

Health and Safety Executive Board		HSE/14/79	
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Type of Paper:	Above the line 2014/341726	Exemptions:	None

HSE Review of Approved Code of Practice (ACOP) for the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR) – L133 Unloading petrol from road tankers

Purpose of paper

1. To report the outcome of the consultation on the revised DSEAR ACOP, L133 Unloading petrol from road tankers
2. To ask the Board's agreement to recommend to the Minister that he gives permission to publish the revised ACOP (see Annex 2) before the end of 2014.

Background

3. The DSEAR ACOPs were reviewed as part of the wider review of ACOPs recommended by Professor Löfstedt. Following an initial outline review of its ACOPs, HSE launched a consultation¹ in summer 2012 on proposed changes to a number of its ACOPs including those supporting DSEAR.
4. Five of the six ACOPs relating to DSEAR were reviewed and consolidated in the first tranche during 2012-13. L133 was omitted from this consolidation exercise due to its niche audience and also as HSE has also been undertaking work to consolidate petroleum legislation².

Devolved Administrations

5. DSEAR applies across Great Britain and the revision of this ACOP raises no particular issues for the Devolved Administrations.

Development of the draft ACOP

6. Following the initial consultation, HSE prepared a draft of the revised DSEAR ACOP. An industry working group of stakeholders including key trade bodies, employees' representatives, trade unions, and relevant enforcing authorities (including those from Scotland and Wales) was closely involved in the development of the text.
7. The Board agreed in May 2014 (HSE/14/44³) to consult on the proposed new ACOP in summer 2014. The consultation⁴ was publicised in the usual ways through the HSE website, by direct alerts of stakeholders/stakeholder networks and through other publicity including by intermediaries.

¹ [CD241 – Consultation on proposals to review HSE's Approved Codes of Practice \(ACOPs\)](#)

² <http://www.hse.gov.uk/aboutus/meetings/hseboard/2014/090414/paprb1431.pdf>

³ <http://www.hse.gov.uk/aboutus/meetings/hseboard/2014/210514/pmayb1444.pdf>

⁴ <http://www.hse.gov.uk/consult/condocs/cd271.htm>

8. The main changes are:

- A focus on the principles of risk assessment.
- Where specific guidance exists in relation to other activities, this has been signposted rather than detailed within the document, for example working at height.
- Updating of some technical terms.

Results of the consultation on the draft ACOP

9. The results of the consultation are at Annex 1. In brief, from 1186 downloads of the consultation document, 25 responses were received which were sufficiently complete to include as formal responses. A range of stakeholders responded, including 4 trade associations, 2 professional bodies and 1 trade union, as well as a number of individual companies and safety professionals.

10. 68% of respondents who answered the question agreed that the draft revised ACOP gives sufficient clarity on how to comply with the Regulations.

11. Of the 32% who answered and did not agree, these appeared mostly to have concerns about specific issues rather than because of general disagreement with the content of the ACOP. The suggestions/criticisms made of the draft text were generally valid and helpful and have now been addressed (these are outlined in the second table of Annex 1).

12. A significant change made in response to comments received is that guidance in relation to emergency procedures in the event of an overfill or spillage has now been assigned ACOP status (paragraph 40, Annex 2).

13. Additional suggestions to promote guidance text to ACOP status in the following areas were also received regarding training of personnel; co-operation; record keeping and safe means of communication. The requirements of the DSEAR regulations are quite clear in these respects, so this was considered unnecessary duplication. However, the guidance has been strengthened by directing the reader to Regulation 9 of DSEAR (Information, Instruction and Training) and directing readers to the relevant paragraphs of L138.

14. A suggestion to promote a paragraph of guidance on lone working to ACOP status was received. This was not adopted as it is not a specific requirement under DSEAR, however it should be considered as part of the DSEAR risk assessment which is now better reflected in the guidance. In addition, the guidance paragraph directs the reader to other relevant, and more detailed HSE guidance on this issue.

Next steps

15. If the Board is content to agree the revised ACOP for publication as proposed, the text will be prepared for publication and Ministerial permission to publish sought before the end of 2014. This will complete the revision of the suite of DSEAR ACOPs.

Action

16. The Board is asked to agree to recommend that the revised ACOP L133 Dangerous Substances and Explosive Atmospheres Regulations 2002 – Unloading petrol from road tankers is submitted to the Minister for his permission to publish.

Clearance

This paper was cleared by the HSE Regulation Policy Committee at its meeting on 2 September 2014.

Annex 1 – Analysis of responses to consultation on proposed draft text Summer 2014

Annex 2 – Draft revised ACOP L133 Dangerous Substances and Explosive Atmospheres Regulations – Unloading petrol from road tankers

Annex 1 – Analysis/summary of responses to consultation on CD271: L138 Dangerous Substances and Explosive Atmosphere Regulations 2002 (DSEAR) Approved Code of Practice (ACOP)- L133 Unloading petrol from road tankers

The revised ACOP and guidance were prepared by HSE in consultation with an industry working group which included trade and professional organisations, employee representatives, trade unions and enforcement authorities.

Summary of responses to questions 1.1 – 4.2. Q1.1 was the key indicative question.

Q1.1: Is the draft ACOP and associated guidance sufficiently clear for you to be confident about how you can comply with the Dangerous Substances and Explosive Atmosphere Regulations in relation to unloading petrol from road tankers?		
Option	Number of respondents	Percentage of total (%)
Yes	15	68
No	7	32
Total	22	

There were 22 responses to this question in total. Of these 7 represented the views of individuals or individual organisations and 15 were responses from representative organisations.

Of the 15 representative organisations that responded to the question:

- 11 supported the question: 1 professional body, 7 local government/fire and rescue, 1 other Government department, 1 trade associations, 1 charity
- 4 did not agree: 1 local government/fire and rescue, 1 professional body and 2 trade associations.
- 3 provided a response but did not provide a clear view: 1 local government/fire and rescue service, 1 trade union and 1 trade association.

If answering no to 1.1
<p>Q 1.2- if not which paragraphs are not clear and why?</p> <p>A number of useful comments on detailed specific issues were raised, all of which were considered and most were adopted.</p> <p>Although answering neither yes, nor no to this question, a major trade union suggested promoting two paragraphs of guidance on lone working and training for forecourt staff to ACOP. We did not adopt these suggestions as lone working is not specifically mentioned in the regulations. There is an expectation under DSEAR that lone working is considered as part of the risk assessment and the document directs the reader to existing, more suitable HSE guidance on lone working. There is a clear requirement in DSEAR for employers to provide adequate training to staff; the guidance paragraph has been strengthened by directing reader to Regulation 9 of DSEAR (Information, Instruction and Training) and revised to direct readers to the relevant paragraphs of L138.</p> <p>Aside from comments on typographical, formatting and clarity issues, some respondents gave very clear and specific reasons for answering 'no' to Q1.1 and these have been addressed as follows:</p>

1. *Need to harmonise some of the terms used in the document describing spills and severity of incidents with that used in other guidance.*

We agree that this makes sense and has since been revised.

2. *Concerns over the use of and reliance on predictive ullage technology.*

We agree and have removed the paragraphs of detailed guidance on these systems but have retained text which points out the availability of such technology and its potential limitations.

3. *The need for drivers to be aware of the hazardous properties of all fuels stored on site.*

We agree that this should be acknowledged in the document and we have amended the text accordingly.

Q 2.1 Are there any comments you wish to make on the method(s) of compliance in the draft ACOP publication?

Three organisations (1 professional body and 2 local government/fire and rescue) commented that the revised ACOP and guidance adequately covers the preferred or recommended methods that can be used to comply with DSEAR.

Q 3.1 Are there any impacts from the revision of this ACOP that we should be aware of?

One trade association commented that the active participation of a cross-section of the industry in drafting the document should lead to a more determined effort of operators to follow the ACOP and guidance.

Two local government respondents commented that familiarisation of enforcing authority officers with the changes will result in financial costs, but did not specify what these would be.

Q 4.1 Is the draft ACOP and guidance sufficiently clear on the respective roles of the road tanker operator, the road tanker driver and the petrol station site operator in relation to unloading petrol from road tankers?

Option	Number of respondents	Percentage of total(%)
Yes	15	71
No	6	29
Total	21	

If answering no to 4.1

Q4.2 If your answer was no please say why briefly.

A number of useful comments on detailed specific issues were raised, all of which were considered and most were adopted.

One respondent suggested that a guidance paragraph on availability of communications between the road tanker driver and other parties be made ACOP. This was retained as guidance as there is no requirement in DSEAR for this but we have moved the paragraph forward within the document to give it more prominence.

Consideration of responses

Conclusion from analysis of consultation responses about the level of support for the revision

There was general view that the new document is sufficiently clear for users to be confident about how they can comply with the Dangerous Substances and Explosive Atmosphere Regulations in relation to unloading petrol from road tankers.

Nevertheless a number of suggestions were given to HSE for further improvement or modification which have been accepted:

- Standardised or improved descriptions/definitions such as severity of spills, incidents and definition of maximum working capacity of petrol tanks, overfill protection in line with those used by the industry.
- Awareness-raising and training of staff in recognising the range fuel types that may also be present on site and the need to have an awareness of their inherent hazardous properties.
- The importance of a tank or tank compartment having its own dedicated, calibrated dipstick in those sites that continue to undertake manual dipping.

We believe that there is sufficient cross-industry support for the revised ACOP.

We assume that as we have been able to address the points raised by those who did not consider the document to be sufficiently clear, a net improvement in the level of satisfaction would ensue. The HSE Board is recommended to approve publication subject of course to the view of the Minister for Disabled People.

Annex 2 – Draft DSEAR ACOP L133