LEGAL NOTICE NO. 7

THE ENERGY ACT
(No. 12 of 2006)

IN EXERCISE of the powers conferred by section 102 of the Energy Act, 2006 the Cabinet Secretary for Energy makes the following regulations –

THE ENERGY (RETAIL FACILITY CONSTRUCTION AND LICENSING) REGULATIONS, 2013

1. These Regulations may be cited as the Energy (Retail Facility Construction and Licensing) Regulations, 2013

2. In these Regulations, unless the context otherwise requires –

“modification” means any change in a facility which alters the existing technical design, storage capacity or impacts on compliance with local health, environmental and safety legal requirements or any change requiring local authority approval;

“specifications” has the meaning assigned to it in section 2 of the Standards Act.

3. These regulations shall not apply to the Kenya Defence Forces.

PART I – CONSTRUCTION PERMITS

4. (1) A person shall not construct or undertake modification of a petroleum retail dispensing site except –

(a) in accordance with the Act; and

(b) under the terms and conditions of a petroleum retail dispensing site construction permit.

5. (1) A person may make an application to the Commission for a petroleum retail dispensing site construction permit in Form I set out in Part I of the First Schedule.

(2) An application for a petroleum retail dispensing site construction permit shall be accompanied by the documentation and information set out in Part II of the First Schedule.

6. (1) The Commission may request additional information from an applicant which may be necessary for the Commission to make a decision regarding the issuing of the petroleum retail dispensing site construction permit.

(2) The Commission shall issue a petroleum retail dispensing site construction permit if it is satisfied that the applicant has complied with the Act and these regulations.

(3) A petroleum retail dispensing site construction permit shall be in Form 2 set out in Part III of the First Schedule.
7. (1) A person appointed by the Commission may enter and inspect any premise which is under construction as a petroleum retail dispensing site.

(2) Where an agent determines that a person who is engaged in the construction of a petroleum retail dispensing site has not obtained a petroleum retail dispensing site construction permit, he shall direct that person to—

(a) cease the construction; and

(b) apply for a petroleum retail dispensing site construction permit.

PART II – LICENSING OF PETROLEUM RETAIL BUSINESSES

8. A person shall not conduct any petroleum retail business except in accordance with the requirements of the Act and the terms and conditions of a valid petroleum retail business licence issued by the Commission.

9. (1) A person may apply for—

(a) a petroleum retail business licence; or

(b) renewal of a petroleum retail business licence, in Form 3 set out in Part I of the Second Schedule.

(2) In the case of a new applicant the application made under paragraph (1) shall be accompanied by Form 4 set out in Part II of the Second Schedule.

10. (1) A person evaluating an application for a petroleum retail business licence, shall take into account the respective criteria set out in Part III of the Second Schedule.

(2) An agent may request additional information from an applicant that may be necessary to enable the Commission determine the application.

11. A petroleum retail business licence shall be in Form 5 set out in Part IV of the Second Schedule.

12. (1) A person appointed by the Commission shall furnish a person interested in applying for any of the licences prescribed under these Regulations with any relevant information.

(2) Any discussions with, notifications or requests for information from the Commission or its agents shall not confer any right to any person to the grant of a licence.
13. A petroleum retail business licensee shall, as general conditions attached to the licence –

(a) only retail petroleum at the facility specified in the petroleum retail business licence;

(b) purchase petroleum or petroleum products only from a holder of a valid petroleum business licence;

(c) only purchase or sell petroleum which meets the Kenyan Standard;

(d) not offer for sale adulterated petroleum products or petroleum products meant for export;

(e) ensure that the petroleum dispensing pumps are calibrated within the time period specified by the law;

(f) not charge prices above those determined by the Commission;

(g) not hoard petroleum products;

(h) ensure that the operations at the petroleum retail dispensing facility comply with the provision of all relevant written laws;

(i) at all times comply with the Act and carry out the instructions of the Commission;

(j) inform the Commission or its agents in writing of any changes of address or telephone number or other material particulars submitted as part of the application for the licence within thirty days of the relevant change taking effect; and

(k) submit information to the Commission or its agents as required under the Act and any regulations made there under.

14. A person appointed by Commission or agent may enter and inspect any petroleum retail dispensing site or any premises where petroleum retail business is conducted for the purposes of inspections or conducting investigations pursuant to the provisions of the Act.

15. The Commission may publish a list of names of retail dispensing sites who may have committed any offence under the Act or these Regulations.

16. Any person who contravenes the provisions of these regulations commits an offence and shall on conviction be liable to a fine not exceeding one million shillings.
FIRST SCHEDULE

PART I

FORM I

APPLICATION FORM FOR A PETROLEUM RETAIL DISPENSING SITE CONSTRUCTION PERMIT

(A separate application form must be completed in respect of each separate installation)

1. Name of applicant/proponent: ________________________________

2. Details of applicant/proponent: ________________________________
   (a) Income Tax Personal Identification Number(s): ________________
   (b) Postal address: ___________________________________________
   (c) Email Address: ___________________________________________
   (d) Facility location:
       I. Plot No.: _______________________________________________
       II. Street/Market: __________________________________________
       III. Town/County: __________________________________________

3. Give full details of proprietors or partners owning business or directors/shareholders of the company, as the case may be:

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<tr>
<th>Name</th>
<th>Nationality</th>
<th>(Where applicable No. of shares held)</th>
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   (Any additional information should be submitted on a separate sheet of paper)

4. Give full details of directors of the company:

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<th>Name</th>
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   (Any additional information should be submitted on a separate sheet of paper)

5. Full description of the proposed petroleum facility:

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
6. Specify the storage capacity of the facility:


7. Give details on equity capital including other sources of financing:


8. Indicate bank references:


9. CONDITIONS FOR ISSUANCE OF A PETROLEUM RETAIL DISPENSING SITE CONSTRUCTION PERMIT

Compliance with:

(a) Energy Act, 2006.


(c) Physical Planning Act, 1996.

(d) Any other subsidiary legislation regulations from the above Acts.

10. DECLARATION

i. I/We have read and understood the relevant sections of the Energy Act, 2006 and the related petroleum rules and regulations, and agree to abide with them.

ii. I/We hereby certify that the information given above is to my/our knowledge true and accurate.

iii. I/We understand that it is an offence to give false information in an application for a construction permit.

iv. I/We hereby confirm that our Company/Business shall abide by the above terms and conditions with regard to construction of the petroleum installation. I also understand that the construction permit is subject to these conditions.

Name of Company: ___________________________________________

Name and ID No. of Person signing the Declaration: ________________

Designation and telephone No.: _________________________________

Signature & Stamp: _________________________________________

Date: _____________________________________________________

Email address: _____________________________________________
11. FOR OFFICIAL USE ONLY

1. Date application received: _________________________

2. Date of review: _________________________

3. Decision: _________________________

4. If application is deferred or rejected, date of letter advising applicant accordingly: _________________________

5. Permit details:
No.: _________ Date issued: _________ Expiry date: _________

PART II

INFORMATION AND DOCUMENTS TO ACCOMPANY APPLICATION FOR A PETROLEUM RETAIL DISPENSING SITE CONSTRUCTION PERMIT

An application for a petroleum retail dispensing construction permit shall be accompanied by-

(a) a completed application form;

(b) three copies of approved plans and specifications;

(c) an Environmental Impact Assessment (EIA) Licence ; and

(d) a certificate of compliance with land use.

PART III

FORM 2

PERMIT NO. .................

PETROLEUM RETAIL DISPENSING CONSTRUCTION PERMIT

Construction Permit is hereby granted to _________________________ of P.O. Box _________________________ to construct the following petroleum Facility (is):

Construction of: 1. Petroleum Facility

On premises situated at:

Plot No.: _________________________

Street/Market: _________________________

Town/County: _________________________

This Permit expires on: _________________________
SECOND SCHEDULE

PART 1

APPLICATION FORM FOR A PETROLEUM RETAIL BUSINESS LICENCE

(A separate application form must be completed in respect of each separate business establishment)

1. Name of business/applicant: ________________________________

2. Details of applicant:
   a) Income Tax Personal Identification Number(s): ____________________
   b) Postal address: ________________________________________________
   c) Email Address: ________________________________________________
   d) Location of business premises:
      I. Plot No.: __________ Building Name: __________________________
      II. Street/Market: ______________________________________________
      III. Town/District: _____________________________________________

3. Give full details of proprietors or partners owning business or directors/shareholders of the company, as the case may be:

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<th>(Where applicable No. of shares held)</th>
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4. Give full details of directors of the company:

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(Any additional information should be submitted on a separate sheet of paper)

5. Full description of the business(es) for which the licence is required:

6. (a) Indicate the number and date of issue of any licence previously held under the Act:

(b) Indicate the period for which the licence is being applied (maximum is one year from the date of issue):

7. State if you are or any of your partners/directors is an undischarged bankrupt (If so indicate the names):

8. (a) Has any previous application for a licence been rejected under the Act? (If so, give details):

(b) Has any previous licence been cancelled under the Act?

9. (a) Criteria to be met for new application and for renewal of a licence is attached at the back of the application form.

(b) Certified copies (by advocate / commissioner of oaths) of documents as per criteria specified above should be submitted together with the licence application.

10. CONDITIONS FOR PETROLEUM RETAIL BUSINESS LICENCE

a) Compliance with ENERGY ACT 2006 and any other subsidiary legislation regulation issued there under.

b) Environmental Management and Co-ordination Act, 1999

c) Traffic Act

d) Relevant Kenya Standard on Petroleum Tankers

e) Any other subsidiary legislation regulations from the above Acts.
DECLARATION

i. I/We have read and understood the relevant sections of the Energy Act, No. 12 of 2006 and the related regulations issued therein, and agree to abide with them.

ii. I/We hereby certify that the information given above is to my/our knowledge true and accurate.

iii. I/We understand that it is an offence to give false information in an application for a licence.

iv. I/We commit to conduct an honest petroleum business.

Name of Company: __________________________________________

Name and ID of Person signing the Declaration: ________________

Designation and telephone No.: ________________________________

Signature & Stamp: __________________________________________

Date: ______________________________________________________

Email address: ______________________________________________

FOR OFFICIAL USE ONLY

1. Date application received: ______________

2. Date of meeting of Petroleum Licensing Committee: ____________

3. Decision of Petroleum Licensing Committee: ___________________

Members present

1. _______________________________ Signature __________________

2. _______________________________ __________________________

3. _______________________________ __________________________

4. _______________________________ __________________________

4. If application is deferred or rejected, date of letter advising applicant accordingly:

________________________________________

5. Date of review of application: ____________________________

Decision of Committee: ______________________________________

Members present

1. _______________________________ Signature __________________

2. _______________________________ __________________________

3. _______________________________ __________________________

4. _______________________________ __________________________
6. Licence details:
   No.: ________ Date issued: ________ Expiry date: ________

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PART II

FORM 4

QUESTIONNAIRE TO BE FILLED BY NEW APPLICANTS FOR A PETROLEUM RETAIL BUSINESS LICENCE

1. Name of applicant: ____________________________________________

2. Nature of business (Sole Trader, Partnership, Private Company or Public Company):
   ____________________________________________

3. Certificate of Incorporation/Registration Number and date: ________
   (a) Country of Incorporation: __________________________________
   (b) Physical address: ____________________________________________
   (c) Postal address: ____________________________________________
   (d) Telephone/ fax: ____________________________________________
   (e) Email address: ____________________________________________

4. Give full details of proprietors or partners owning business or directors/shareholders of the company, as the case may be:

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5. Give full details of directors of the company:

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   (Any additional information should be submitted on a separate sheet of paper)

6. Give details on equity capital including other sources of financing:

   ____________________________________________

7. Indicate bank references ____________________________________________
8. Type of business required to be licensed (tick as appropriate):
   (i) Refining
   (ii) Importation
   (iii) Exportation
   (iv) Wholesale
   (v) Storage
   (vii) Specify any other ________________________________

9. Indicate if you:
   (a) Own storage facilities (If so, give details including location and capacity):
   ________________________________
   (b) Have hospitality/rental arrangement (If so, give details including copies of any agreements):
   ________________________________

10. Do you intend to market your product locally? ________________
    If Yes,
    (a) Give the number and locations of Retail Outlets:
        ________________________________
    (b) Give the number and locations of Distribution Depots including their capacities:
        ________________________________
    (c) If neither (a) nor (b) is applicable, explain:
        ________________________________
    (d) Give details on how you propose to maintain the approved quality of your product:
        ________________________________

11. (a) Give details of measures you have taken/you propose to take to ensure that the product you handle does not endanger life or pollute the environment:
    ________________________________
    (a) Any additional information that the applicant wishes to give:
    ________________________________

(If space provided above is not adequate use plain paper where applicable and attach to this questionnaire)

Name of Company: ________________________________

Name and ID No. of Person signing the Declaration: ________________

Designation and telephone No.: ________________________________

Signature & Stamp: ________________________________

Date: ________________________________
PART III

A. LICENCE EVALUATION CRITERIA FOR NEW PETROLEUM RETAIL BUSINESS LICENCE

An application for a Petroleum Retail Dispensing Construction Permit shall be accompanied by—

(a) a completed application form;
(b) a completed detailed questionnaire;
(c) a certified copy of Certificate of Incorporation;
(d) Certified copy of PIN registration certificate;
(e) Certified copy of VAT registration certificate;
(f) Certified copy of current Tax compliance Certificate;
(g) Certified copy Identification documents for directors ID/passport;
(h) Certified copy of a valid entry permit for foreign directors;
(i) Certified copy of Lease agreement/proof of ownership of Premises e.g. title documents;
(j) Certified copy of valid calibration certificate for the dispensing pumps from Weights and Measures;
(k) Certified copy of Memo and Articles of association;
(l) Environmental Impact Assessment (EIA) Licence;
(m) Certified copy of Certificate of Compliance with Physical Planning Act

(n) Certified copy of Clearance Certificate form Chief Fire Officer;
(o) Detailed approved drawings drawn to scale; and
(p) Certified copy of DOSHS certificate of registration.

B. LICENCE EVALUATION CRITERIA FOR RENEWAL OF PETROLEUM RETAIL BUSINESS LICENCE

An application for a Petroleum Retail Dispensing Construction Permit shall be accompanied by—

(a) Completed application form;
(b) Certified copy of current Tax compliance Certificate;
(c) Certified copy of Lease agreement/proof of ownership of Premises e.g. title documents;
(d) Valid Environmental Audit acknowledgement letter from NEMA;
(e) Certified copy of Certificate of Compliance with Physical Planning Act;
(f) Certified copy of Clearance Certificate form Chief Fire Officer;
(g) Detailed approved drawings drawn to scale;
(h) Certified copy of DOSHS certificate of registration; and
(i) Certified copy of valid calibration certificate for the dispensing pumps from Weights and Measures.

PART IV
PETROLEUM RETAIL BUSINESS LICENCE

No. ERC/PET/83

Licence is hereby granted to __________________________ of P.O. Box ___________ to carry on the following petroleum businesses:

LICENCE NAME

On premises situated at:

Plot No.: __________________________

Building: __________________________

Street/Market: __________________________

Town/District: __________________________

This licence expires on: __________________________

Dated this: __________________________

Signature __________________________

(S Seal),
Director General,
Energy Regulatory Commission.

Made on the 19th December, 2013.

D. K. CHIRCHIR,
Cabinet Secretary for Energy and Petroleum.