



Republic of the Philippines
Office of the President
DANGEROUS DRUGS BOARD

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BOARD RESOLUTION NO. 122
Series of 2012

SUBJECT: IMPOSING THE FINE OF TEN THOUSAND PESOS (PHP 10,000.00) AGAINST ECOLAB PHILIPPINES, INC. AND CLEARING THE SAME FROM ANY FURTHER LIABILITY REGARDING ITS SEPTEMBER 16, 2012 SHIPMENT

WHEREAS, pursuant to Section 81 (b) and I of Article IX of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (RA 9165), the Board issued Board Regulation No. 3, Series of 2003 which provides for the “Comprehensive Guidelines on Importation, Distribution, Manufacture, Prescription, Dispensing and Sale of, and Other Lawful Acts in Connection with any Dangerous Drugs, Controlled Precursors and Essential Chemicals and other Similar or Analogous Substances”;

WHEREAS, pursuant to Section 81 (b) and I of Article IX of RA 9165, the Board likewise issued Board Regulation No. 5, Series of 2006, which provides for the “Imposition of Fines and other Sanctions for Violations Committed on the Pertinent Provisions of Board Regulation No. 3, Series of 2003”;

WHEREAS, ECOLAB PHILIPPINES, INC., with business address at Quezon Avenue, Quezon City, is possessed of PDEA licenses P5 – C – 03496001 – N007 and P5 – I – 03496001 – N004 both valid until May 11, 2013;

WHEREAS, on September 16, 2012, a shipment for ECOLAB PHILIPPINES, INC. containing alkyl benzene sulfonic acid (1 – 2.5% sulfuric acid) arrived in the Port of Manila from the United States without the necessary importation permit / certificate of exemption, in violation of Section 6 (2) (b) of Board Regulation No. 3, Series of 2003 which states that no operator shall import any dangerous drug or controlled chemicals and their preparations in the absence of a separate import permit or Certificate of Exemption;

WHEREAS, due to the absence of said permit / certificate, said shipment was not released to **ECOLAB PHILIPPINES, INC.** by the Bureau of Customs, prompting the former to seek consideration for their alleged violation with the Dangerous Drugs Board;

WHEREAS, Section 1 (1) of Board Regulation No. 5, Series of 2006 provides that violation of the terms and conditions of a license granted by the PDEA in relation to Section 6 (2) (b) of Board Regulation No. 3, Series of 2003 shall warrant a fine of PHP 10,000.00 for the first commission of offense with a stern warning that the repetition of said offense shall be dealt with in accordance with Section 32, Article II of RA 9165 and other applicable laws;

WHEREAS, ECOLAB PHILIPPINES, INC. has been previously penalized for a similar act, having violated the Board Regulation No. 3, Series of 2003 due to lack of proper importation permit on May 16, 2012, and therefore its officers could be made liable for violation of Section 32 (Liability to a Person Violating Any Regulation Issued by the Board) of RA 9165, as provided for under Board Regulation No. 5, Series of 2006;

WHEREAS, after investigation and due deliberation, it has been found that **ECOLAB PHILIPPINES, INC.** failed to procure an import permit / certificate of exemption when it relied on good faith on the fact that an import permit / certificate of exemption is not required if only trace amounts of controlled chemicals are present in imported products;

WHEREAS, records show **ECOLAB PHILIPPINES, INC.** is a legitimate enterprise regularly alkyl benzene sulfonic acid; that the controlled chemical component of the same is minimal (1 – 2.5% sulfuric acid) and its extraction for illicit use is highly impractical;

WHEREAS, as a rule, although intent to commit a crime is not necessary to prosecute violations of RA 9165, it being a special law, **ECOLAB PHILIPPINES, INC.** had no intent to take control of said shipment considering the absence of an importation permit or Certificate of Exemption and such importation and possession is only incidental to the fact of the arrival of said shipment. Good faith exists on its part and their lack of criminal intent is a valid consideration;

WHEREAS, considering that this is **ECOLAB PHILIPPINES, INC.’s** second shipment sans importation permit or Certificate of Exemption, the law and pertinent regulations are silent as to the proper penalty that may be imposed;

WHEREAS, it is a general principle in criminal law that penal laws are construed liberally in favor of the accused (Agote v. Lorenzo, GR No. 142675, July 22, 2005). The Supreme Court, in Palaganas v. People of the Philippines (GR No. 165483, September 12, 2006), expanded this principle, when it stated that “when the law is silent, the same must be interpreted in favor of the accused.”;

WHEREAS, considering the fact that **ECOLAB PHILIPPINES, INC.** was in good faith since the importation in question was merely done in the ordinary course of business and the controlled chemical content in the shipment is very minimal (1 – 2.5% sulfuric acid), the fine of TEN THOUSAND PESOS (Php 10,000.00) as provided under Board Regulation No. 5, Series of 2006 may be imposed, being in consonance with settled jurisprudence.

WHEREFORE, be it **RESOLVED**, as it is hereby **RESOLVED**: That-

- a. **A FINE OF TEN THOUSAND PESOS (PHP 10,000.00) BE IMPOSED** against **ECOLAB PHILIPPINES, INC.** for its September 16, 2012 importation of alkyl benzene sulfonic acid (1 – 2.5% sulfuric acid) without a separate importation permit / certificate of exemption;
- b. The **SEPTEMBER 16, 2012 SHIPMENT** of **ECOLAB PHILIPPINES, INC.** has satisfactorily **COMPLIED** with the DDB / PDEA administrative and regulatory requirements;
- c. The **ECOLAB PHILIPPINES, INC. SUBMIT** with the Board an **EXPLANATION** of corrective measures that it would undertake to avoid a repetition of the incident within **TEN (10) WORKING DAYS**; and
- d. **ECOLAB PHILIPPINES, INC. IS STERNLY WARNED THAT A REPETITION OF SAID ACT SHALL BE DEALT WITH MORE SEVERELY.**

APPROVED and ADOPTED this 18th day of October, in the year of Our Lord, 2012 in Quezon City.

(Sgd.) **Secretary ANTONIO A. VILLAR, JR.**
Chairman, Dangerous Drugs Board

Attested:

(Sgd.) **Assistant Secretary BENJAMIN P. REYES**
OIC-Secretary of the Board