strengthen the partnership with the DENR-EMB in order to completely eliminate the smuggling of ozone depleting substances. The need to reactivate the Environmental Protection Unit in the Bureau was recommended with modification that the Unit be placed under the direct supervision of the Deputy Commissioner for Intelligence and Enforcement Group for more effectiveness. On April 03, 2002 Commissioner Antonio M. Bernardo approved the reactivation of the Environmental Protection Unit under Customs Special Order No. 07-2002.

Customs Special Order No. 07-2002 - Establishment of an Environmental protection Unit (EPU) under the Office of the Deputy Commissioner, Intelligence and Enforcement Group

Duties and Functions

1. Monitor the processing of all importation of waste products and/or recyclable products;
2. Conduct spotchecks on all importation of waste product and/or recyclable products in coordination with the Environmental Management Bureau (EMB), Department of Environment and Natural Resources (DENR);
3. Conduct surveillance, detection and/or apprehension on all importation of waste products and/or recyclable products without proper clearance from EMB, DENR and/or without payment of duties and taxes to the government;
4. Coordinate / participate in all activities regarding environmental protection conducted by other government agencies and non-government organizations whether local or foreign based institutions;
5. Shall effect proper coordination with the District Collector of Customs and/or other concerned offices;
6. Shall develop the capability to strictly enforce Sec. 2529 of the Tariff and Customs Code; and
7. Perform such other functions as may be directed by the Deputy Commissioner, IEG and/or higher authority

The Personnel to be assigned to this Unit shall be sourced from the different divisions of the Bureau who shall be covered with the appropriate Customs Personnel Order.

The Deputy Commissioner, Intelligence and Enforcement Group shall endeavor to establish Environmental Protection Units in all Principal Ports and Sub-Ports of Entries for the effective enforcement of environmental laws/regulations.

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

CUSTOMS SPECIAL ORDER

NO. 7-2002

SUBJECT: ENVIRONMENTAL PROTECTION UNIT

In view of the need to closely monitor the importation of waste products of articles for recycling purposes and other articles which could be hazardous and may affect the environment as well as activities of carriers of importation that may pollute the environment, an Environment Protection Unit under the Office of the Director, ESS shall henceforth be transferred and placed under the office of the Deputy Commissioner, Intelligence & Enforcement Group with the following functions, to wit:

1. Monitor the processing of all importation of waste products and/or Recyclable products;
2. Conduct spotchecks on all importation of waste product and/or recyclable products in coordination with the Environmental Management Bureau (EMB), Department of Environment and Natural Resources (DENR);
3. Conduct surveillance, detection and/or apprehension on all importation waste products and/or recyclable products without proper clearance from EMB, DENR and/or without payment of duties to the government;
4. Coordinate/participate in all activities regarding Environmental Protection conducted by other government agencies and non-government organizations whether local or foreign based institutions;
5. Shall effect proper coordination with the District Collector of Customs and/or other concerned offices;
6. Shall develop the capability to strictly enforce Sec. 2529 of the Tariff and Customs Code; and
7. Perform such other functions as may be directed by the Deputy Commissioner, Intelligence & Enforcement Group and/or higher authority.

The personnel to be assigned to this Unit shall be sourced from the different divisions of the Bureau who shall be covered with the appropriate Customs Personnel Order.

The Deputy Commissioner, Intelligence & Enforcement Group shall endeavor to establish Environmental Protection Units in all Principal Ports and Sub-ports of Entries for the effective enforcement of environmental laws/regulations.

CSO 12-96 is hereby revoked.

ANTONIO M. BERNARDO
Commissioner

Republic of the Philippines
Department of Finance
BUREAU OF CUTOMS

INTELLIGENCE & ENFORCEMENT GROUP

07 May 2002

Memorandum to:

The Director, CIIS
The Director, ESS
The District Collector, POM (Attn: The Chief, Assessment Division)
The District Collector, MICP (Attn: The Chief, Assessment Division)
The District Collector, NAIA (Attn: The Chief, Assessment Division)

RE: Organization and Action Plans of
Environmental Protection Unit (EPU), IEG

Please find attached Memorandum dated 06 May 2002 of Capt. Nicomedes P. Enad, Special Police Captain, Deputy District Commander, NAIA District Office, ESS, relative to the reactivation of the Environmental Protection Unit, IEG, inviting attention to the recommendation therein, to which this Office concurs.

In this connection, you are hereby directed to submit the names of persons to be included in the Composite Team.

For immediate compliance.

RAY M. ALLAS, CESO III
Deputy Commissioner

Enforcement & Security Service
Customs Police Division
NAIA DISTRICT OFFICE
Pasay City

May 6, 2002

Memorandum:

For: Deputy Commissioner Ray M. Allas
Intelligence and Enforcement Group

From: Capt. Nicomedes P. Enad
Deputy District Commander
NAIA District Office, ESS

Re: Organization and Action Plans of
Environmental Protection Unit (EPU), IEG

In line with the reactivation of Environmental Protection Unit under the Office of the Deputy Commissioner for Intelligence and Enforcement Group and in response to the pressing concerns for environmental safety, the Bureau of Customs is mandated to enforce environmental laws, rules and regulations focus on the importation of hazardous waste which pose unreasonable risk to human health and environment and from risk of or potential dangers in the use of or exposure to chemicals from long term damage brought about by careless handling or disposal of hazardous wastes and toxic chemicals.

These includes:

1. Department Administrative Order No. 97-29 - Implementing Rules and Regulations for the Management of Chemicals and Toxic Substances.
- 1-A Philippine Inventory of Chemicals and Chemical Substances (PICCS) - is a list of existing chemicals available in commerce imported into or manufactured in the Philippine and submitted and nominated prior to 01 January 1993.
- 1-B Pre-Manufacture and Pre-Importation Notice of New Chemicals (PMPIN)- is the process by which new chemicals are screen before they enter Philippine Commerce to ensure that chemicals that will pose unreasonable risk to human health and the environment are banned or placed under control and restriction to limit potential releases. All chemicals not included in the PICCS

must undergo PMPIN before manufactured or imported to the Philippines.

- 1-C Priority Chemical List- is a list of existing and new chemicals that DENR has determined to potentially pose unreasonable risk to public health, workplace and the environment.

These includes:

1.1.1 Trichloroethane	Halons
1.1.2 Diphenylhydrazine	Hexachlorobenzene
Arsenic Compounds	Hexachloroethane
Asbestos	Lead Compounds
Benzene	Mirex
Beryllium Compounds	Polychlorinated Biphenyls
Cadmium Compounds	Phosgene
Carbon Tetrachloride	Pentalchloropehenol
Chlorofluorocarbons	Polybrominated Biphenyls
Chloroform	Selenium
Chlorinated Ethers	Tributyltin
Chromium Compounds	Vinyl Chloride
Ethylene Oxide	

1-D Chemical Control Order (CCO)- is a DENR Administrative Order that prohibits, limit, or regulate the use, manufacture, import, export, transport, processing, storage, possession, and sale of these priority chemicals that DENR Determined to be regulated, phased out, or banned because of the serious risks they pose to public health, workplace and the environment.

1.D.1 DAO #97-38 - CCO for Mercury and Mercury Compounds

1.D.2 DAO #97-39 - CCO for Cyanide and Cyanide Compounds

1.D.3 DAO #00-02 - CCO for Asbestos

1.D.4 DAO #00-18 - CCO for Ozone Depleting Substances

2. Department of Administrative Order No. 94-28 - Interim Guidelines for the Importation of Recyclable Materials containing Hazardous Substances. Under this guidelines importation of wastes for recovery, recycling and reprocessing may be allowed upon obtaining prior written approval from the Secretary of DENR or his duly authorized representative. A recyclable material is any material which is reused, following its original, for any purpose of commercial, industrial, agriculture or economic value. These includes:

- 2.A.1 Scraps and wastes containing precious metals and their alloy of gold, platinum and silver.
- 2.A.2 Metal sludges containing precious and the associated metals.
- 2.A.3 Ferrous waste and scrap for remelting: cast iron, stainless steels, other alloy steels, tinned iron or steel, turnings, shavings, chips, milling waste, fillings, trimmings and stampings, scraping and used iron and steel nails.
- 2.A.4 Non-ferrous scraps and alloys
- 2.A.5 Other metal bearing waste arising from melting, smelting and refining of metals of hard zinc smelter, zinc containing drosses, zinc shimmings and slags from processing for further refining.
- 2.A.6 Lead acid batteries
- 2.B Solid Plastic Materials
- 2.B.1 Waste parings and scrap of plastics
- 2.B.2 Polymerized or co polymerized
- 2.B.3 Resins from condensation products
- 2.C Electronic Assemblies and Scraps
- 2.C.1 All electronic assemblies containing printed circuit boards.
- 2.C.2 Electronic components containing hazardous substances such as TV, VCR, stereo, etc.

3. Department Administrative Order No. 97-28 - Amending Annex-A of DAO 94-28 which allows the importation of used oil and oil residues provided that the spent oil have no traces of polychlorinated biphenyls (PCB),

4. International Convention and Commitments

- 4.A Montreal protocol on Chemical Substances that deplete the ozone layer
- 4.B Basel Convention - Prohibit the transboundary movements of wastes materials

- 4.C United National Framework of Climate Change
- 4.D Treaty on Persistent Organic Pollutants (POPs)
- 4.E Prior Informed Consent (PIC) of The Rotterdam Convention.

Under the TCCP as amended, the Bureau is mandated to enforce/implement all other laws, rules and regulations within its jurisdiction. These includes:

1. Section 101 - Prohibited Importations - under letter K" all other articles and parts thereof, the importation of which is prohibited by law, rules and regulations issued by competent authority.
2. Section 3514 - Words and phrases Defined - under par. 10 "Tariff and Customs Laws" includes not only the provisions of this Code and regulations which are subject to enforcement by the Bureau pf Customs or otherwise within its jurisdiction.
3. Section 2529 - Other Offenses - A vessel shall be fined in an amount hereafter fixed for:
 1. Anchoring at any dock, pier, wharf, quay or bulkhead without rat guards, two hundred (P200) pesos for coastwise vessels, and one thousand (P1,000) thousand pesos for overseas vessel;
 2. Dumping garbage or slops over the side within three miles from the nearest coastline, one (P1,000) pesos;
 3. Dumping or causing to spread crude oil, kerosene or gasoline in the bay or at the piers within three miles from the nearest coastline, one thousand (P1,000) thousand pesos for each offense;
 4. Loading gasoline at a place other that that designated by the regulations, one (P1,000) thousand pesos for each offense;
 5. Causing the emission and spread of harmful gas, fumes and chemicals, five (P5,000) thousand pesos for each offense.

Information relayed by EMB-DENR based on data gathered from the industries and end-users of these hazardous and toxic wastes and substances that there is an increased in the stock inventory of importers which is beyond the quota allowed by EMB Import Clearance System. Much more end-users can secure supply from other sources in the market, confirming reports that these wastes and substances are smuggled into the country. A reliable information was received by the undersigned that vessels docked at South Harbor and MICT are engaged in the illegal disposal and transport of use oil/sludge oil that may pollute or pose danger to the environment and without payment of duties and taxes to the government.

In view hereof, the undersigned e\respectfully recommend that the personnel to be assigned to this unit must have an inside knowledge of assessment and operations with expertise in intelligence and enforcement in order for EPPPU to effectively performed and accomplished

its assigned task . It is suggested that the personnel which will comprised the Composite Team for the three (3) major ports shall be sourced from the Assessment (3), CIIS (3), and ESS (6). It is requested that the unit be provided an office with telephone and fax, computer, furnitures and office equipments and supplies. Furthermore, trainings and seminars be conducted to enhance the capabilities of the unit. The EMB-DENR together with United Nations Organizations will sponsor training for customs officials and other key stakeholders to enable them to identify controlled substances under the Montreal Protocol and imported refrigerators, freezers and other refrigerator equipment using ozone depleting substances and providing CFC Detection Equipment for major customs entry in the country. Attached herewith is the proposed Memorandum of Agreement between EMB-DENR and BOC-DOF (draft prepared by EMB) for your review, comment and recommendation.

For your information and appropriate action.

NICOMEDES P. ENAD
Special Police Captain
Deputy District Commander

Encls:

1. DENR Manual for Regional Training Courses
2. DAO # 94-28
3. Draft MOA
4. Project Training by UNEP-EMB/DENR
5. Staffing pattern

MEMORANDUM OF UNDERSTANDING

KNOW ALL MEN BY THESE PRESENTS:

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between:

The Department of Environment and Natural Resources, represented herewith by the ENVIRONMENT MANAGEMENT BUREAU created by virtue of Executive Order No. 192 with offices at EMB Bldg., DENR Compound, Visayas Avenue, Diliman, Quezon City, represented by its Secretary, Hon. HEHERSON T. ALVAREZ, herein referred to as DENR-EMB;
AND

The Department of Finance, represented herewith by the BUREAU OF CUSTOMS, with offices at the Port Area, Manila represented by its Commissioner, Undersecretary ANTONIO M. BERNARDO herein referred to as BoC:

WITNESSETH:

WHEREAS, under Republic Act 6969 (Toxic and Hazardous and Nuclear Wastes Control Act of 1999) and Resolution No. 25 dated March 10, 1993 of the Senate of the Philippines ratifying the Montreal Protocol on Substances that Deplete the Ozone Layer, the DENR-EMB has the legal mandate to regulate, restrict or prohibit the import, export, use, manufacture, transport, processing, storage, possession or sale of ozone-depleting substances to abate or minimize their risks and hazards to the stratospheric ozone, public health, and the environment.

WHEREAS, the BoC, under Republic Act 1973 and 4109 and Presidential Decree 1464, is responsible for clearing all importations prior to entry into the country.

WHEREAS, there is an urgent need to clarify the respective responsibilities of, and establish the working relationship between, BoC and the DENR-EMB in relation to the provisions of RA 6969 and the Montreal Protocol on Substances that Deplete the Ozone Layer as ratified by the Senate.

NOW, THEREFORE, in view of the foregoing premises, the DENR-EMB and the BoC hereby stipulate and agree as follows:

1. The DENR-EMB, shall:

- a) Issue rules and regulations relative to the import, export, transport, processing, storage, possession or sale of ozone-depleting substances and its alternatives;
- b) Issue Pre-Shipment Importation Clearance to registered/authorized importers of ODS and its alternatives as basis for BoC's approval of entry;
- c) Support the BoC in obtaining resources such as equipment, manpower training, expertise,

information, and others, in order to capacitate the BoC and assure proper enforcement/implementation of appropriate rules and regulations;

d) Draft, together with the BoC, a Customs Handbook for perusal in the enforcement and implementation of any endeavor that the parties may pursue in furtherance of the terms of this agreement;

e) Upon advice of BoC, monitor/validate "suspicious" shipment after it has left the BoC.

f) Designate the Philippine Ozone Desk and the Environmental Quality Division of EMB as official liaison to the BoC.

2. The BoC, shall:

a) Implement/enforce relevant rules and regulations relative to the import, export, transport, processing, storage, possession or sale of ozone-depleting substances and its alternatives;

b) Draft, together with the DENR-EMB, a Customs Handbook for perusal in the enforcement and implementation of any endeavor that the parties may pursue in furtherance of the terms of this agreement;

c) Provide to DENR-EMB import data of ODS and its alternatives on a semi-annual basis;

d) Notify the DENR-EMB of any "suspicious" shipment/s encountered;

e) Designate Environmental Protection Unit (EPU) under the Office of the Deputy Commissioner for Intelligence and Enforcement Group (IEG) to be in-charge of implementing the MOU and act as the official liaison to the DENR-EMB through the Philippine Ozone Desk.

For the efficient and effective implementation of this Agreement, an EMB-BoC Liaison Committee shall be created to ensure adequate coordination, cooperation, information sharing, and problem solving between the two agencies. Membership of the liaison committee shall be decided by the head of the two agencies. The Committee shall meet at least twice a year, or as may be requested by either party.

This Agreement shall be binding without prejudice to further and subsequent laws, orders or regulations that may be passed in relation to the foregoing subject matter of this undertaking.

This Agreement shall take effect upon its execution by the Parties. Any modification or amendment of the terms and conditions of this Agreement shall be mutually agreed upon by the parties and shall be made in writing duly signed by the Parties.

IN WITNESS WHEREOF, the parties hereby set their hands this 24th day of July year Two Thousand and Two at the Heritage Hotel, Pasay City.

Department of Environment
and Natural Resources
Environmental Management Bureau

Department of Finance
BUREAU OF CUSTOMS

By:

By:

HEHERSON T. ALVAREZ
Secretary

ANTONIO M. BERNARDO
Commissioner

Signed in the Presence of:

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES
QUEZON CITY

}
} S.S.

Before me on the _____ day of _____ 2002 personally appeared HEHERSON T. ALVAREZ with CTC No. _____ issued on _____ at _____ and ANTONIO M. BERNARDO with CTC No. _____ issued on _____ at _____, known to me to be the same persons who executed the foregoing undertaking and acknowledging to me that the same is of their own free act and will.

WITNESS MY HAND AND SEAL.

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Series of 2002

Republic of the Philippines
Department of Finance
BUREAU OF CUTOMS
Manila

March 4, 2003

CUSTOMS MEMORANDUM CIRCULAR
NO. 75-2003

TO: All District/Port Collectors
And Others Concerned

SUBJECT: CFC 11, CFC 12 & HCFC Registered Importers
Ozone Depleting Substances (ODS)

Attached is a copy of the letter dated February 18, 2003 of Director Julian D. Amador, EMB, DENR providing this Bureau with an updated list of EMB-registered importers of CFC 11, CFC12 and HCFC and alternatives as of February 18, 2003, and informs that:

A. The following ozone-depleting substances are already banned for importation:

1. All other CFCs except for CFC 11 and CFC 12
2. Halon 1211 (Bromochlorodifluoromethane)
3. Halon 1301 (Bromotrifluoromethane)
4. Carbon Tetrachloride or CTC or tetrachloromethane
5. 1,1,1 TCA or trichloroethane or methyl chloroform

B. There are only six (6) registered importers of CFC 11 and CFC 12, to wit:

1. Delsa Chemicals and Multi-Products Inc.
2. Thermo Engineering Supply Corporation
3. Manhattan Chemical Corporation/Noah Trading Corporation
4. Genetron Refrigeration Industries
5. Abomar Corporation and
6. Wise and Company, Inc.

For the Commissioner
(Per CMO 85-90)

EMMA M. ROSQUETA
Deputy Commissioner
Internal Administration Group

Part III

The Environmental Management Bureau and the Philippine Ozone Desk

The Environmental Management Bureau

I. Background

The Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), the prevailing environmental administrative machinery, had several forerunners. Foremost of these was the National Water and Air Pollution Commission (NAWAPCO), which was created in 1964 by virtue of Republic Act No. 3931. It was subsequently transformed into the National Pollution Control Commission (NPCC) in 1977 through Presidential Decree No. 984. This new commission had more regulatory functions than the NAWAPCO.

In the mid-seventies, environmental problems took on a wider perspective, realizing that industrial pollution was not the country's sole environmental problem. It was recognized that practically all aspects of the environment were subjected to varying degrees of abuse and degradation. It was this perception that brought about the need to integrate the approach in confronting and solving environmental problems.

On July 6, 1976, the Inter0Agency Committee on Environmental protection (IACEP) was created under the Department of Environment and Natural Resources to assess the environmental situation at that time, specifically on government policies and programs on environmental protection. The Committee's findings showed that there was an uncoordinated implementation of activities by at least 22 agencies with specific sectoral responsibilities on environmental protection. Furthermore, their findings also showed that the lack of adequate legislation and regulatory powers hindered the environmental efforts of the various agencies. There was also no mechanism to assess the environmental impacts of development projects. As a result, the IACEP recommended the integration of environmental programs through inter-agency coordination and the creation of a national coordinating agency on environmental protection.

These recommendations were operationalized on April 18, 1977 when the National Environmental Protection Council (NEPC) was created by virtue of Presidential Decree No. 1121 and was placed under the Office of the President. It was tasked with the rationalization of the functions of government agencies for an effective, coordinated and integrated system of environmental protection, research and implementation of laws.

In 1986, the formation of a new government saw the abolition and reorganization of various government agencies, including the NEPC and the NPCC. These two agencies were merged on June 1987, with the creation of the DENR by virtue of Executive Order No. 192. It was in this Order that the EMB was likewise created as its staff bureau. A little more than a decade later, pursuant to the Clean Air Act or Republic Act No. 8749, the EMB has been elevated from a staff to a line bureau.

II. Functions

Specifically, the functions of the bureau are the following:

- A. Advise the DENR Secretary on matters relating to environmental management, conservation, and pollution control;
- B. Formulate and implement comprehensive plans, policies, projects and activities for the prevention and control of pollution and protection of the environment;
- C. Establish and enforce environmental quality standards for water, air land and noise for the protection and sustainable use of natural resources consistent with the national environmental goals and enforceable at the local government units;
- D. Enforce the Environmental Impact Statement System;
- E. Issue permits, clearances under Presidential Decree No. 984 and Republic Act No. 6969 and monitor compliance to said laws including Environmental Compliance Certificate (ECC) conditions;
- F. Conduct public hearings on pollution cases and strengthen the prosecution of violators;
- G. Conduct special response and monitoring during pollution emergencies and catastrophes;
- H. Develop and implement a Research and Development Program in support of the formulation of environmental criteria and standards; environmental quality and compliance monitoring; and study of existing and potential environmental problems and issues; and,
- I. Promote public information and education to encourage participation of an informed citizenry in environmental planning and monitoring.

THE PHILIPPINE OZONE DESK: IN BRIEF

THE MONTREAL PROTOCOL AND ITS AMENDMENTS

The discovery of the ozone hole in the Antarctic regions in 1985 raised an alarming global concern that led to the execution of the Montreal Protocol in 1987. The Montreal Protocol on Substances that Deplete the Ozone Layer is an agreement among 129 countries, including the Philippines, that limits the production, application and use of the most commonly used ozone depleting substances (ODSs), like CFCs, to 50% of 1986 levels by the year 1998 and called for a freeze in production of Halons at 1986 levels beginning 1992. However, the London (June 1990) and the Copenhagen (November 1992) Amendments to the Protocol added more stringent controls on the substances included in the original agreement and by adding control on other ODSs.

THE PHILIPPINES' COMMITMENT

Being a signatory country to the Montreal Protocol, the Philippines is obliged to comply with its commitment to reduce and eventually phase out ozone depleting substances (ODSs). It is through this commitment that an office, aptly named as the Philippine Ozone Desk (POD), was created in 1994. The Desk was initially known as the Montreal Protocol Secretariat. The name Philippine Ozone Desk was merely an evolved name for the same office that pursues the very same objective - the protection and preservation of the ozone layer.

The Department of Environment and Natural Resources, through the Environmental Management Bureau and the Philippine Ozone Desk (EMB-POD), acts as the national coordinator on programs, in drawing up policies and devising administrative measures for the implementation of the Montreal Protocol. Since the Philippines is not a producer of any ODS, the phase out of these substances pertains mainly to controlling ODS importation. The Philippines' commitment to the Montreal Protocol stipulates, as reflected in the Philippine Country Program, that a certain phase out and reduction schedule is met — 25% by year 2001; 50% by year 2005; 85% by year 2008; and 100% by year 2010.

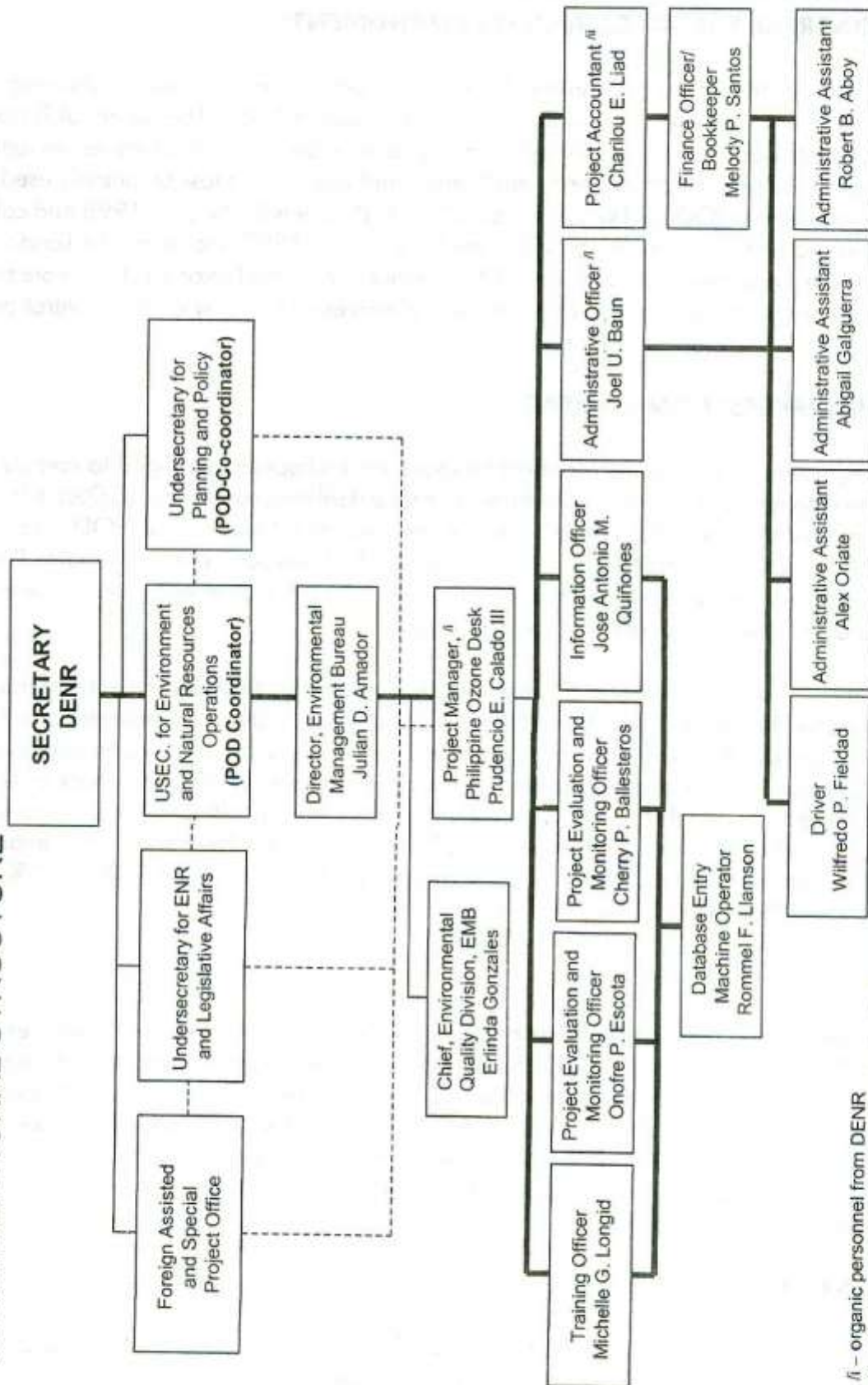
NCPP

The National CFC Phaseout Plan was prepared by the Government of the Philippines (DENR/POD) with assistance from the World Bank and the Government of Sweden in a cooperative undertaking. The NCPP was approved during the 38th Executive Committee Meeting of the Multilateral Fund of the Montreal Protocol. This Plan will phaseout the remaining CFC consumption of 2,017.6 MT of Annex A, Group I chemicals during the period of 2003-2010. Through the NCPP, series of investment and non-investment projects and other support activities will be undertaken.

POD TO DATE

To date, the government through the DENR-EMB-POD, maintains a successful pace and continues to be vigilant in the pursuit of its commitment to the Montreal Protocol.

Philippine Ozone Desk ORGANIZATIONAL STRUCTURE



/i - organic personnel from DENR

/ii - The EMB Accountant is designated as POD Accountant

Note: Boxes with light or no shade show the POD's operational structure



Philippine Ozone Desk
(DENR-EMB-POD)
DENR Compound, Visayas Avenue
Diliman, Quezon City