

(Legislative Supplement No. 6)

LEGAL NOTICE NO. 9

THE ENERGY ACT, 2006

(No. 12 of 2006)

IN EXERCISE of the powers conferred by section 102 of the Energy Act, 2006 the Cabinet Secretary for Energy and Petroleum makes the following Regulations—

ENERGY (LICENSING OF PETROLEUM LOGISTICS BUSINESS AND FACILITY CONSTRUCTION) REGULATIONS, 2013

PART I - PRELIMINARY

1. The Energy (Licensing of Petroleum Logistics Facilities and Businesses) Regulations, 2013.

Citation.

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

Interpretation.

“licence” means any document or instrument in writing granted under this Act by the Commission to any person authorizing the operation of a petroleum logistics facility;

“modification” means any change in a facility that alter the design, storage capacity, or impacts on the health, safety and environmental requirements;

“petroleum logistics facility” means any facility that is or can be used to receive, store, load, offload or transport petroleum and includes petroleum marine jetties, marine terminals, pipeline systems, and storage depots but does not include retail dispensing sites; and

“petroleum logistics facility licensee” means a person licensed to operate a petroleum logistics facility and provide related services.

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

Application.

PART II – PETROLEUM LOGISTICS FACILITY CONSTRUCTION PERMITS

4. A person shall not construct or modify a petroleum logistics facility except in accordance with the Act and the terms and conditions of a valid petroleum logistics facility construction permit issued by the Commission.

Prohibition against constructing a petroleum logistic facility without a construction permit.

Application of a construction permit.

5.(1) A person who wishes to construct or modify a petroleum logistics facility shall apply to the Commission for a construction permit in the Form 1 set out in the First Schedule.

(2) An application under paragraph (1) shall be accompanied by the documentation and information specified in the First Schedule.

Consideration and determination of applications for a construction permit.

6.(1) The Commission may request such additional information from an applicant as it considers necessary to decision regarding the issuing of the petroleum logistics facility construction permit.

(2) Where the Commission is satisfied that the applicant meets the requirements under these Regulations, it shall issue to the applicant with a petroleum logistics facility construction permit in Form 2 set out in the First Schedule.

7. (1) The Commission may authorize a suitably qualified person to enter into and inspect any premises or facility that the Commission believes is under construction or modification as a petroleum logistics facility.

(2) Where the Commission is satisfied after an inspection under paragraph (1) that a person is engaged in the construction or modification of a petroleum logistics facility requiring a construction permit and is not in possession of such construction permit it shall direct that person to cease the construction or modification unless and until the requisite permit is obtained.

## PART II-PETROLEUM LOGISTIC FACILITY LICENSING

Prohibition against operating a petroleum logistics facility without a licence.

8.(1) A person shall not operate a petroleum logistics facility except in accordance with the terms and conditions of a valid licence issued by the Commission under these regulations.

(2) Where the Commission determines that a person is engaged in the operation of a petroleum logistics facility without a licence it shall direct that person to cease such operation immediately and not to resume until a licence is obtained.

Application for a licence.

9. (1) A person who intends to engage in the operation of a petroleum logistics facility shall apply to the Commission for a licence in the Form 3 set out Second Schedule.

(2) An application under paragraph (1) shall be accompanied by the documents and additional information specified in the Second Schedule.

Consideration and determination of applications.

10. (1) In evaluating an application for a petroleum logistics facility licence, the Commission shall take account of the criteria specified in the Second Schedule.

(2) The Commission may request for such additional information from an applicant as it may consider necessary to enable it to make a decision regarding the issuance of the licence.

(3) Where the Commission is satisfied that the applicant meets the requirements under these Regulations, it shall issue a licence in Form 4 set out in the Second schedule.

11. (1) The Commission shall furnish to all persons who intend to make an application for a petroleum logistics facility licence and construction permit prescribed under these Regulations with any necessary information in the Commission's possession.

Inquiries by licensees.

(2) Any discussions with, notifications or requests for information from the Commission or its agents shall not confer any right on any person to the grant of a licence or a permit, as the case may be.

12.A petroleum logistics facility licensee shall-

Obligations of Petroleum logistics facility licensees.

- (a) operate and maintain the facility in accordance with the requirements of all relevant laws for the time being in force;
- (b) not permit the loading or offloading on its facility by petroleum road tankers which do not comply with the requirement of the Act;
- (c) not allow any person not certified by the Commission as a petroleum tanker driver to drive a petroleum tanker within its premises;
- (d) put in place measures to ensure that petroleum from its facilities complies with the Kenya standards;
- (e) maintain and operate the facility in compliance with Kenya standards or the relevant international standards approved by Kenya Bureau of Standards;
- (f) operate the facility in a manner that conforms to the existing Kenyan standards for Petroleum Storage Installations;
- (g) provide to the Commission all information required to be provided by Act; and
- (h) if so directed by the Commission, stop providing logistics facility services to a petroleum business licensee that is not in compliance with the Act or the conditions of its licence.

13. The Commission may enter and inspect any premises where a petroleum logistics facility is located for the purpose of inspecting or conducting an investigation pursuant to the provisions of the Act or Regulations made under the Act.

Inspections and investigations.

14. A 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.

Offence.

## FIRST SCHEDULE (r.5,6)

## FORM 1

APPLICATION FORM FOR A PETROLEUM LOGISTIC FACILITY  
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) Site 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:

<i>Name</i>	<i>Nationality</i>	<i>(Where applicable No. of shares held)</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

4. Give full details of directors of the company:

<i>Name</i>	<i>Nationality</i>	<i>Passport/ ID No.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

5. Full description of the proposed petroleum facility:

\_\_\_\_\_

- 
6. Specify the points between which the pipeline is to run (For Pipeline installations only):
- 

7. Specify the storage capacity of the facility:
- 
- 
- 

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

9. Indicate bank references:
- 
- 
- 

10. **CONDITIONS FOR ISSUANCE FOR A PETROLEUM LOGISTIC FACILITY CONSTRUCTION PERMIT**

Compliance with:

- (a) Energy Act, 2006.
- (b) Environmental Management and Co-ordination Act, 1999 and in particular the report of the Environmental (Impact Assessment and audit) Regulations, 2003.
- (c) Physical Planning Act, 1996.
- (d) Any other subsidiary legislation regulations from the above Acts.

11. **DECLARATION**

- i. I/We have read and understood the relevant sections of the Energy Act, No. 12 of 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.

of Company: \_\_\_\_\_

Name and ID No. of Person signing The Declaration: \_\_\_\_\_

Designation and telephone No.: \_\_\_\_\_

Signature & Stamp: \_\_\_\_\_

Date: \_\_\_\_\_

Email address: \_\_\_\_\_

## 12. 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: \_\_\_\_\_

### INFORMATION AND DOCUMENTS TO ACCOMPANY APPLICATION FOR A PETROLEUM LOGISTIC FACILITY CONSTRUCTION PERMIT

<i>Criteria</i>	<i>REF</i>	<i>PLF</i>	<i>PL</i>	<i>RT</i>
Application form	Yes	Yes	Yes	Yes
Three copies of approved plans and specifications	Yes	Yes	Yes	Yes
Environmental Impact Assessment (EIA) Licence	Yes	Yes	Yes	Yes
Certificate of compliance with Land Use	Yes	Yes	Yes	Yes

#### KEY

REF – Refinery.  
 PLF – Petroleum Logistic Facility.  
 RT – Retail Dispensing Site.  
 PL – Pipeline.

FORM 2

PERMIT NO. ....

PETROLEUM LOGISTIC FACILITY CONSTRUCTION PERMIT

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

Construction of: 1. Petroleum Logistic Facility

On premises situated at:

Plot No.: \_\_\_\_\_

Street/Market: \_\_\_\_\_

Town/County: \_\_\_\_\_

This Permit expires on: \_\_\_\_\_

Dated this: \_\_\_\_\_

Signature: \_\_\_\_\_

(SEAL)  
Director General,  
Energy Regulatory Commission.

Conditions:

- 1. ....
- 2. ....
- 3. ....
- 4. ....

SECOND SCHEDULE

(r.9)

FORM 3

APPLICATION FORM FOR A PETROLEUM 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): \_\_\_\_\_

a) Postal address: \_\_\_\_\_

b) Email Address : \_\_\_\_\_

## c) 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:

<i>Name</i>	<i>Nationality</i>	<i>(Where applicable No. of shares held)</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

## 4. Give full details of directors of the company:

<i>Name</i>	<i>Nationality</i>	<i>Passport/ ID No.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(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 LOGISTIC BUSINESS LICENCE IN KENYA**
- 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****Signature**

- |          |       |
|----------|-------|
| 1. _____ | _____ |
| 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****Signature**

- |          |       |
|----------|-------|
| 1. _____ | _____ |
| 2. _____ | _____ |
| 3. _____ | _____ |
| 4. _____ | _____ |

6. Licence details:

No.: \_\_\_\_\_ Date issued: \_\_\_\_\_ Expiry date: \_\_\_\_\_

**QUESTIONNAIRE TO BE FILLED BY  
PETROLEUM LOGISTIC BU**

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E**

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:

<i>Name</i>	<i>Nationality</i>	<i>(Where applicable No. of shares held)</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

5. Give full details of directors of the company:

<i>Name</i>	<i>Nationality</i>	<i>Passport/ ID No.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(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 Retails 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:  
\_\_\_\_\_

- (b) 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: \_\_\_\_\_

**EVALUATION CRITERIA FOR NEW PETROLEUM LOGISTIC BUSINESS (EXCEPT LPG) LICENCE**

<i>Criteria</i>	<i>REF</i>	<i>IMP</i>	<i>EXP</i>	<i>STO</i>	<i>WH</i>	<i>PL</i>
Application form	Yes	Yes	Yes	Yes	Yes	Yes
Detailed Questionnaire	Yes	Yes	Yes	Yes	Yes	Yes
Certified copy of Memo and Articles of association	Yes	Yes	Yes	Yes	Yes	Yes
Certified copy of Certificate of Incorporation	Yes	Yes	Yes	Yes	Yes	Yes
Certified copy of PIN registration certificate	Yes	Yes	Yes	Yes	Yes	Yes
Certified copy of VAT registration certificate	Yes	Yes	Yes	Yes	Yes	Yes
Certified copy of current Tax compliance Certificate	Yes	Yes	yes	yes	Yes	yes
Identification documents for directors (ID/passport page 1 and 5)	Yes	Yes	yes	yes	Yes	yes
Work permits for non-citizens / Entry permit class H	Yes	Yes	yes	yes	Yes	yes
Certified copy of Lease agreement/Premises ownership	Yes	Yes	Yes	Yes	Yes	Yes
Letter from OSMAG confirming membership	Yes	Yes				Yes
Signed KPRL product off take agreement		Yes				
Purchase of allocated product from KPRL		Yes				
Letter from MOE confirming applicant Signed OTS agreement for crude and refined products		Yes				
Supply agreement with licensed importer or supplier /letter of intent				Yes		Yes
EIA Licence (if new)/ EA if existing				Yes		Yes
Certified copy of Certificate of Compliance with Physical Planning Act				Yes		Yes
Certified copy of Clearance Certificate form Chief Fire Officer				Yes		Yes
Detailed approved drawings drawn to scale				Yes		Yes
Certified copy of DOSHS certificate of registration				Yes		Yes

**EVALUATION CRITERIA FOR RENEWAL OF PETROLEUM LOGISTIC BUSINESS (EXCEPT LPG) LICENCE**

<i>Criteria</i>	<i>REF</i>	<i>IMP</i>	<i>EXP</i>	<i>STO</i>	<i>WH</i>	<i>PL</i>
Application form	Yes	Yes	Yes	Yes	Yes	Yes
Copy of previous licence	Yes	Yes	Yes	Yes	Yes	Yes
Proof that expired licence was utilised	Yes	Yes	Yes	Yes	Yes	Yes
Certified copy of Current Tax compliance certificate	Yes	Yes	yes	yes	Yes	yes
Proof of active OSMAG membership – OSMAG letter	Yes	Yes				Yes
Annual performance data				Yes		
Proof of purchase of product from KPRL		Yes				
EA acknowledgement letter from NEMA				Yes		Yes
Certified copy of Clearance certificate form chief				Yes		Yes

fire officer						
Certified copy of DOHSS certificate of registration				Yes		Yes

## KEY

REF – Refining

IMP – Import

EXP – Export

STO – Storage &amp; Loading

WH – Wholesale

PL – Pipeline,

## FORM 4

## PETROLEUM LOGISTIC BUSINESS LICENCE

No. ERC/PET/ \_\_\_\_\_

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

*Licence Name (Except LPG)*

On premises situated at:

Plot No.: \_\_\_\_\_

Building: \_\_\_\_\_

Street/Market: \_\_\_\_\_

Town/District: \_\_\_\_\_

This licence expires on: \_\_\_\_\_

Dated this: \_\_\_\_\_

Signature \_\_\_\_\_

(SEAL),  
Director General,  
Energy Regulatory Commission.

Made on the 19th December, 2013.

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