

AgriCulture

SOUTH AFRICA / SUID-AFRIKA

**Agri SA written submission on the
Petroleum Product Draft Bill**



Facilitated by
AgriSA

For attention: Ms Vania Mahotas

Per email: petroleum.policy@dmre.gov.za

Dear Ms Mahotas,

Introduction

Agri SA, representing a broad spectrum of South Africa's agricultural community and its associated value chains, appreciates the opportunity to provide comments on the Petroleum Products draft Bill, which has been published for public comment. This submission aligns with and further supports Agbiz's written submission, with both organisations collectively representing approximately 90% of the agricultural sector and allied value chains.

Agbiz's submission provides a detailed and focused analysis of specific aspects of the proposed changes that are of concern, which Agri SA fully supports. These aspects include:

- Definitions
- Objects of the Act
- Control and management of petroleum products by the Minister
- Powers and Functions of the Controller
- The concept of end-consumer certificates
- Powers and functions of inspectors
- Prohibited activities
- System for allocation of site and retail licenses
- Transformation of the sector
- Issuing of compliance notices
- System for issuing site and retail licenses
- Offences and penalties
- Regulations
- General comments

Agri SA's submission emphasizes the significant challenges these proposed changes pose for the agricultural sector, food security, and the broader economy. By addressing the specific concerns raised by Agbiz, our submission underscores the importance of ensuring that these regulatory measures are balanced, practical, and supportive of sustainable economic growth.

Agri SA's core mission is to ensure the agricultural sector contributes constructively to South Africa's economic growth, development, and transformation. We strive to create an enabling environment for agriculture and the country's economy to thrive. Together with Agbiz, we aim to safeguard the interests of the agricultural sector and its extensive value chains while advocating for sound, equitable policies that benefit the broader South African economy.

For ease of reference, we present below the key aspects that Agbiz has already addressed in its submission, with which we fully align and support:

1. General comments

Conservative estimates attribute 14% of South Africa's GDP to the food and fibre value chain, although its proportionate contribution to the rural economy and rural job creation is significantly higher.

Agriculture value chains are crucial in managing the supply chain from farms to consumers. This includes transportation, processing, and distribution of agricultural products. These value chains play a vital role in stimulating economic growth, managing resources, optimizing the supply chain, advancing technology, and diversifying operations.

The food system depends heavily on oil and gas to feed billions of people across the planet. The agricultural sector uses petroleum products as raw materials and as energy in all stages of agriculture production from planting, irrigation, feeding, and harvesting, to processing, distribution, and packaging. Farm machinery, processing facilities, storage, and transport all rely on fuel.

Some of the provisions in the Bill will add to the cost of doing business for producers as well as agribusinesses and may translate into a higher cost burden for the agricultural sector leading to higher food prices.

The reach of the Bill is very broad – seemingly covering everyone from manufacturers and wholesalers to end users such as farmers.

2. Specific comments

2.1 Definitions

Many of the definitions in the Bill are quite broad and all-encompassing, for example, the definition of petroleum product which includes “any other substance which may be

used for a purpose for which petroleum fuel or lubricant may be used.” This creates legal uncertainty with regard to which products are subject to regulation and which are not. The definition also states that it may be “...derived from refining or processing of petroleum crude oils or synthetic fuels...”. It is not clear what is meant by synthetic fuels. Would biodiesel or bioethanol derived from agricultural products be regulated under this definition? It is unclear.

2.2 Objects of the Act

Whilst many of the objects of the Act are laudable, a balance with other objectives which are in the national interest such as food production and access to affordable food must be struck. Some of the objectives may have unintended negative consequences on certain industries and even the country as a whole. Regulation brings about additional administrative costs and some of the objectives, such as those aimed at licencing all players and prohibiting vertical integration may impact on the viability of existing agribusinesses and producers. Successful agribusiness ventures often require vertical integration whereby the supply chain of a company, or parts of it, is integrated and owned by that company.

Clause (f), namely the regulation of petroleum products should not be an objective in itself. As stated above, there are several, important public interest considerations which necessitate regulation, but regulation is merely a means to achieve the public good. Regulation can never be an end in and of itself.

2.3 Control and management of petroleum products by the Minister

Similar to the 1977 Petroleum Products Act, extensive powers are granted to the Minister to control almost every aspect of the petroleum industry from the use of petroleum products to the price and quantities that may be held. In addition to these already extensive powers, clause 5 of the Bill now provides for more detailed control measures through Regulations, including, “additional powers, duties and functions of the Controller, regional controllers and inspectors.” Although a similar provision is

contained in the 1977 Act, the power of the Minister to prohibit or specify the change of suppliers of petroleum products to any business or undertaking seems severely restrictive and drastic.

Clause 3 (1) (a) seeks to ensure that petroleum products are used in an economical and efficient manner. Efficiency is a prerequisite for a successful business but can only be achieved through management interventions, not regulation. The liquid fuels industry is highly competitive and with legislated margins, efficiency gains can only be achieved through efficient business processes such as lowering overhead costs. These are fundamental elements to a free market and the market will ensure that inefficient businesses are removed from the system. If the regulator attempts to alter efficiencies using regulatory means, it will have the opposite effect by hindering the expansion of efficient businesses or artificially propping up inefficient businesses by allocating licences to them. The net effect of artificial competitiveness is poor service and additional costs to the consumer.

2.4 Powers and Functions of the Controller

The office of the Petroleum Controller was established in 2006 with the set responsibility of implementing the Petroleum Products Amendment Act, 2003. The Bill expands the powers of the controller who will now also:

- Issue end consumer certificates.
- Investigate transgressions of the provisions of the Act.
- Conduct regular transformation audits.
- Establish the facts in contractual disputes between licencees.
- Determine the margins at which petroleum products may be bought or sold.
- Determine or prescribe businesses practices and methods of trading.
- Determine quantities of the product to be maintained.

In terms of clause 7(3) the Controller may also impose quite onerous conditions on any licensee or end user customer including requirements of management, control,

ownership, sustainability, supportive culture and employment equity. All of these are already regulated by other pieces of legislation such as NEMA, the Climate Change Act, the BBBEE Act and the Employment Equity Act.

The concept of end-consumer certificates

The act requires all consumers who store petroleum products in a tank, building, dispensing pump etc. for their own consumption to be in possession of an end consumer certificate. Such certificates must be issued by the controller on a case-by-case basis and can contain conditions. The holders are also required to provide financial provisions in the form of insurance, a bank guarantee or cash. Whilst there are public interest considerations that require the storage of fuel to be regulated, such as environmental risks, the proposed methodology is impractical and unimplementable.

In the agricultural sector, fuel is extensively used for tractors, combine harvesters and other heavy machinery that operates exclusively on-farm. These farmers are supplied by agribusinesses who are also fuel retailers. There is no alternative as this machinery is stored in remote areas and must operate 24 hours a day during peak times such as planting or harvesting. It will be unaffordable and impractical for these implements to travel long distances to refuel, so there is simply no alternative to refuelling on a farm. According to the latest census on commercial agriculture, there are 42 000 VAT registered farms, another 100 000 commercial farmers and roughly 3 million households involved in agriculture. Even if one makes the assumption that the 3 million households operating on a subsistence level will not be mechanised, there are still at least 140 000 farms that will now require an end consumer certificate for their storage facilities. In addition to farmers, there are countless nature reserves, mining operations, quarries etc. are likely to add to this number. It is simply impossible to administer this many certificates with conditions tailored to each circumstance.

We fully accept that there may be a legitimate need to regulate the storage of liquid fuels. There are environmental, health and safety concerns as articulated in clause 7

(3). These concerns can, however, be regulated through a system of Norms and Standards. It would be far more practical to include the powers to issue norms and standards for the storage of liquid fuels on farms, mines, nature reserves etc. Inspectors should then be empowered to conduct spot-checks and issue compliance orders should they discover non-compliance. However, to assess 200 000+ applications and issue site-specific certificates with conditions would simply not be feasible.

2.5 Powers and functions of inspectors

This is a new requirement that will in all likelihood lead to more red tape and cost for end users such as farmers.

2.6 Prohibited activities

The Bill contains a long list of prohibited activities.

2.7 System for allocation of site and retail licences

These provisions seem to be very limiting and prescriptive in nature and seem to go against the principles of a free market. Efficiency cannot be legislated. The Controller should not have the power to, for example, determine which licenses a business will have to sacrifice to get a new one.

2.8 Transformation of the sector

It should not be the responsibility of the Controller to enforce transformation in the sector. As with all industries, the B-BBEE Act is designed to incentivise transformation in the liquid fuel industry. We note that the B-BBEE Act does allow B-BBEE to be taken into consideration when issuing licences and permits, however when the entire legality of an operation is subject to a licence provision then it cannot be an absolute requirement. B-BBEE contains various incentives and disincentives to promote transformation efforts but the introduction of a peremptory requirement undermines the voluntary nature of B-BBEE and consigns it to an absolute requirement, which contradicts the intention of the B-BBEE Act.

The Bill furthermore provides the controller with seemingly unfettered discretion to apply B-BBEE. Targets and objectives should be negotiated by specialist charter councils and captured in codes such as the liquid fuels charter.

Finally, clause 7 (3) (b) also provides that the Controller may impose B-BBEE requirements or conditions to the issue of an end consumer certificate. This is entirely misplaced. The storage of liquid fuels on site is merely an element of a farming operation. It does not contribute towards the transformation of the liquid fuels industry. These agricultural enterprises' transformation status is regulated by the AgriBEE Sector Code and not the Liquid Fuels Charter. It would therefore be unimaginable that an entity is measured by and complies with the AgriBEE Sector Code only to be denied the right to store fuel on farm, a critical tool needed in their enterprise, on B-BBEE grounds.

2.9 Issuing of compliance notices

Vast powers are given to Controllers to conduct inspections, issue compliance notices and issue administrative fines.

System for issuing site and retail licences

We acknowledge the need to regulate site and retail licences to ensure sufficient supply to the consumer and various value chains and to ensure accountability within the sector. However, clause 15 (3) (d) (i) & (ii) is an unjustified interference in the free market. It states that the system may limit the total number of sites and corresponding retail licences to "...promote efficient investment in the retail sector and the productive use of retail facilities...". In plain language, it seems as if the controller will use licences to support certain businesses by eliminating competition for them. This cannot be endorsed. This will have the substantive effect of reducing competition in the economy which flies in the face of the Competition Act and will ultimately prejudice consumers and businesses in the value chain. We propose that this clause be removed.

2.10 Offences and penalties

The proposed fines are very steep. The fact that a party will be required to pay these very high fines even when an appeal is lodged and will then have to try to recover the

fine through a court process seems unfair and unjust. The proposed penalties seem to be disproportionate to the seriousness of the offences. The imposition of an administrative penalty may lead to businesses closing with resulting undesirable consequences for employee and consumer welfare.

2.11 Regulations

Further extensive powers are granted to the Minister to make regulations, including a provision for the amount of financial security for rehabilitation. If these amounts are set quite high, it may disincentivise the provision of services to the farming community in rural areas.
