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**HEALTH AND SAFETY COMMISSION
ADVISORY COMMITTEE ON DANGEROUS SUBSTANCES
PETROL WORKING GROUP**

**MODERNISING PETROLEUM LEGISLATION
DEVELOPMENT OF PREFERRED OPTIONS**

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Issue

- 1 At its 8th meeting on 5 August 2003 the Petrol Working Group (PWG) considered a paper (PWG/03/02) which set out some options for Phase 2. It was agreed that a paper would be produced for the next meeting which developed further the two preferred options of the five originally presented
- 2 This paper fulfils that agreement and develops further the two options for the future regulatory regime for retail and non-retail petrol filling stations (PFSs).

Timing

- 3 Routine.

Recommendation

- 4 Members are invited to consider the arguments put forward in this paper, with a view to discussion and agreement to a way forward at the meeting on 4 November 2003.
- 5 HSE's preferred option is for a new notification regime for PFSs to be developed and implemented by a new set of regulations by 16 December 2005.

Background

- 6 For reference, here are the five original options.
- Option 1
Do nothing. Continue with annual licensing of PFSs, supported by standard licence conditions.
 - Option 2
Continue with annual licensing supported by a minimal number of standard licence conditions (currently being reviewed).
 - Option 3
Develop and introduce a consent regime for new PFSs, with deemed consent for existing PFSs to replace the requirement for a licence. This would include the requirement for consent from the Petroleum Licensing Authority (PLA) for a material change to take place.
 - Option 4
Develop and introduce a notification regime for new PFSs and existing PFSs with proposed material changes. This could be linked to statutory planning requirements.
 - Option 5
Remove the current licensing regime and do not replace it with any industry specific regulations; relying on existing health and safety legislation, eg the Health and safety at Work etc Act 1974 (HSWA), the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR), the Management of Health and Safety at Work Regulations 1999 (MHSWR), the Electricity at Work Regulation 1989 (EWR), Construction (Design and Management) Regulations 1994 (CDM), etc.
- 7 As mentioned earlier, it was agreed that Options 2 and 4 were preferred and that they should be developed for further consideration.

Argument

Development of Option 2

- 8 Discussed below, in no particular order, are the factors which need to be taken into account in the development of a continued licensing regime for petrol fillings stations supported by a 'small' number of Standard Licence Conditions (SLCs) developed and published by LACORS.
- 9 As you are aware, a LACORS working group has been developing a new set of SLCs. The main criteria used by the group when producing the new set of SLCs were:
- only activities which were not already adequately covered by the requirements of the Health and Safety at Work etc Act 1974 (HSWA) and its relevant statutory provisions should be considered;
 - the availability of HSE, LACORS, HELA and industry guidance which, by its nature, is more flexible than SLCs, in that it can be amended,

updated, replaced etc relatively easily to reflect developments in working practices, technology etc;

- the publication of the Dispensing Control Measures PETEL which provides much needed guidance on forecourt controls.
- 10 LACORS hope that a further draft of the new SLCs will be available by the end of October and will, therefore, will be able to be considered further at the PWG meeting on 4 November.
 - 11 Further development and the future implementation of Option 2 are dependent on the satisfactory completion of this LACORS review of SLCs. It is vital that a consensus is reached between all parties on the final version of the SLCs. It is envisaged that the new SLCs will be published by the end of 2003.
 - 12 The introduction of the new SLCs will help the enforcement community and the industry in changing their approach to the more modern goal-setting regime recently introduced by DSEAR.
 - 13 There would be a comfort factor with the retention of a licensing regime. Duty holders would not be required to make too much of an adjustment in the way they approach the running of their undertaking.
 - 14 Retention of licensing would mean a continued income source for PLAs.
 - 15 Licensing, through the planning/construction process, gives PLAs an opportunity to influence the extent to which good practice is incorporated into the new or redeveloped PFSs. This could also be seen as an advantage to businesses, particularly small ones, in that expensive mistakes could be avoided.
 - 16 There is some feeling that small businesses would prefer prescriptive conditions, which can only be maintained through a continuing licensing regime, rather than being left to their own devices. This could, however, be overcome by ensuring that sufficient, effective guidance is made available. West Yorkshire Fire and Rescue Service have already gone a long way to ensuring that such guidance is available to PFS owners and operators. Comprehensive guidance has been published specifically covering the issues that need to be considered in complying with DSEAR and SLCs. This guidance is available at <http://www.wyorks-fire.org.uk/>. It should be noted, however, that comprehensive guidance such as this can be just as useful when complying with a regime that does not rely on licensing.
 - 17 There is an argument put forward that, as there have been very few major fire and explosion incidents involving PFSs in Great Britain, then why replace the licensing regime with something else.
 - 18 From the point of view of equipment manufacturers and installers, there should still be some form of enforcement albeit against a reduced number of SLCs. This statement should, however, be qualified with the point that there would continue to be a requirement for enforcement of health and safety legislation at PFSs should the licensing regime be removed.

- 19 Although legislation is applicable the belief is that, as with other legislation, proactive enforcement is not always obvious and therefore requirements such as electrical testing will not be carried out as routinely as at present as required by current or future SLCs.

Development of Option 4

- 20 Now that is highly likely that the vast majority of SLCs will be removed, there appears little benefit in retaining licensing, other than for the income derived from licence fees.
- 21 It is argued that there is a major conflict between the prescriptive licensing regime and the goal-setting approach introduced by DSEAR. The industry's attempts to bring about a cultural change have been hindered by this conflict. There is now a duplication of requirements as the two regimes run along side each other.
- 22 Indeed, some PLAs already recognise that SLCs conflict quite dramatically with the requirements of, for example, DSEAR or MHSWR. That is why, to overcome that conflict in the short term, the LACORS review of SLCs is being undertaken. Similarly, changes are being made when determining risk controls at PFSs. Rather than a PLA telling a PFS operator what is required for them to be satisfied that the fire and explosion risks have been adequately controlled, the PLA is requesting the operator to submit their own proposals. The PLA is providing the operator with information about the available guidance material to which they would need to refer in order for them produce such proposals.
- 23 The potential fire and explosion risks from storage and sale of petroleum could be considered to fall well below the level normally required for a licensing or permissioning regime being used to control such risks. This argument was aired in the earlier paper (PWG/03/02). To recap, HSC's Policy Statement on Permissioning Regimes <http://www.hse.gov.uk/enforce/permissioning.pdf> responds to a call for greater public understanding of HSC's approach to permissioning regimes. It sets out principles governing the introduction, development and maintenance of regimes, how the principles are implemented and explains the terminology used.
- 24 It is argued that the guidance contained in PETEL circulars now takes precedent over SLCs. Furthermore, the development and publication of an HSC Approved Code of Practice (ACOP) and other guidance material to support a new notification regime will ensure a consistent approach to safety across the wide range of PFSs. Again, there is an argument that ACOP and guidance material will not limit the benefit of new technology being applied in the way that the prescriptive approach through licensing has done in the past.
- 25 The introduction of a new notification scheme could allow for the repeal of Petroleum (Consolidation) Act 1928 (PCA). This would enable enforcement of fire and explosion controls at PFSs to be undertaken alongside the enforcement of other more general health and safety legislation. The additional benefits stemming from the fact that all health and safety legislation would be enforced at PFSs would mean that far better controls over all risks to health and safety of employers,

- employees, contractors and members of the public would be likely to emerge.
- 26 The argument put forward in the previous paragraph suggests that non-fire and explosion risks are not controlled and adequate enforcement is not undertaken. There is some anecdotal evidence to suggest that day-to-day risks to health and safety are ignored by local authority (LA) health and safety enforcement officers (usually Environmental Health Officers (EHOs)). It is argued that because the premises happen to hold a petroleum licence issued by the PLA, some LAs believe there is little need to give PFSs any priority for inspection against other risk to health and safety, eg violence to staff and musculo-skeletal disorders. This is, of course, an unacceptable approach because the petroleum licence covers only the fire and explosion risks resulting from the keeping of petroleum-spirit at the premises, and not the numerous other activities which can be associated with a modern PFS.
 - 27 A new notification scheme would, of course, be developed with a view to ensuring that PLAs were provided with all the necessary information to enable them to perform their statutory duties satisfactorily. Such a scheme, together with the proper enforcement of DSEAR, would ensure better risk control than that which currently exist through the licensing regime. The essential elements of a notification scheme are given in Annex 1.
 - 28 For new petrol stations, the need for planning approval will provide the PLA (or LA, should that be the case in the future) with the opportunity to assess and approve the technical and construction standards.
 - 29 For existing petrol stations and the ongoing safety of new petrol stations, simple regulations could be developed and introduced which would place certain duties on employers. These would require notifications that provide the enforcement authority with certain information that would enable them to take appropriate action.
 - 30 Compared with licensing and consent/permissioning, a notification regime should be a simpler regime for the enforcement authority to administer.
 - 31 As there would be no fee involved, the potential arguments and disagreements by the various stakeholders over the level of fee and inspections involved etc would not arise.
 - 32 With regard to the loss of revenue, it is argued that this loss, when taken as a percentage of the overall revenue for a typical PLA [less the cost of administering the licensing regime], would be negligible.
 - 33 The enforcing authority would be made aware of proposed PFSs and proposed alterations to existing PFSs, this would enable them to undertake inspections to ensure compliance with DSEAR. Employing such an approach would help to ensure public safety is not prejudiced.
 - 34 Making the assumption that a notification would be in perpetuity (other than for material change), the administrative burden on businesses and enforcing authorities would be minimal.

Costs and Benefits

- 35 In preparing this paper we have undertaken some very basic calculations of the financial implications of moving away from the current regulatory regime. These calculations are based on figures available currently and knowledge gleaned from previous exercises. There would, of course, be a full regulatory impact assessment (RIA) undertaken prior to any consultation exercise.
- 36 There are currently 11,435 retail PFSs, compared with just over 13,000 two years ago (source: 2003 IP Retail Marketing Survey). Two years ago there were about 6,250 non-retail PFSs (source: HSE regulatory impact assessment for Phase One). If non-retail has declined at the same rate as retail, there are probably about 5,200 still operational.
- 37 This is a total of 16,635. As the vast majority of PFSs have a renewal licence fee of £99, then the total revenue to PLAs will be £1.65m. As there are 150 PLAs, the average revenue per PLA will be £11,000. However, this figure is misleading, as most Metropolitan County PLAs have a much larger number of sites than most county or unitary authorities.
- 38 Most licences for PFSs will be renewals – not many new PFSs are being opened. The earlier RIA found that PLA administrative costs for renewing a licence were, on average £100. However, the average administrative cost for a new licence was in the range £250 to £350. Thus, it would seem the licence fee for renewals is more or less cost neutral, while the fee for a new site fails to cover costs by a factor between 2.5 and 3.5. None of these figures include inspection costs, which presumably means these are currently being met from enforcement authorities' central funds.
- 39 These calculations suggest that abolishing licensing would actually reduce PLAs' costs. Government policy requires that fees charged should reflect actual costs. These figures indicate, therefore, that if licensing is retained there would need to be a review of licence fees, especially those related to the licensing of new sites.

Other Issues

- 40 There will be many issues which will need to be taken into consideration during the development of any new notification regime or changes to the existing licensing regime. Some of these are detailed below.

Environmental

- 41 We must ensure that Environmental considerations are taken into account. The new or revised regime will have to complement activities related to the enforcement of environmental requirements by others, eg LAs, EA, SEPA.

Small Firms

- 42 The majority of PFSs are classed as small firms, ie less than 50 employees and even none. The needs of small and medium-sized enterprises (SMEs) must be considered. Some of these small firms are

also low throughput rural PFSs with specific issues of their own, eg small profit and therefore little money for refurbishment, upgrading etc. HSC's Small Firms Strategy will need to be considered and inclusion of stakeholders and representative organisations will need to be sought.

Enforcement

- 43 Whichever regime is implemented there must a strong case put forward for improving the consistency of enforcement.

HSC Policy

- 44 As mentioned in the earlier paper (PWG/03/02), this work falls within HSC's Modernising agenda, ie modernisation and simplification of the regulatory framework. Further details of this can be found on HSE's Website at <http://www.hse.gov.uk/aboutus/plans/hscplans/plan0304.htm>.
- 45 Also mentioned in the paper was HSC's Policy Statement: *Our Approach to Permissioning Regimes*. Again, further details can be found on HSE's Website at <http://www.hse.gov.uk/enforce/permissioning.pdf>.

Consultation

- 46 HSE Solicitors and Economic Advisers Unit have been consulted on the resource implications of the proposed work.
- 47 In addition to previous discussion at PWG meetings there have been a number of bilateral meetings with individuals representing various constituencies.

Action

- 48 Members are invited to agree to HSE's recommendation and to note that following agreement on the way forward:
- HSE Solicitors will produce draft regulations;
 - PWG, Flammable Substances Sub-committee (FSSC) and Advisory Committee on Dangerous Substances (ACDS) will consider the proposals which, by then, will be contained in a draft Consultative Document (CD) prepared by HSE with input from Members;
 - Following this, the proposals and recommendations, contained in a draft Consultative Document, will be put to the HSC for their agreement to publish the CD.

Timings for these stages are given in more detail in PWG/03/04.

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Notification requirements

- 1 Any existing licensed storage and dispensing facilities at a petrol filling station will be deemed to have fulfilled the initial notification procedures.
- 2 The PLA to be informed by the applicant when planning permission is sought for a new filling station.
- 3 Notification of intention to start storing [fuel] [petroleum-spirit], at least 14 days before the event. The notification should include details of the quantity to be stored and manner of storage, eg number, capacities and types of tanks.
- 4 Notification of opening date, at least 14 days before the event.
- 5 The notifications mentioned above need to include details of the owner and, if different, the operator of the site. If the site owner and operator differ, then the notification needs to make clear who is responsible for ongoing site maintenance.
- 6 Notification of a change of ownership and/or operator, at least 28 days before the event.
- 7 Notification of alterations or redevelopment of the site where this could have an impact on the safety of the petroleum storage and dispensing facilities, at least 28 days in advance of commencement of work. This would include changes to storage arrangements, eg new tanks, dispensers, site layout, changes to grades of petrol and proposals to introduce new fuels onto the site, eg LPG.
- 8 Notification to cease operation of a petrol filling station, at least 28 days in advance of cessation.
- 9 Notification of cessation of storage – to include details of how the site is to be maintained in a safe condition – at least 14 days before the event.
- 10 Notification of a proposal to demolish the site – at least 14 days before the event.
- 11 Notification of leaks, spillages, fires and explosions involving petroleum-spirit or other vehicle fuel. The notification needs to be as soon as reasonably practicable after the event.

Regulatory requirements

- 12 A prohibition on any person under 16 years of age dispensing fuel.
- 13 A prohibition on any person under 18 being a site operator.
- 14 A prohibition on the site operator allowing any person under 18 to be in sole charge of a filling station.
- 15 A prohibition on any person dispensing fuel into an unsuitable container.

- 16 A prohibition on any person smoking or using unprotected mechanical or electrical equipment while dispensing fuel.
- 17 Discontinued storage - powers to require rendering safe and penalties for failure to do so.
- 18 Storage prior to notification should be an offence, as should false statements regarding notification.
- 19 Develop an ACOP and guidance material for the safe operation of petrol filling stations to ensure that a model of good practice is established.