

REPUBLIC OF SOUTH AFRICA

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# PETROLEUM PRODUCTS AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No. 24752 of 15 April 2003) (The English text is the  
official text of the Bill)*

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(MINISTER OF MINERALS AND ENERGY)

[B 25—2003]

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## GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

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

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# 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 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.

**B**E 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 definition:

“ ‘hold’ means to own or lease land or buildings on land for the purpose of establishing or operating a site;”;
- (b) by the insertion after the definition of “inspector” of the following definitions:

“ ‘licence’ means a manufacturing, wholesale, site or retail licence;  
‘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 [**Mineral and Energy Affairs and Public Enterprises**] Minerals and Energy;”;
- (d) by the insertion after the definition of “petroleum product” of the following definitions:

“ ‘retail’ means the sale of petroleum products to an end-consumer from 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 petroleum products;  
 ‘site licence’ means a licence to hold and develop a site;”;
- (g) by the substitution for the definition of “this Act” of the following definition:  
 “ ‘this Act’ includes any regulation, [or] notice and licence issued or given in terms of this Act;”;
- (h) by the deletion of the definition of “Treasury”;
- (i) by the addition of the following definitions:  
 “ ‘wholesale’ means the sale in bulk of petroleum products to a retailer or to an end-consumer for own use, 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 [of] in, and the efficient and safe 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;”;
- (c) by the addition to subsection (1) of the following paragraphs:  
 “(f) oblige any person to publish the prices at which petroleum products are sold, and prescribe conditions relating to the frequency of such publication, 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 and 2D 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)** Subject to section 2B, no person may without a manufacturing, wholesale, site or retail licence issued by the Controller of Petroleum Products—

- (a) hold or develop a site;  
 (b) construct or operate an installation for the manufacture of petroleum products; or  
 (c) conduct the business of a wholesaler or retailer.

(2) (a) If a person engages in an activity in contravention of subsection (1), the Controller of Petroleum Products shall 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 shall 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 condition of a licence issued to that person, the Controller of Petroleum Products shall 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) 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) vertical integration of ownership in respect of manufacturing, wholesaling or retailing of petroleum products;
- (b) the sale of petroleum products using a system of self-service by consumers.

### Licensing

**2B.** (1) In considering the issuing of any licences in terms of this Act, the Controller of Petroleum Products shall give effect to the following objectives:

- (a) Promoting an efficient retail petroleum industry;
- (b) facilitating an environment conducive to commercially justifiable investment;
- (c) promoting advancement of historically disadvantaged South Africans;
- (d) the creation of employment opportunities and the development of small businesses in the petroleum sector; and
- (e) ensuring countrywide availability of petroleum products at competitive prices.

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

- (a) complies with the conditions of the licence; and
- (b) remains active in the licensed activity.

(3) The Controller of Petroleum Products may issue only one retail licence per site.

### Transitional licensing provisions

**2C.** (1) For the purposes of this section—

'hold' means to own or lease land or to possess of 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 540 calendar days from the date of commencement of the Petroleum Products Amendment Act, 2003.

(2) Notwithstanding any provision of this Act, 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) conducts the business of a manufacturer, wholesaler or retailer, 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, in terms of section 2A.

(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 if the applicant is in compliance with all national, provincial and local government legal requirements 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 security requirement prescribed by regulation.

### System for allocation of licences

**2D.** (1) Notwithstanding any provision of this Act, the Minister may by regulation, in accordance with the objectives referred to in section 2B(1), prescribe a system for the allocation of site and retail licences 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, which period may not exceed ten years from the date of promulgation of that regulation.

(2) Any system contemplated in subsection (1)—  
 (a) shall be published for comment in the *Gazette* prior to promulgation;  
 (b) shall be based on the objectives referred to in section 2B(1); and  
 (c) may—  
 (i) link the allocation of site and retail licences to the total mass or volume of petrol and diesel consumed in South Africa;  
 (ii) link the issuing of site and retail licences to the total mass of petrol and diesel manufactured in South Africa or imported into South Africa; and  
 (iii) link the issuing of new site or retail licences to the termination or transfer of ownership of one or more existing site or retail licences.

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

### Amendment of section 3 of Act 120 of 1977

4. Section 3 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Minister [**may**]—

- (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 [**Treasury**] Minister of Finance determine, appoint or authorize 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** 5

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 liable on conviction to a fine not exceeding R1 000 000,00, or to imprisonment for a period not exceeding ten 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. 10 15

(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 1985**

13. The following sections are hereby substituted for section 12A of the principal Act: 20

**“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. 25

(2) An appeal in terms of subsection (1) 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 on which the appeal is based. 30

(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 from a retailer alleging an unfair contractual practice by a wholesaler, or *vice versa*, require, by notice in writing to the parties concerned, that the parties submit the matter to arbitration. 35

(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. 40

(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 shall request a suitable person to act as arbitrator; and
- (b) the arbitrator shall determine the applicable rules. 45

(4) An arbitration contemplated in subsection (1)—

- (a) shall be limited to determining only whether the contractual practices concerned are unfair or unreasonable; and

- (b) shall result in a final and binding order, including any order as to costs, made by the arbitrator.

### Regulations

- 12C.** The Minister may, without derogating from his or her general regulatory powers, make regulations— 5
- (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; 10
  - (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 or restrictions which may be imposed by the Controller of Petroleum Products in respect of a particular licence or a category of licences, including the rights, duties and obligations of licensees in the manufacture, handling and sale of petroleum products and conditions relating to the advancement of historically disadvantaged South Africans; 15
  - (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; 20
  - (vii) the transfer of ownership of licences;
  - (viii) the discontinuance of a business conducted in terms of a licence, and the procedures relating to such discontinuance; 25
- (b) prohibiting a business practice which conflicts with any objective referred to in section 2B(1);
- (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); 30
- (d) regarding the continuity of supply of petroleum products by licensees under normal operating conditions, and in cases of potential or actual emergency;
- (e) regarding the specifications and standards of petroleum products; 35
- (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 standards or for the purpose of avoiding the payment of any tax, duty or levy; 40
- (g) regarding the rehabilitation of land used in connection with a licensed activity, including the lodging of security for rehabilitation purposes and the composition and amount of such security.”.

### 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: 45
- “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 provide for the promulgation of regulations relating to such licences; and to provide for matters incidental thereto.”. 50

### Short title

- 15.** This Act is called the Petroleum Products Amendment Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 55



## **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 One of the main objects 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:

- \* promoting an efficient and competitive retail petroleum industry;
- \* facilitating an environment conducive to commercially justifiable investment;
- \* promoting advancement of historically disadvantaged South Africans;
- \* creating employment opportunities and the development of small businesses in the petroleum sector; and
- \* ensuring countrywide availability of petroleum products at competitive prices.

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

1.5 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.

1.6 The Bill also envisages provisions—

- \* extending the Minister's power to determine the price of petroleum products;
- \* prescribing a hefty maximum penalty 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.

1.7 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 1.3 above.

1.8 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.

### **3. CONSULTATION**

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

- \* The South African Petroleum Industry Association;



- \* the African Minerals and Energy Forum;
- \* the Fuel Retailers Association;
- \* the South African Fuel Dealers Association; and
- \* individual oil companies.

#### **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.





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