



Republic of the Philippines
Department of Environment and Natural Resources
POLLUTION ADJUDICATION BOARD
DENR Compound, EMB Building, Visayas Avenue
Diliman, Quezon City

DATE: 01/26/2022
TIME: 2:14pm

**IN THE MATTER OF
THE AIR POLLUTION
CONTROL AND
ABATEMENT CASE**

**DENR-PAB Case No.
08-000064-21-A**

-versus-

**FOR: Violation of
Section 1, Rule XIX,
DAO No. 2004-26,
R.A No. 8749**

PETRON MARKETING CORPORATION (VEES 5 CORPORATION)
Fatima Village Rotonda, Brgy. 77, Tacloban City, Philippines
Respondent.

X- -----X

ORDER

For consideration before the Board is the air pollution case of Respondent docketed as DENR-PAB Case No. **08-000064-21-A**.

Records of the case reveal that on **12 August 2021**, the Clearance and Permitting Division of the EMB Regional Office No. VIII conducted a desk review upon the application for the renewal of herein respondent's Permit to Operate Air Pollution Source and Control Installation filed before the Online Permitting System last **07 August 2021**.

The desk review report revealed the existence of **one unit Airman Diesel Genset rated at 25 kva (20kw); one-unit UGT for Diesel with capacity of 14.5 KL; and three units UGT for Premium, Unleaded and Turbo Diesel with Capacity of 7.5 KL**, but allegedly without a Permit to Operate Air Pollution Source and Control Installation since **16 July 2021**.

The desk review report further revealed that a similar Notice of Violation has been issued against the same respondent for the same violation. The Board has found the respondent liable, and the respondent was made to pay a fine on 09 February 2021. A temporary PTO was then issued to the respondent on 15 April 2021 valid until 15

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July 2021. The respondent, however, failed to secure a regular permit to operate again.

Consequently, a Notice of Violation was issued on **02 September 2021** stating the violation.

Pursuant to **Pollution Adjudication Board Resolution No. 02, Series of 2020 or the Interim Guidelines of the Pollution Adjudication Board during the Public Health Emergency due to COVID-19**, in lieu of a technical conference/hearing, the Respondent was directed to submit a position paper fifteen (15) days from receipt of the NOV.

Respondent, however, failed to submit a position paper. The records of the EMB Regional Office will show that the Respondent, thru one **Richard Murino**, was properly served with the NOV last **06 September 2021**. Hence, such failure to submit a position paper, despite receipt of the NOV, constitutes a waiver of its right to contest the findings.

Upon a thorough review of the desk review report and such all other available evidence on record, the Hearing Officer submitted the case for the Order of the Board, thru this Office, and is of the opinion that the alleged violation must be affirmed, and the Respondent should be held liable, there being a lawful ground to do the same.

RULING

The Board, in turn, thru this Office, finds no cogent reason or legal justification to deviate from the opinion and recommendations of the Hearing Officer. The said opinion and recommendations are hereby adopted in the ruling of this case.

Section 1, Rule XIX of DAO No. 2004-26 (IRR of R.A 8749) requires that all sources of air pollution must have a valid permit to operate issued by the EMB Regional Director. **Section 47 of R.A 8749**, meanwhile, provides that "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 (P10,000) but not more than One Hundred Thousand Pesos (P100,000) or six (6) months to six (6) years imprisonment or both shall be imposed. xxx", subject to the provisions of **PAB Resolution No. 01-2019**.

Here, the existence of the Air Pollution Sources and Control Installation is apparent. However, the records are also clear that no valid Permit to Operate exists for the latter on the part of the Respondent at the time of the desk review. The failure by the respondent to submit a position paper, despite receipt of the NOV, constitutes a waiver of its right to contest the findings. The records of this Office will show that the Respondent, thru one **Richard Murino**, was properly served with the NOV last **06 September 2021**.

Notwithstanding the foregoing, however, there is a need to dismiss the alleged violation against the respondent for the records will show that only on **01 September 2021** did a Formal Lifting Order was issued by the PAB on the first case involving the same respondent. In such a case, the respondent cannot be reasonably expected to have been able to secure the discharge permit at the time or prior to the expiration of the temporary permit, for under **PAB Resolution No. 01-2019**, it provides that:

“xxx, the Regional Office shall submit a monthly report to the Pollution Adjudication Board the names of establishments with their corresponding dockets and imposed fines **in order for the PAB to issue the necessary clearance for the issuance of the regular permits of these establishments.**”

Henceforth, if the clearance, in the form of a Formal Lifting Order was issued only last **01 September 2021**, then the respondent would technically not have been able to secure the permit prior to **July 2021**. Fairness then dictates that the violation be dismissed.

WHEREFORE, after due deliberation and consultation, the Board hereby resolves to **DISMISS** the alleged violation and to relieve the respondent from any liability.

In addition, the respondent is likewise directed to secure a Regular Permit to Operate from the EMB Regional Office No. VIII and must cease from utilizing the APSCI until and unless a PTO is secured for the same. Otherwise, any future similar violation shall be dealt with severely by law.

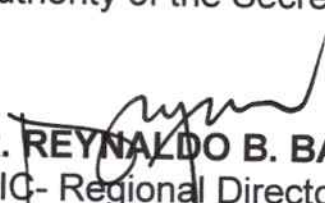
The Clearance and Permitting Division is likewise directed to cause and process the issuance of a regular Permit to Operate Air Pollution Source and Control Installation upon respondent.

The Legal Officer or his duly authorized representative is directed to serve this Order within seventy-two (72) hours from receipt hereof.

SO ORDERED.

Tacloban City, Philippines. JAN 25 2022

By authority of the Secretary:


ENGR. REYNALDO B. BARRA
OIC- Regional Director

Copy furnished:

Air & Water Permitting Section
Clearance and Permitting Division

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