



EMB MEMORANDUM CIRCULAR
No. 2020 **012**

MAR 12 2020

**SUBJECT : RULES ON THE CONFISCATION OF ILLEGAL CHEMICALS,
CHEMICAL SUBSTANCES AND APPREHENSION OF
HAZARDOUS WASTE UNDER RA 6969**

Pursuant to the provisions of Republic Act 6969, otherwise known as “*Toxic Substances and Hazardous and Nuclear Wastes Act of 1990*” and DENR Administrative Order No. 29, Series of 1992, and other pertinent policies, rules and regulations, these Rules for the administrative apprehension, seizure, confiscation and disposition of illegally possessed, handled, transported and of the conveyance use to move or otherwise transport the same, are hereby promulgated.

I. BASIC POLICY

It is the policy of the State to regulate, restrict or prohibit the importation, manufacture, processing, sale, 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 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 wastes.

II. OBJECTIVES

1. To compel handlers and transporters of hazardous and toxic chemical substances and mixtures, and hazardous waste in securing the environmental permits and other requirements.
2. To provide procedural guidelines to be followed by the various stakeholders for the seized and confiscated toxic chemical substances and mixtures, and hazardous wastes.
3. To minimize, if not obliterate, the potential risks posed by the proliferation of illegal transport and storage of hazardous wastes and toxic chemicals for the safety and welfare of the public and of the environment.

III. SCOPE AND COVERAGE

These Rules and Regulations shall cover the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all illegal chemical substances and mixtures and the apprehension of hazardous wastes regulated under RA 6969 in the Philippines including the entry, even in transit, as well as the transport, keeping or storage and disposal of hazardous wastes into the country for whatever purpose.



IV. DEFINITION OF TERMS

- a) "Apprehended Articles" means the chemical substances, mixtures, hazardous substances, and/or hazardous wastes, including all its attachments, containers, and/or conveyances, which are apprehended and turned-over to the EMB.
- b) "Apprehending Officer" means the authorized personnel to inspect and investigate any suspected items/products, and thereafter effect apprehension.
- c) "Apprehension" is the initial measure of interception and taking into custody over the hazardous and toxic chemical substances or mixtures, or hazardous waste by the apprehending officers.
- d) "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 part, 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 non-biodegradable mixtures.
- e) "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.
- f) "Confiscation" is the legal form of seizure by government or other public authority.
- g) "Conveyance" is any mode or type or class of vehicle or craft or any other means used for transportation either on land, water, air, or any combination thereof, whether motorized or not, used for or in taking and/or maintaining temporary or permanent possession or control, gathering, collecting, processing, disposing of, or otherwise transporting, moving or transferring of toxic chemicals and/or hazardous waste.
- h) "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.
- i) "Hazardous Wastes" are substances that are without any safe commercial, industrial, agricultural or economic usage 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.



- j) "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 remaining under customs control, the product or substance of which is intended for direct consumption, merchandising, warehousing, for further processing.
- k) "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.
- l) "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.
- m) "Republic Act 6969" means an act to control Toxic Substances and Hazardous and Nuclear Wastes providing penalties for violation thereof, and for other purposes.
- n) "Seizure" is the official act of taking by persons authorized by law into government custody, pending formal administrative proceedings for the disposition thereof.
- o) "Seizure Officer" shall refer to the officer or personnel authorized by these rules who assume possession and control of apprehended items/products.
- p) "Transport" includes conveyance by air, water and land.

V. JURISDICTION

Jurisdiction of the administrative proceedings shall be determined by the nature of the chemical, chemical substance, or hazardous waste, or the permitting authority of such chemical or hazardous waste being transported, as prescribed by the existing guidelines. The chemicals and/or hazardous wastes apprehended shall be held *in custodia legis* by the Office acquiring jurisdiction on the place where the same is apprehended.

All actions of the EMB Offices shall be done in consideration of the authority of the courts or any other agency which may have an interest over the case.

VI. GENERAL REQUIREMENTS AND PROCEDURES

All chemical substances and mixtures, hazardous substances, and hazardous wastes which are apprehended by reason being in contravention of prohibited acts under Republic Act No. 6969 and its relevant rules and regulations shall be considered illegal.

a) Standard Procedure

- i. Apprehended illegal chemical substances or mixtures, hazardous substances, or hazardous wastes, including its attachments, containers,



and/or conveyances, turned-over to the possession of the EMB Regional Office, shall be properly identified as to its character, content, condition, and volume.

- ii. The legal and technical units of the Bureau shall jointly make a proper recommendation as to the course of action to be taken, i.e. release, detain, disposal, or the issuance of order of forfeiture, without prejudice to the administrative action which may be taken against the perpetrator.
- iii. The EMB Office may cause the temporary detention of the apprehended articles in its own facility, or a facility of another person or entity which the EMB Office may acquire capable of safely handling such articles.

b) Full Compliance of Documentary Requirements and Chain of Custody

The following information must be sought by the EMB Office from the Apprehending Officer upon the turn-over of the apprehended articles (*See Annex A*):

- i. Full name and address of the offenders on-site
- ii. Time, date and place of apprehension
- iii. Circumstances that led to the apprehension
- iv. Preliminary description of the items or chemicals and conveyance being apprehended
- v. Place, time and date of origin and intended destination, consignor and consignees of the items being apprehended
- vi. Full names of all persons accompanying or providing on-site assistance the apprehending officer

c) Detention or Disposal, and Release of Apprehended Articles

In case detention of the apprehended articles shall be made for the purpose of confiscation, the EMB Office shall ensure that the apprehended articles be safely and properly detained *in custodia legis* in a facility supervised by the EMB Office.

In case the EMB Office deems it proper for the disposal, destruction or deportation of the apprehended articles, the same shall be disposed, destroyed or deported at the expense of the apprehended person or entity, without prejudice to the imposition of any administrative penalty for the violation of the law.

The EMB Office may dispose of the apprehended articles which it ordered to be forfeited, through public sale consistent with prevailing guidelines.

Release of the apprehended articles shall be made in favor of the respondent through an order to be issued by the EMB Office, if it is found that the apprehended articles are legal, and/or does not pose an immediate threat or hazard to public health and safety of the environment.

d) Chain of Custody

In all stages of the transfer of the apprehended articles, a transmittal document (*See Annex B*) shall be executed by both parties, a copy of which shall be furnished to the EMB Office acquiring administrative jurisdiction over the case.

e) Disputable Presumptions

In administrative proceedings conducted pursuant hereto, the following shall be considered presumptions of fact and/or law and taken as part of the evidence:

- i. All those apprehended on-site for direct or indirect participation in the commission of the offenses cited had full knowledge and willingly participated therein.
- ii. The registered owner and/or operator/driver of a conveyance used in the commission of the offense had full knowledge and willingly participated therein by providing the conveyance was applied. In case the registered owner of the conveyance is a partnership or corporation, the partners and/or officers thereof had full knowledge of a granted authorization or issued instructions for the use or application of the conveyance in the commission of the offense.

VII. ORDER

The all orders and decisions as to the apprehended articles shall be made by the EMB Director or Regional Director, in consideration however to other administrative agencies or tribunals acquiring jurisdiction over the case.

VIII. ADMINISTRATIVE COSTS

1. The administrative fines imposed and collected shall accrue to a special fund to be administered by the Department exclusively for projects and research activities relative to toxic substances and mixtures.
2. Any costs and/or expenses incurred by the EMB Office in the detention, disposal, destruction, or deportation of the apprehended articles shall be reimbursed by the offending party in addition to other administrative fines and penalties which may be imposed.
3. Should a criminal case be filed, such expenses shall attach as primary liens over such items in favor of the EMB and shall be deducted from and reimbursed to the EMB as administrative costs from the proceeds of the forfeiture sale thereof if any.

IX. PENALTY CLAUSE

Any violations specified in this Memorandum will subject those persons responsible therefore to administrative and criminal sanctions as specified under Title V, Chapter XI, Sections 41 and 42 of DAO 29, Series of 1992, otherwise known as the Implementing Rules and Regulations of Republic Act No. 6969, and other relative rules and regulations.

X. SEPARABILITY CLAUSE

If any provision of these Rules is declared invalid, void, or unconstitutional, the remaining provisions not affected thereby shall remain in full force and effect.

XI. EFFECTIVITY

This Order shall take effect fifteen days (15) after its publication in two (2) newspapers of general circulation and upon acknowledgment of receipt of a copy thereof by the Office of the National Administrative Register (ONAR), University of the Philippines Law Center.


ENGR. WILLIAM P. CUÑADO
OIC-Director

 Department of Environment and
Natural Resources
ENVIRONMENTAL MANAGEMENT BUREAU
Office of the Director

MC No. 2020-012



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PRO FORMA APPREHENSION RECEIPT

Apprehension Receipt No. (YY-RR-MM-NN)*

Name of Persons Apprehended	
Address and Contact No.	
Citation of Offense	
Date and Time of Apprehension	Place of Apprehension
Particular Description of Items Apprehended <i>(i.e. 1 Barrel unmarked, cyanide; 1 truck with boom crane, plate number XYZ-123)</i>	Total Volume (approx. 158.987 liters)
I acknowledge the that these items are being apprehended for the alleged violation of Republic Act No. 6969, otherwise known as Toxic Chemicals and Hazardous and Nuclear Waste Act of 1990, and its Implementing Rules and Regulations. As such, I understand that these items, including all its implements, accessions and accessories, as well as all instruments relative thereof, will be held in custody by the Environmental Management Bureau of the Department of Environment and Natural Resources under its existing guidelines. All costs incurred by the agency for the preservation, storage, and maintenance of the item apprehended shall be borne by the apprehended person. Further, I release the agency free from any and all civil and criminal liability in case of damage to the items apprehended by reason of or as an incident of the apprehension conducted.	
_____	_____
Apprehending Officer	Apprehended Person

*Y-Year; R- Region; M – Month; Apprehended; N – Number of Apprehensions for the Month

** Copy furnished to Apprehended Person, Apprehending Officer, and EMB Office acquiring administrative jurisdiction over the case.

TRANSMITTAL DOCUMENT

FOR : **TRANSFEROR**

FROM : **TRANSFeree**

SUBJECT : **TRANSFER OF CUSTODY OF CHEMICALS AND HAZARDOUS WASTE AND ITEMS UNDER APPREHENSION TICKET NO.**

DATE : _____

Respectfully transferred and conveyed to the custodial authority and jurisdiction of your Office for the purpose of _____ (i.e. sampling, detention, marking or other legitimate purposes) the following items apprehended/seized under Apprehension Ticket No. _____ for the case against _____, in violation of _____ of Republic Act No. 6969, otherwise known as Toxic Chemicals and Hazardous and Nuclear Wastes Act of 1990, and its Implementing Rules and Regulations:

Particular Description of Items Apprehended	Total Volume
<i>(i.e. 1 Barrel unmarked, cyanide; 1 truck with boom crane, plate number XYZ-123)</i>	(approx. 158.987 liters)

I hereby attest that these articles are in such condition as it was conveyed to me.

Transferor

ACKNOWLEDGMENT

I hereby acknowledge the receipt of the articles conveyed to me, along with all its implements, accessories, accessions, as well as other items intimately related to the above-case.

Transferee