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**HEALTH AND SAFETY COMMISSION  
ADVISORY COMMITTEE ON DANGEROUS SUBSTANCES  
PETROL WORKING GROUP  
MODERNISING PETROLEUM LEGISLATION  
REGISTRATION PROCEDURES**

**A Paper by Peter Roberts & Stewart McEwen**

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**Cleared by Martin Davies on 4 March 2004**

### **Issue**

**1** At its 10<sup>th</sup> meeting on 28 January 2004 the Petrol Working Group (PWG) further considered the two options for Phase 2 of the Modernising Petroleum Legislation project. Neither of the options was acceptable to all members. Generally, the majority of enforcing authorities and some others favoured option 2 (ie the continuation of the licensing regime with some licence conditions retained) while the trade associations representing site operators and a minority of Petroleum Licensing Authorities (PLAs) favoured option 4 - a notification scheme.

**2** In view of the fact that a consensus could not be reached, a third option was developed during discussions, ie a proposal for a registration scheme, incorporating elements from the current licensing regime and the proposed notification regime. All members agreed that this latest proposal was broadly acceptable and it was agreed that HSE should draft a paper developing the proposals.

### **Timing**

**3** Routine.

## Recommendation

4 Members are invited to consider and comment on the paper, in particular;

- provide the necessary evidence to demonstrate that, as a result of the introduction of DSEAR, appropriate enforcement practice is developing as necessary (**see paragraph 26**);
- provide the necessary evidence to support the view that should the resource and priority currently afforded to fire and explosion enforcement activity at petrol filling stations reduce as a result of losing the revenue from licence fees (**see paragraph 27**); and
- provide evidence to demonstrate how a reduction in enforcement activity will result in a diminution of safety standards (**see paragraph 28**).

## Proposed Registration Scheme

5 The proposed registration scheme for petrol filling stations will require sites to be registered with the relevant PLA. Licensees in existence at the time the proposed new regulations come into force will be deemed to have registered and will not need to take any action.

6 A registration fee will be charged, approximately equivalent to the current licence fee. The registration will be renewed annually and the same fee will be charged, subject, of course, to amendments to the Health and Safety (Fees) Regulations, ie inflation related increases.

7 Unlike the current licensing regime, the proposed registration scheme will not include a provision for conditions to be attached to the registration. Enforcement of health and safety in relation to fire and explosion risks will be through Health and Safety at Work Act etc Act 1974 (HSWA) controls, in particular the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR); and any new regulations introduced to bring the proposed registration scheme into force.

8 The move away from the licensing of an individual petrol filling station operator towards the registration of the petrol filling station premises will go a long way to alleviating the problem currently encountered, whereby the licensee may not be able (for example due to contractual arrangements with another person or organisation) to undertake the necessary actions to comply with any enforcement action undertaken by the PLA.

9 It has been argued that because petrol filling stations are licensed premises, enforcement associated with non-fire and explosion related risks to health and safety is not being given the appropriate priority by the health and safety enforcing authority. Although action to address this problem goes

beyond the remit of Phase 2 and PWG, it should be noted that removal of licensing could lead to the appropriate priority being given to all health and safety risks at petrol filling stations, eg manual handling, violence to staff etc.

**10** The new regulations will be contained within a Statutory Instrument, perhaps called the Petroleum Filling Station (Safety) Regulations 200X. A set of definitions will be required which are likely mostly to be copied over from Schedule 6 of DSEAR. The proposed new regulations are likely to repeal certain parts of the Petroleum (Consolidation) Act 1928 (PCA), in particular sections 1 to 4. Such changes will, of course, need to be developed into suitable instructions to HSE Solicitors to begin drafting regulations. The draft regulations will then have to be agreed by the Health and Safety Commission's (HSC's) Advisory Committee on Dangerous Substances (ACDS) and the HSC itself before undergoing the usual public consultation process.

**11** The registration scheme and all enforcement and inspection procedures connected with it will be the responsibility of the existing PLAs. As discussed at earlier meetings, there are no plans under Phase 2 to develop proposals for transferring enforcement responsibilities to any other organisation or agency.

#### **Notification and registration procedures – new sites**

**12** As mentioned above, any existing licensed petroleum storage and dispensing facilities at a petrol filling station will be deemed to have fulfilled the registration requirements. However, for new petrol filling stations the following proposed procedures will need to be followed:

- The PLA to be informed by the applicant when planning permission is sought for a new petrol filling station, eg PLA to receive a copy of the planning application from the applicant at the same time the application is submitted to the Planning Authority.
- Notification of intention to start storing petroleum-spirit and any other vehicle fuel, at least 14 days before the event. This notification will include details of the quantity to be stored and manner of storage, eg number, capacities, types of tanks and if any other vehicle fuel is to be dispensed at the site.
- Notification of opening date, at least 14 days before the event.

**13** The notifications mentioned above will 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 will need to make clear who is responsible for construction and who is responsible for ongoing site maintenance and operation. As mentioned earlier, the PLA will charge a special one-off fee (still to be determined) for processing and assessing such notifications. Once

the PLA is satisfied that the site has been properly constructed and has been commissioned satisfactorily, then it can be registered and a registration fee, as described in paragraph 6, will be charged.

### **Changes to existing sites**

**14** If licences and licence conditions are to be removed, it will be necessary for the new regulations to contain some further duties to ensure the continued safe operation of both new and existing petrol filling stations. Thus, for petrol filling stations wishing to change current arrangements, the following procedures will need to be followed:

- Notification of a change of ownership and/or operator, at least 28 days before the event.
- 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 notification will include changes to storage arrangements, eg new tanks, dispensers, site layout (including sales and fill points), changes to tanks from petrol to diesel storage (and vice versa) and proposals to introduce new fuels onto the site, eg LPG.
- Notification of any development off-site, which could adversely affect the safe storage and dispensing of fuel.
- Notification to cease operation of a petrol filling station, at least 28 days in advance of cessation.
- 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.
- Notification of a proposal to demolish the site – at least 14 days before the event.

**15** All petrol filling station registrants will have a duty to inform the relevant PLA about significant leaks, spillages, fires and explosions involving petroleum-spirit or other vehicle fuel. This would need to be as soon as reasonably practicable after discovery of such an event. The collection and keeping of incident data will need to be considered in more detail as the proposals develop.

**16** It is possible that a PLA will react unfavourably to a proposal made in a notification which, in their view, may be detrimental to existing safety standards. PWG will, therefore, need to consider what measures might be necessary to resolve this type of dispute. Examples of such unfavourable notifications could include the repositioning of the sales point to the extent that

the Petroleum Licensing Officer (PLO) considers supervision of the forecourt will be less effective, or repositioning the fill points which result in the road tanker being in a less safe position during delivery (in the view of the PLO) than before.

### **Regulatory requirements**

**17** The proposed regulations will also include the prohibition of some activities on petrol filling station sites. These prohibitions would apply to “any person”, ie would cover members of the public as well as employees:

- No person under 16 years of age to dispense fuel.
- No person under 18 should be a site operator.
- No person should dispense fuel into an unsuitable container.
- No person should smoke or use unprotected mechanical or electrical equipment while dispensing fuel.

**18** Similar prohibitions would apply to site operators:

- Not to allow any person under 16 years of age to dispense fuel.
- Not to allow any person under 18 to be in sole charge of a petrol filling station.
- Not to allow any person to dispense fuel into an unsuitable container.
- Not to allow any person to smoke or use unprotected mechanical or electrical equipment while dispensing fuel.

**19** The proposed regulations will also contain provisions covering the discontinuation of petroleum-spirit storage at the premises. These will include powers for the PLA to require site operators to make the site safe and would include penalties for failure to do so.

**20** Storage prior to notification/registration will be an offence, as will false statements regarding notification/registration.

### **Enforcement**

**21** Enforcement options under the proposed registration regime will range from a simple letter pointing out minor issues and requesting remedial action to be undertaken, through to formal improvement and prohibition notices and ultimately prosecution. Failure to comply with any of the regulations, registration requirements or the provisions of the ACOP and guidance (bearing in mind the limitations of ACOPs' and guidance legal status) will be

an offence, which ultimately could lead to prosecution in the Courts. It is likely that the current Appeal mechanism, ie to the Secretary of State, will be replaced with the usual HSWA appeal system (HSWA s24), ie if a site operator believes the contents of a formal notice to be incorrect or unnecessary, they will be able to appeal against such a notice to an employment tribunal.

### **Developments since last meeting**

**22** Since the last meeting, HSE have received a number of representations from Members. It is clear that there is still no consensus on a way forward, therefore, there are requests below for further consideration of certain issues and for further information to be provided. HSE believe that until these issues have been considered further and addressed, it is unlikely that we will be able to make any significant progress in the short-term.

**23** With the proposed registration scheme accepted and in place, it will be imperative that health and safety legislation relating to fire and explosion risks at petrol filling stations is enforced effectively by the PLA. This will mean the continued move away from the traditional enforcement practices associated with a prescriptive regime, towards enforcement techniques conducive to modern, goal-setting and risk-based legislation, eg DSEAR.

**24** There is a great deal of concern being voiced currently about the way DSEAR - which has been in place now for 15 months - is being enforced at petrol filling stations. These concerns extend, therefore, to the way DSEAR and any new regulatory requirements will be enforced in the future. Representations received by HSE recently (in response to our earlier attempts to develop a satisfactory way forward agreeable to both PLAs and industry) fail to demonstrate that enforcement practice has changed as result of the introduction of DSEAR; or indeed will develop along the necessary lines now that the amended, streamlined set of licence conditions have been published. Although some PLAs have already issued the revised conditions to licensees, it is recognised that it will take some time for all licensees to receive them, as most licensees receive them as part of the licence renewal process.

**25** The number of licensees working to the revised set of licence conditions will increase over the coming months. This will, therefore, provide a useful indicator of how appropriate enforcement practice is developing.

**26** There is a need for robust evidence to demonstrate that the necessary enforcement techniques associated with DSEAR have been developed, introduced and are being practiced. Such evidence will go a long way towards dispelling any anecdotal evidence of the contrary. **Members are invited, therefore, to consider this and respond accordingly. If it is considered that there are current deficiencies with enforcement practice, it would be extremely helpful if suggestions and proposals on how these deficiencies can be addressed were forthcoming. It would be**

**also helpful if any such suggestions went beyond, for example, the simple abolition of licensing.**

**27** The argument which has been put forward by PLAs as the reason for keeping the current licensing regime is that, should income derived from licence fees be lost, petroleum enforcement will not be afforded the necessary priority by those people within the enforcement authorities who make decisions about inspection priorities and resources. **Members are invited to provide sound evidence to this effect.**

**28** It has further been argued that such a reduction in priority and resource will result in a diminution of safety standards associated with fire and explosion risks at petrol filling stations. **Members are also invited to provide sound evidence to this effect.**

**29** It has been recognised by all parties that, should there be no loss of income, whether derived from either a licensing or registration scheme, there would be no reduction in the priority afforded to petrol filling station enforcement activity.

### **Action**

**30** Members are invited to consider and comment on the paper and, in particular, to:

- provide the necessary evidence to show that, as a result of the introduction of DSEAR, appropriate enforcement practice is developing as necessary (**see paragraph 26**);
- provide the necessary evidence to support the view that the resource and priority currently afforded to fire and explosion enforcement activity at petrol filling stations will reduce as a result of losing the revenue from licence fees (**see paragraph 27**); and
- provide evidence to show how a reduction in enforcement activity will result in a diminution of safety standards (**see paragraph 28**).

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