

LEGAL NOTICE NO. _____

THE ENERGY ACT, 2006

(No. 12 of 2006)

THE ENERGY (BIODIESEL LICENCING) REGULATIONS, 2009

PART I – GENERAL

Citation. 1. These Regulations may be cited as the Energy (Biodiesel Licencing) Regulations, 2009.

Definitions. 2. In these Regulations, unless the context otherwise requires -

"approved" means approved by the Commission;

"automotive gas oil" also referred to as diesel fuel has the meaning given to it under the international standard on petroleum terminology ISO 1998-1:1998 and meets the specifications of Kenya Standard KS 1309-1:2003 Part 1 or any revisions thereof;

"commission" has the meaning assigned to it in Section 5 of the Act;

"biodiesel" means raw biodiesel that meets KS Specification for pure biodiesel that has already undergone the transesterification process and is ready to be blended into automotive gas oil;

"biodiesel B5" means diesel fuel (automotive gas oil) that has been blended with biodiesel in the ratio of 95 percent automotive gas oil and 5 percent biodiesel and meets KS .. Specification for automotive grade biodiesel;

"diesel fuel" means the meaning given to it under the international standard on petroleum terminology ISO 1998-1;1998;

"licence" means a licence issued by the Commission in accordance with these rules.

"licencee" means the holder of a licence issued under these rules.

"licensed" means licensed by the Commission;

"premises" includes any place and, in particular includes—

any vehicle, vessel, aircraft or hovercraft, any installation on land including the foreshore and land intermittently covered by water, any offshore installation or any other installation whether floating, or resting on seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof ;

“production of biodiesel for commercial purposes” means production of biodiesel of more than 5000 litres per annum;

“production of biodiesel for own use” means production of biodiesel of less than or equal to 5000 litres per annum;

"retail in biodiesel" means a form of distribution of biodiesel by which the biodiesel in pure or blended form is customarily sold to consumers other than for the purpose of resale;

"retailer" means a person regularly engaged in retail trade in biodiesel, or who participates in some act or set of acts of retail trade which is the subject of an action under these Regulations;

“the Act” means the Energy Act 2006;

"store or storage" means to keep biodiesel in any one place otherwise than is necessary in the ordinary course of transit;

“Tribunal” has the meaning assigned to it by the Act;

"wholesale trade" means a form of distribution of biodiesel by which biodiesel in pure or blended form is customarily sold for the purpose of resale; and includes any act or set of acts of sale for either of those purposes which is the subject of an action under these Regulations;

"wholesaler" means a person regularly engaged in wholesale trade in biodiesel, or who participates in some act or set of acts of wholesale trade, which is the subject of an action under these Regulations.

Licences for
biodiesel
business

3.(1) A person shall not conduct a business of production, importation, storage, exportation, wholesale, transport or retail of biodiesel, except under and in accordance with the terms and conditions of a valid licence.

Except that activities involving not more than 5000 liters per annum meant for own purposes and not for sale shall not require a licence.

(2) No licence shall be granted for the production, importation, storage, exportation, wholesale, transport or retail of biodiesel unless the site has been approved in accordance with the Physical Planning Act, No. 6 of 1996, the Environment Management and Coordination Act, No. 8 of 1999 and the Local Government Act, Cap 265 and other applicable Kenya Laws.

(3) No licence shall be granted for the production, importation and storage of biodiesel in an installation unless the plans and specifications of such an installation have been approved by the Commission.

PART II – PRODUCTION OF BIODIESEL

License to produce biodiesel.

4 (1) A person shall not conduct a business of production of biodiesel for commercial purposes, except under and in accordance with the terms and conditions of a valid licence.

(2) Every application for the production of biodiesel shall be accompanied by:

(a) An environmental impact assessment licence issued in accordance with the Environmental Management and Coordination Act 1999 or any revisions thereof;

(b) documentary proof to the satisfaction of the Commission that the manufacturing facility complies with health and safety standards set out in the Occupational Safety and Health Act 2007 and the Public Health Act Chapter 242 or any revisions thereof;

(c) A certificate of Compliance issued in accordance with the Physical Planning Act 1996 or any revisions thereof;

(d) Copy of approved drawings in accordance with the Local Government Act Chapter 265 with specifications;

(e) written description of the nature and quantity of biodiesel to be produced indicating the sources of raw materials and the intended market outlets.

PART III – BLENDING OF BIODIESEL B5

Blending of Biodiesel B5

5. (1) Biodiesel to be blended into automotive gas oil shall meet KS..... Specification for pure biodiesel.

(2) Any biodiesel sold for use in automotive vehicles shall be blended as Biodiesel B5 which shall comprise of 5 percent pure biodiesel and 95 percent automotive gas oil (diesel fuel).

(3) Biodiesel B5 shall comply with the Kenya Standard KS B5 Specification for Biodiesel – B5 - Automotive Gas Oil Blend.

(4) Any biodiesel sold for automotive use at retail petrol sites shall be blended into Biodiesel B5 at Kenya Pipeline Company facilities or any other oil storage depot approved by the Commission before dispatch to oil company storage depots or loading onto trucks.

PART IV – LICENSE TO STORE BIODIESEL AND/OR BIODIESEL B5 IN BULK

License to Store biodiesel and Biodiesel B5 in bulk.

6. (1) A person shall not conduct a business of bulk storage of biodiesel and Biodiesel B5 except under and in accordance with the terms and conditions of a valid licence.

(2) Every application for a licence to store biodiesel and/or Biodiesel B5 shall be accompanied with:

(a) An environmental impact assessment licence issued in accordance with the Environmental Management and Coordination Act 1999 or any revisions thereof;

(b) proof that the storage facility complies with health and safety standards set out in the Occupational Safety and Health Act 2007 and the Public Health Act Chapter 242 or any revisions thereof;

(c) A certificate of Compliance issued in accordance with the Physical Planning Act 1996 or any revisions thereof;

(d) Copy of approved drawings in accordance with the Local Government Act Chapter 265 with specifications;

(e) documentary proof of compliance with the Environmental Management and Coordination (Water Quality) Regulations, 2006, Legal Notice No. 120.

(f) documentary proof of compliance with the Environmental Management and Coordination (Waste Management) Regulations, 2006, Legal Notice No. 121.

(g) documentary proof of compliance with KS1967:2006, The petroleum industry – Storage and distribution of Petroleum products in aboveground bulk installations; KS 1968:2006, The petroleum industry – Electrical installations in the distribution and marketing sector – Code of practice; KS 1969:2006, The petroleum industry – The installation of underground storage tanks, pumps/dispensers and pipe work at service stations and consumer installations – Code of practice; and KS – 201.... Specifications for underground kerb side tank.

(3) A licensee shall not make any alterations in the licensed facility or in the method of storing biodiesel as shown in the submitted drawings without the authority of the Commission.

PART V – TRANSPORTATION OF BIODIESEL AND/OR BIODIESEL B5

Saving in case of own use of Biodiesel B5.

7. Nothing in this Part of these Regulations shall apply to Biodiesel B5 in the fuel tank of any vehicle.

Licence for transport of biodiesel and Biodiesel B5.

8. (1) A person shall not conduct the business of transportation of biodiesel and/or Biodiesel B5 except under and in accordance with the terms and conditions of a valid licence.

(2) A licence to transport biodiesel and/or Biodiesel B5 shall authorize the transport of biodiesel and/or Biodiesel B5 within the area or over the routes specified in the licence.

(3) A licensee shall not transport biodiesel and/or Biodiesel B5 from an unlicensed person or discharge from his vehicle to a person not licensed under the provisions of these regulations.

(4) No person, having a valid biodiesel and/or Biodiesel B5 transportation license, shall drive or cause to be driven such vehicle which this regulations relates by a person who is not certified by the Commission to drive such a vehicle.

Duties of persons in charge of vehicles.

9. The owner, person in possession or licensee of every vehicle used for the conveyance, of biodiesel and/or Biodiesel B5 shall jointly and severally be responsible for carrying out the provisions of this Part of these Regulations and every such person shall take all reasonable measures to ensure -

(a) that any person employed by him in connection with such

conveyance is acquainted with the provisions of these Regulations; and

(b) that such provisions are carried out.

PART VI – WHOLESALING OF BIODIESEL AND/OR BIODIESEL B5

License to
wholesale
biodiesel and
Biodiesel B5

10. (1) A person shall not conduct the business of wholesaling of biodiesel and/or Biodiesel B5 except under and in accordance with the terms and conditions of a valid licence.

(2) Every application for the wholesaling of biodiesel and/or Biodiesel B5 shall be accompanied by –

(a) documentary proof to the satisfaction of the Commission that the wholesaler's production and/or storage premises complies with environmental standard set out in the Environmental Management and Coordination Act 1999 or any revisions thereof;

(b) documentary proof that the wholesaler's production and/or storage premises complies with health and safety standards set out in the Occupational Safety and Health Act 2007 and the Public Health Act Chapter 242 or any revisions thereof;

(c) documentary proof that the wholesaler's premises production and/or storage complies with planning standards set out in the Physical Planning Act 1996 or any revisions thereof;

(d) documentary proof that the wholesaler's production and/or storage premises complies with the applicable local government by-laws enacted in accordance with the Local Government Act Chapter 265;

(e) proof of adherence to Kenya Standard KS1967:2006, The petroleum industry – Storage and distribution of Petroleum products in above ground bulk installations for petroleum;

PART VII – RETAILING OF BIODIESEL B5

License to
retail Biodiesel
B5

11. (1) A person shall not conduct the business of retailing of biodiesel and/or Biodiesel B5 except under and in accordance with the terms and conditions of a valid licence issued by the Commission.

(2) No person shall retail “Biodiesel B5” other than that which complies with Kenya Standard KS B5 ...Specification for Biodiesel-Automotive Gas Oil B5 Blend.

(3) Biodiesel B5 retailing sites shall comply with the requirements of KS 1969:2006, The petroleum industry – The installation of underground storage tanks, pumps/dispensers and pipe work at service stations and consumer installations – Code of practice; petroleum retail sites.

(4) The pumps and other appliances used for dispensing Biodiesel B5 shall be clearly and legibly labeled so as to distinguish them from pumps dispensing pure automotive gas oil.