

REPUBLIC OF SOUTH AFRICA

PETROLEUM PRODUCTS AMENDMENT BILL

*(As presented by the Portfolio Committee on Minerals and Energy (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 25B-2003]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Petroleum Products Act so as to define certain expressions and to substitute or delete certain definitions; to provide for the licensing of persons involved in the manufacturing or sale of petroleum products; to promote the transformation of the South African petroleum and liquid fuels industry; to prohibit certain actions relating to petroleum products; to amend, substitute or repeal obsolete provisions; to provide for appeals and arbitrations; to authorise the Minister of Minerals and Energy to make specific regulations; to substitute the long title; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 120 of 1977, as amended by section 1 of Act 61 of 1985 and section 1 of Act 68 of 1991

1. Section 1 of the Petroleum Products Act, 1977, hereinafter referred to as the principal Act, is hereby amended-

- (a) by the insertion before the definition of "inspector" of the following definitions:

" 'bulk' means a prescribed quantity of petroleum product;

'Charter' means the Charter in Schedule 1;

'hold', when used in relation to land, means the owning of land for the purpose of establishing a site;";

- (b) by the insertion after the definition of "inspector" of the following definitions:

" 'licence' means a manufacturing, wholesale, site or retail licence;

'Liquefied Petroleum Gas' means a petroleum product which consists mainly of propane or butane or both and which can be stored as a liquid under relatively low pressure for use as a fuel;

'manufacture' means the manufacture of petroleum products for commercial purposes, and includes the blending and re-refining of petroleum products, and 'manufacturer' shall be interpreted accordingly;";

- (c) by the substitution for the definition of "Minister" of the following definition:

"Minister" means the Minister of Minerals and Energy;";

- (d) by the insertion after the definition of "petroleum product" of the following definitions:

" 'paraffin' means a liquid petroleum product that is a complex mixture of predominantly aliphatic hydrocarbons ranging from C9 to C16, used mainly for lighting, cooking and heating purposes, also known as kerosene.

'prescribed' means prescribed by regulation made by the Minister;

'retail' means the sale of petroleum products to an end-consumer at a site and "retailer" shall be interpreted accordingly;

'retail licence' means a licence to conduct the business of a retailer;";

- (e) by the deletion of the definition of "service";

- (f) by the insertion before the definition of "this Act" of the following definitions:
"site means premises on land zoned and approved by a competent authority for the retailing of prescribed petroleum products:"
- (g) by the substitution for the definition of "this Act" of the following definition:
"this Act" includes any regulation, notice and licence issued or given in terms of this Act; and
- (h) by the deletion of the definition of "Treasury"; and
- (i) by the addition of the following definitions:
"wholesale' means the purchase and sale in bulk of petroleum products
 by a licensed wholesaler to or from another licensed wholesaler, or from a licensed manufacturer, or sale to a licensed retailer or to an end-consumer for own consumption and "wholesaler" shall be interpreted accordingly:
'wholesale licence' means a licence to conduct the business of a wholesaler."

Amendment of section 2 of Act 120 of 1977, as amended by section 1 of Act 72 of 1979, section 2 of Act 61 of 1985, section 2 of Act 68 of 1991 and section 1 of Act 46 of 1993

2. Section 2 of the principal Act is hereby amended -

- (a) by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:
"(a) for the purposes of ensuring a saving in, and the efficient use of, petroleum products, regulate in such manner as he or she may deem fit, including the imposition upon any person of any duty in connection therewith, or prohibit -";
- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
"(c) prescribe the price, or a maximum or minimum price, or a maximum and minimum price, at which any petroleum product may be sold or bought by any person, and conditions under which the selling or buying of petroleum products other than in accordance with the prescribed, maximum or minimum price may take place:"
and
- (c) by the addition to subsection (1) of the following paragraphs:
"(f) oblige any person to publish the prices at which petroleum products are available for sale including conditions relating to the frequency of such publications, its content and structure, the method and manner of its publication and the displaying thereof;
(g) prescribe the quantities of crude oil or petroleum products to be maintained by any person."

Insertion of sections 2A, 2B, 2C, 2D, 2E and 2F in Act 120 of 1977

3. The following sections are hereby inserted in the principal Act after section 2:

"Prohibition of certain activities

2A. (1) A person may not-

- (a) manufacture petroleum products without a manufacturing licence;
 (b) wholesale prescribed petroleum products without an applicable wholesale licence;
 (c) hold or develop a site without there being a site licence for that site;
 (d) retail prescribed petroleum products without an applicable retail licence;

issued by the Controller of Petroleum Products.

(2) (a) If a person engages in an activity in contravention of subsection (1) the Controller of Petroleum Products must by written notice direct that person to cease such activity forthwith.

(b) The Controller of Petroleum Products may allow a person to continue with an activity contemplated in paragraph (a) pending an application and the issuing of a licence if the cessation of such an activity is likely to lead to a material interruption in the supply of petroleum products.

(c) If an application contemplated in paragraph (b) is unsuccessful, the Controller of Petroleum Products must by written notice direct that person to cease such activity and, if applicable, to rectify any state of affairs resulting from that person's activities within the period stipulated in the notice.

(3) If a person engages in an activity in contravention of a licence issued to that person, the Controller of Petroleum Products must by written notice direct that person to comply with the licence and, if applicable, to rectify any state of affairs resulting from such contravention within the period stipulated in the notice.

(4) Any person who has to apply for a licence in terms of subsection (1) **must**—

- (a) in the case of a manufacturing licence be the owner of the property concerned and if not the owner must have the written permission of the owner;
- (b) in the case of a site licence be the owner of the property concerned or in the case of publicly owned land have the written permission of the owner;
- (c) in the case of retail and wholesale licences be the owner of the business entity concerned;
- (d) do so in the form and manner prescribed.

(5) No person may make use of a business practice, method of trading, agreement, arrangement, scheme or understanding which is aimed at or would result in—

- (a) a licensed wholesaler holding a retail licence except for training purposes as prescribed, but excludes wholesalers and retailers of liquefied petroleum gas and paraffin;
- (b) self-service by consumers of prescribed petroleum products on the premises of a licensed retailer.

(6) A licensed manufacturer shall only sell petroleum products to a licensed wholesaler or a licensed retailer, or both, except for export purposes.

(7) A licensed retailer shall only purchase petroleum products from a licensed wholesaler or a licensed manufacturer, or both.

Licensing

2B. (1) The Controller of Petroleum Products must issue licences in accordance with the provisions of this Act.

(2) In considering the issuing of any licences in terms of this Act, the Controller of Petroleum Products shall give effect to the provisions of section 2C and the following objectives:

- (a) Promoting an efficient manufacturing, wholesaling and retailing petroleum industry;
- (b) facilitating an environment conducive to efficient and commercially justifiable investment;
- (c) the creation of employment opportunities and the development of small businesses in the petroleum sector;
- (d) ensuring countrywide availability of petroleum products at competitive prices; and
- (e) promoting access to affordable petroleum products by low-income consumers for household use.

(3) Any licence issued by the Controller of Petroleum Products remains valid for as long as—

- (a) the licensee complies with the conditions of the licence;
- (b) the licensed activity remains a going concern, excluding a site; and
- (c) in the case of a site, there is a corresponding valid retail licence.

(4) The Controller of Petroleum Products must issue only one retail licence per site.

(5) To ensure the continued operation of a licensed activity and the prevention of hardship the Controller of Petroleum Products may, upon application, issue a temporary licence which shall be valid for a period not longer than six months.

(6) It shall be a condition of a wholesale licence that the licensee must purchase and sell petroleum products-

- (a) manufactured from coal, natural gas or vegetable matter;
- (b) that meet prescribed specifications and standards where applicable;
- (c) when such petroleum products are available; and
- (d) at mutually acceptable prices, subject to section 2 of this Act,

before purchasing and selling petroleum products manufactured from other raw materials.

Transformation of South African petroleum and liquid fuels industry

2C. (1) In considering licence applications in terms of this Act, the Controller of Petroleum Products shall-

- (a) promote the advancement of historically disadvantaged South Africans; and
- (b) give effect to the Charter.

(2) The Controller of Petroleum Products may require any category of licence holder to furnish information, as prescribed, in respect of the implementation of the Charter.

Transitional licensing provisions

2D. (1) For the purposes of this section-

'hold' means to own or lease land, or to possess an option to purchase or lease land, that has been zoned and approved by appropriate authorities for use as a site; and

'process of developing' means the construction of, or the completion of the infrastructure necessary to use such land as a site within a period of 12 months from the date of commencement of the Petroleum Products Amendment Act, 2003.

(2) Any person who, at the time of commencement of the Petroleum Products Amendment Act, 2003-

- (a) holds and is in the process of developing a site; or
- (b) manufactures or wholesales petroleum products, or retails prescribed petroleum products;

shall, subject to subsection (3), be deemed to be the holder of a licence for that activity.

(3) (a) Any person referred to in subsection (2) shall, within a period of six months from the date of commencement of this section, apply for a manufacturing, wholesale, site or retail licence, as the case may be.

(b) Subsection (2) shall cease to apply if the person fails to apply for a licence within the period contemplated in paragraph (a).

(4) (a) An applicant contemplated in subsection (3) shall, on application, be entitled to be issued with a licence for the operation of the activity concerned if the applicant is in compliance with all national, provincial and local government legal requirements, that are in force immediately prior to the commencement of this Act for the operation of the activity concerned;

(b) Such applicant shall be subject to the general conditions of a licence set out in this Act, but not to any financial security requirement prescribed by regulation.

System for allocation of licences

2E. (1) The Minister must prescribe a system for the allocation of site and their corresponding retail licences and the supply of prescribed petroleum products to such licensees, by which the Controller of Petroleum Products shall be bound: Provided that the Controller of Petroleum Products shall

only be bound by the provisions of such a system for the period set out in that regulation or any amendment thereto or any substitution thereof which period may not exceed 10 years from the date of commencement of that regulation.

(2) The Minister shall prior to promulgating a system contemplated in subsection (1) invite public comment thereon by publishing it in the *Gazette* and duly considering such comments.

(3) A system contemplated in subsection (1) -

- (a) must intend to transform the retail sector into one that has the optimum number of efficient sites;
- (b) must intend to achieve an equilibrium amongst all participants in the petroleum products industry within the constraints of this Act;
- (c) must be based on the objectives referred to in section 2B(2) and 2C;
- (d) must promote efficient investment in the retail sector and the productive use of retail facilities -
 - (i) by limiting the total number of site and corresponding retail licences in any period;
 - (ii) by linking the total number of site and corresponding retail licences in any period, to the total mass or volume of prescribed petroleum products sold by licensed retailers; and
 - (iii) by other appropriate means;
- (e) must allow licensed wholesalers to trade with each other any contractual rights and obligations they may have, to supply licensed retailers with prescribed petroleum products;
- (f) may specify that petroleum products which -
 - (i) are manufactured from coal, natural gas or vegetable matter, when available;
 - (ii) meet prescribed specifications and standards, where applicable;
 - (iii) are at mutually acceptable prices, subject to section 2 of this Act,

must be supplied to a licensed retailer before the supply of prescribed petroleum products manufactured from other raw materials may be supplied;

- (g) may link the issuing of a new site licence and the corresponding retail licence to the termination or transfer of ownership of one or more existing site licences and the corresponding retail licences;
- (h) may link the issuing of a new retail licence to the transfer from a licensed wholesaler of contractual rights enjoyed by that wholesaler in respect of one or more licensed retailers, to another licensed wholesaler.

(4) The Minister shall from time to time review the efficacy of the system contemplated in subsection (1) against the objectives of this Act and may amend the system in an appropriate manner and the provisions of subsection (2) shall *mutatis mutandis* apply.

(5) Nothing contained in subsections (1), (2) or (3) absolves any person from the obligation to apply for and hold a licence in terms of this Act.

System for allocation of licences for Liquefied Petroleum Gas and Paraffin

2F. (1) For the purposes of this section 'retail' means the sale of liquefied petroleum gas or paraffin to an end -consumer and 'retailer' shall be interpreted accordingly.

(2) The Minister may by regulation, prescribe licensing systems for the wholesaling and retailing of liquefied petroleum gas or paraffin, or both, by which the Controller of Petroleum Products shall be bound.

(3) A system contemplated in subsection (2) must -

- (a) be based on the objectives referred to in sections 2B(2) and 2C;
- (b) be targeted at poverty alleviation for low income households;

(4) The Minister shall prior to promulgating a system contemplated in subsection (2) invite public comment thereon by publishing it in the *Gazette* and duly consider such comments.

(5) A system contemplated in subsection (2) may in designated areas, restrict the retail of liquefied petroleum gas or paraffin to one or more retailers.

(6) The Minister shall from time to time review the efficacy of a system contemplated in subsection (2) against the objectives of this Act and may amend the system in an appropriate manner and the provisions of subsection (4) shall *mutatis mutandis* apply."

Amendment of section 3 of Act 120 of 1977

4. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister—

- (a) shall, subject to the laws governing the public service, appoint any person in the public service as Controller of Petroleum Products and may appoint persons in the public service as regional controllers of petroleum products or as inspectors for the Republic or any part thereof;
- (b) may on such conditions and at such remuneration as he or she may in consultation with the Minister of Finance determine, appoint or authorise any other person or person belonging to any other category of persons to act as regional controller of petroleum products or as inspector for the Republic or any part thereof."

Repeal of section 4A of Act 120 of 1977

5. Section 4A of the principal Act is hereby repealed.

Repeal of section 4B of Act 120 of 1977

6. Section 4B of the principal Act is hereby repealed.

Repeal of section 5 of Act 120 of 1977

7. Section 5 of the principal Act is hereby repealed.

Repeal of section 7 of Act 120 of 1977

8. Section 7 of the principal Act is hereby repealed.

Repeal of section 8 of Act 120 of 1977

9. Section 8 of the principal Act is hereby repealed.

Repeal of section 10 of Act 120 of 1977

10. Section 10 of the principal Act is hereby repealed.

Repeal of section 11 of Act 120 of 1977

11. Section 11 of the principal Act is hereby repealed.

Substitution of section 12 of Act 120 of 1977, as amended by section 5 of Act 72 of 1979 and section 8 of Act 61 of 1985

12. The following section is hereby substituted for section 12 of the principal Act:

"Offences and Penalties

12. (1) Any person who contravenes a provision of this Act shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 000,00, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment: Provided that if a directive issued

in terms of section 2A(2)(c) or (3) is complied with within the period specified therein, the person concerned shall be absolved from criminal liability.

(2) The Minister may by notice in the *Gazette* amend the amount referred to in subsection (1) in order to counter the effect of inflation."

Substitution of section 12A of Act 120 of 1977, as inserted by section 9 of Act 61 of 1991

13. The following sections are hereby substituted for section 12A of the principal Act:

"Appeal

12A. (1) Any person directly affected by a decision of the Controller of Petroleum Products may, notwithstanding any other rights that such a person may have, appeal to the Minister against such decision.

(2) An appeal in terms of paragraph (a) shall be lodged within 60 days after such decision has been made known to the affected person and shall be accompanied by-

- (a) a written explanation setting out the nature of the appeal;
- (b) any documentary evidence upon which the appeal is based.

(3) The Minister shall consider the appeal, and shall give his or her decision thereon, together with written reasons therefor, within the period specified in the regulations.

Arbitration

12B. (1) The Controller of Petroleum Products may on request by a licensed retailer alleging an unfair or unreasonable contractual practice by a licensed wholesaler, or *vice versa*, require, by notice in writing to the parties concerned, that the parties submit the matter to arbitration.

(2) An arbitration contemplated in subsection (1) shall be heard –

- (a) by an arbitrator chosen by the parties concerned; and
- (b) in accordance with the rules agreed between the parties.

(3) If the parties fail to reach an agreement regarding the arbitrator, or the applicable rules, within 14 days of receipt of the notice contemplated in subsection (1) -

- (a) the Controller of Petroleum Products must upon notification of such failure, appoint a suitable person to act as arbitrator; and
- (b) the arbitrator must determine the applicable rules.

(4) An arbitrator contemplated in subsection (2) or (3) -

- (a) shall determine whether the alleged contractual practices concerned are unfair or unreasonable and, if so, shall make such award as he or she deems necessary to correct such practice; and
- (b) shall determine whether the allegations giving rise to the arbitration were frivolous or capricious and, if so, shall make such award as he or she deems necessary to compensate any party affected by such allegations;

(5) Any award made by an arbitrator contemplated in this section shall be final and binding upon the parties concerned and may, at the arbitrator's discretion, include any order as to costs to be borne by one or more of the parties concerned.

Regulations

12C. (1) The Minister may, without derogating from his or her general regulatory powers, make regulations -

- (a) regarding manufacturing, wholesale, site or retail licences, including-
 - (i) the form and manner in which an application for a licence or an amendment to an already issued licence shall be made;
 - (ii) procedures to be applied in the evaluation of an application for a licence, and the period within which it shall be considered;
 - (iii) the monies payable for licences;

- (iv) the form of a licence;
 - (v) conditions of licence which may be imposed by the Controller of Petroleum Products in respect of a particular licence or a category of licences, including -
 - (aa) the rights, duties and obligations of licensees in the manufacture, handling, storage, packaging, dispensing and sale of petroleum products;
 - (bb) conditions relating to the advancement of historically disadvantaged South Africans;
 - (cc) the number of retail licences that may be held by a licensed wholesaler for retail training purposes;
 - (vi) the obligation of a licence holder to keep records and to furnish particular information to the Controller of Petroleum Products, and the frequency of furnishing such information;
 - (vii) the transfer of ownership of licences, excluding the price of the licensed property;
 - (viii) the termination of a licence and the procedures relating to such termination;
 - (b) prohibiting a business practice which conflicts with the objectives referred to in sections 2B(2) and 2C;
 - (c) regarding the records and information to be kept by the Controller of Petroleum Products, and the furnishing thereof to third parties in accordance with the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
 - (d) regarding the continuity of supply of petroleum products by licensees under normal operating conditions, and in cases of potential or actual emergency, including an amendment to a licence;
 - (e) regarding the specifications and standards of petroleum products;
 - (f) regarding the prohibition of the blending or mixing of different petroleum products or the blending or mixing of petroleum products with other substances which will lead to deviation from prescribed petroleum product specifications or standards or for the purpose of avoiding the payment of any tax, duty or levy;
 - (g) regarding the rehabilitation of land used in connection with a licensed activity by the licensee concerned, including the lodging of financial security for rehabilitation purposes and the composition and amount of such security; and
 - (h) the period within which a decision on an appeal should be given.
- (2) The Minister shall, except in an emergency, prior to promulgating any regulation contemplated in subsection (1)(e) -
- (a) invite public comment thereon by publishing in the *Gazette* the full particulars of the specification or standard;
 - (b) allow a period of not less than two months after the date of publication of such *Gazette* for the submission of public comment; and
 - (c) duly consider such comments."

Substitution of long title of Act 120 of 1977

14. The following long title is hereby substituted for the long title of the principal Act:
- "To provide for measures in the saving of petroleum products and an economy in the cost of distribution thereof, and for the maintenance and control of a price therefor, for the furnishing of certain information regarding petroleum products, and for the rendering of services of a particular kind, or services of a particular standard, in connection with petroleum products; to provide for the licensing of persons involved in the manufacturing and sale of certain petroleum products; to promote the transformation of the South African petroleum and liquid fuels industry; to provide for the promulgation of regulations relating to such licences; and to provide for matters incidental thereto."

Short title

15. This Act is called the Petroleum Products Amendment Act, 2003, and comes into operation on a date to be fixed by the President by Proclamation in the *Gazette*.

Charter

For the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry

Preamble

Mindful of

- the imperatives of redressing historical, social and economic inequalities as stated by the Constitution of the Republic of South Africa, inter ohs Section 9 on Equality (and unfair discrimination) in the Bill of Rights, and section 217.2 on procurement where the "organs of state" may implement a "procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination";
- the policy objective stated in the Energy Policy White Paper to achieve "sustainable presence, ownership or control by historically disadvantaged South-Africans of a quarter of all facets of the liquid fuels industry, or plans to achieve this
- the Black Economic Empowerment Commission's definition of empowerment as "an integrated strategy aimed at substantially increasing black participation at all levels of the population":

And noting:

- the enactment of the Preferential Procurement Framework Act (No 5 of 2000)
- the Employment Equity Act (No 55 of 1998)
- the Competition Act (No 89 of 1998) (Also ref. to the Amendment Act No 15 of 1999 and subsequent amendments)
- the Skills development Act (No 97 of 1998)

the signatories have developed this Charter to provide a framework for progressing the empowerment of historically disadvantaged South Africans in the liquid fuels industry.

Scope of Application

This Charter applies to the privately owned parts of the industry and to all parts of the value chain, inter alia:

- Exploration and production of oil
- Liquid fuels pipelines, single buoy moorings (SBMs), depots and storage tanks
- Oil refining and synthetic fuel manufacturing plants, including lubricants
- Transport, including road haulage and coastal shipping
- Trading, including import and export
- Wholesale and retail assets/infrastructure.

Interpretation

For the purposes of interpreting the White Paper on Energy Policy, the following terms apply:

- The term historically disadvantaged South Africans (HDSA) refers to all persons and groups who have been discriminated against on the basis of race, gender and/or disability.
- HDSA companies are those companies that are owned or controlled by historically disadvantaged South Africans which operate on a basis to meet all aspects of this Charter. These companies, which operate within and supply the industry, submit affidavits to Government reconfirming their ownership status in December of each year. Government publishes this list annually.
- Ownership refers to equity participation and the ability to exercise rights and obligations that accrue under such ownership.
- Control of a business entity, can be achieved in a number of ways: (a) a majority shareholding position i.e. 50% + 1 share; (b) an effective controlling shareholding; (c) a majority of aboard of directors; and/or (d) a shareholders agreement.

- *Sustainability* refers to:
 - medium to long-term viability and adaptability through a presence across all facets of the liquid fuels value chain;
 - ventures with prospects of long-term profitability; and
 - requisite levels or skills and access to technology.
- *A quarter of all facets of the liquid fuels industry, or plans to achieve this*
 The 25% ownership and control of all facets of the industry that the parties to this Charter are seeking to bring about over a ten-year period means HDSAs owning in total, by the end of that period, not less than 25% of the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry. The parties to the Charter agree that the measurement of the extent of the achievement of this target of 25% of the aggregate value of the equity will be based on the asset values per the audited accounts of the entities concerned.

Supportive Culture

The success of this programme depends on the disposition of those who have responsibility for managing the process.

Member companies and Government therefore undertake to appoint to such positions managers who will understand the spirit and background under which these policies were conceived in order to create a supportive and enabling environment for business success. It is noted that the process that gave rise to this Charter has increased the understanding and cooperation between established industry players and HDSA companies.

Companies undertake to foster a supportive culture with regard to all aspects of this Charter when dealing with HDSAs. Companies subscribe to incorporating and driving a process of transformation and a change of culture in their statements of business principles.

Capacity Building

The South African labour market does not produce enough of the skills required by the petroleum industry, especially the HDSA oil companies. Organized industry and government work together in addressing this skills gap:

- In its bilateral relations with relevant countries, Government endeavours to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with oil companies operating outside of South Africa.
- Industry undertakes to build the skills of its employees and report on progress annually in an agreed format
- The industry, through the standing consultative arrangements, interfaces with statutory bodies such as SETA (Sectoral Education and Training Authority) in the development of skills development strategies.

Employment Equity

Companies publish their employment equity targets and achievements and subscribe to the following

- South African subsidiaries of multinational companies and South African companies focus their overseas placement and/or training programmes on historically disadvantaged South Africans;
- Identifying a talent pool and fast-tracking it;
- Ensuring inclusiveness of gender;
- Implementing mentorship programmes; and
- Setting and publishing "stretch" (i.e. demanding) targets and their achievement.

It is noted that the Capacity Building efforts referred to above will assist in this process

Private Sector Procurement

Participants in the industry subscribe to and adopt supportive procurement policies to facilitate and leverage the growth of HDSA companies. Such policies include criteria that favour HDSA companies, all else being equal.

- Scope: the scope of procurement shall include supplies (e.g. crude), products and all other goods and services.
- HDSA companies are accorded preferred supplier status as far as possible
- List of suppliers: it is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist in compiling such a list that will inter alia be published by Government on the Internet and updated regularly.
- All participants shall continue to deploy every effort to ensure that vessels used in the transportation of supplies or products shall meet all prescribed health, safety and environmental standards.

Public Sector Procurement

Government will engage with State Tender authorities to draw their attention to the White Paper milestones with respect to economic empowerment of historically disadvantaged South Africans, with the aim of giving effect to supportive procurement policies within this sector.

Access and Ownership of Joint Facilities

Access to large infrastructure for the movement and storage of crude oil and petroleum products, such as SBMs, pipelines and depots and storage tanks, is acknowledged as a critical weakness in the supply chain of emerging companies. In this regard owners of such facilities provide third parties with non-discriminatory access to uncommitted capacity. HDSA companies are to be given fair opportunity to acquire ownership in such facilities.

Refining Capacity

Access to refining capacity also represents a key weakness in HDSA companies' supply chain. Oil refiners and synthetic fuel manufacturers seriously consider:

- selling shares in their facilities to HDSA companies;
- making capacity available to HDSA companies (e.g. through toll refining agreements); and
- including HDSA companies as joint venture partners in any expansions or upgrades.

Retailing/Wholesaling

The parties agree to create fair opportunity for entry to the retail network and commercial sectors by HDSA companies.

State Assets

Government undertakes to deal with State assets in a manner that promotes the objectives of the White Paper on Energy Policy and this Charter.

Upstream

The activity of oil and gas exploration and production is acknowledged as a high-risk activity that provides limited opportunities for new entrants. Government continues to make licences subject to the following conditions:

- All licences for exploration and production in the country's offshore area reserve not less than 9% for buy-in.
- All licensees contribute funds toward the 'Upstream Training Trust' to fund skills development at various levels. As discoveries are made, further skills development strategies are devised to empower historically disadvantaged South Africans in this sector.

Financing

Finance is a serious constraint for HDSA companies

- Government assists industry in explaining the milestones in the White Paper on Energy Policy as well as explaining the needs and characteristics of the industry to financing institutions, both private and public.
- Companies investigate and implement internal and external financing mechanisms for giving HDSA companies access to equity ownership within the South African context.
- Companies to consider engaging HDSA companies in viable strategic partnerships.

Terms of Credit to HDSA Companies

Industry participants acknowledge that terms of credit are important to HDSA companies and agree to take this into account in bilateral activities.

Regulatory Framework and Industry Agreements

Governments regulatory framework and industry agreements strive to facilitate the objectives of this Charter.

Synfuels Supply

Parties to the Synfuels Supply agreements will strive to accommodate HDSA companies, which lack the facilities to comply fully with such agreements in the fairest way possible.

Consultation, Monitoring, Evaluation and Reporting

It is recognized that the achievement of the objectives set out herein entails an ongoing process. The Department of Minerals and Energy (DME) conducts an annual survey of the industry to evaluate progress in achieving the objectives of the White Paper. Companies submit such data as is required at the end of each year, including employment equity data, procurement targets, etc. The aggregated information is published and forms the basis of the annual forum.

Oil companies have taken major initiatives in this regard and have participated in a first survey earlier this year.

Parties hereto participate in an annual forum for the following purposes:

- Monitoring progress in the implementation of plans;
- Developing new strategies as needs are identified;
- Ongoing government/industry interaction in respect of these objectives;
- Developing strategies for intervention where hurdles are encountered;
- Exchanging experiences, problems and creative solutions;
- Arriving at joint decisions;
- Reviewing this Charter if required; and
- Giving notice of withdrawal.

LIST OF COMPANIES THAT HAVE PARTICIPATED
IN THE BEE PROCESS

South African Petroleum Industry Association (SAPIA)

BP Southern Africa (Pty) Limited

Caltex Oil (SA) (Pty) Limited

Engen Petroleum Limited

Sasol Limited

Shell South Africa (Pty) Limited

Tepco Petroleum Company (Pty) Limited

Total South Africa (Pty) Limited

African Minerals and Energy Forum (AMEF)

Afric Oil (Pty) Limited

Exel Petroleum (Pty) Limited

Worldwide African Investment Holdings (Pty) Limited

Department of Minerals and Energy

Ministry of Minerals and Energy

Central Energy Fund

African Minerals Petroleum

African Minerals and Energy Corporation

Calulo Investment Holdings (Pty) Limited

Mandlakazi

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**MEMORANDUM ON THE OBJECTS OF THE PETROLEUM
PRODUCTS AMENDMENT BILL, 2003**

1. OBJECTS OF BILL

1.1 The Petroleum Products Act, 1977 (Act No. 120 of 1977), is outdated as it is no longer in line with the socio-political and economic dynamics of the South African liquid fuels industry and it does not meet the present-day governance needs of the sector.

1.2 The Petroleum Products Amendment Bill will ensure that governance of the liquid fuels sector is in line with Government's policy objectives and with developments in the sector. The White Paper on Energy Policy for the Republic of South Africa (1998) states that the Petroleum Products Act, 1977, will remain as enabling legislation but that it is to be amended to accommodate policy reforms.

1.3 The Bill seeks to "to promote the transformation of the South African petroleum and liquid fuels industry" by giving effect to the "Charter for the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry" and through licensing.

1.4 The other main object of the Bill is to give effect to the said White Paper and in doing so to provide for a licensing dispensation that includes refiners, wholesalers and retailers conducting business in respect of petroleum. The Bill seeks to authorise the Controller of Petroleum Products to issue the licences. In issuing a licence the Controller will have to give effect to the following objectives and to the Charter:

- promoting an efficient manufacturing, wholesaling and retailing petroleum industry;
- facilitating an environment conducive to efficient and commercially justifiable investment;
- the creation of employment opportunities and the development of small businesses in the petroleum sector;
- ensuring countrywide availability of petroleum products at competitive prices; and
- promoting access to affordable petroleum products by low-income consumers for household use.

1.5 Certain prohibitions relating to petroleum products are proposed in the Bill, e.g. a prohibition on a licensed wholesaler holding a retail licence (to promote small business in the retail industry) and on self-service at retail fuel outlets (to protect the jobs of pump attendants).

1.6 The Bill also seeks to authorise the Minister of Minerals and Energy to determine a system for the allocation of certain licences. This system must be based on the objectives mentioned above and advancement of the Charter.

1.7 The Bill creates a legislative framework for a system aimed at the regulation of liquefied petroleum gas and paraffin for the purpose of promotion of access to affordable petroleum products by low-income consumers for household use.

1.8 The Bill also envisages provisions-

- extending the Minister's power to determine the price of petroleum products;
- prescribing hefty maximum penalties for non-compliance with the Act;
- providing an appeal procedure where a person is unhappy with a decision of the Controller of Petroleum Products;
- for the referral of a matter to arbitration where there is a dispute between a wholesaler and retailer of petroleum products;
- for the repeal of obsolete provisions.

1.9 The Bill seeks to extend the Minister's power to make regulations. In terms of this provision, the Minister will be able to prohibit business practices which are in conflict with the objectives referred to in paragraph 1.4 above.

1.10 In terms of the regulations envisaged, the Minister will be able to--

- ensure the continuity of the supply of petroleum products;
- prescribe the specifications and standards of petroleum products;
- prohibit the blending or mixing of petroleum products with other substances, which will affect the standards of petroleum products or which is done in order to avoid a tax, duty or levy;
- prescribe measures for the rehabilitation of land used in connection with any licensed activity.

2. FINANCIAL IMPLICATIONS FOR STATE

The administration of the amended Petroleum Products Act will place a greater administrative burden on the Department of Minerals and Energy. Funding for additional posts in the Department is estimated to be R600 000 per year. The creation of the licensing system will cost a further R1 500 000, in capital expenditure, system formulation and data capturing.

3. CONSULTATION

The Bill and proposed regulations to be promulgated in terms of the Act were published for public comment. Comment was received from all the major stakeholders, namely:

- The South African Petroleum Industry Association;
- Fuel Retailers Association and South African Fuel Dealers Association;
- The Competition Commission;
- Associated OCTEL;
- The Liquefied Petroleum Gas Safety Association and Afrox Limited;
- African Minerals & Energy Forum;
- Chemical and Allied Industries Association;
- Legal Resources Centre; and
- Coastal Refineries.

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.