

## **Submission from the Health and Safety Authority to the Public Consultation on Review of the Dangerous Substances Acts and Regulations – Updating the regulatory regime applying to petroleum and other fuels**

The Health and Safety Authority welcomes the opportunity to contribute to the public consultation on the review of the Dangerous Substances Acts and associated Regulations.

### **1 The Need for Review**

The Health and Safety Authority is convinced that the Dangerous Substances Act 1972, with its largely antiquated content and philosophy, and the Regulations made under it now need to be replaced with updated legislation. The repeal of the Dangerous Substances Act is already provided for in the Safety, Health and Welfare at Work Act 2005, subject to activation by Ministerial Order(s).

### **2 Risk Assessment Approach**

The Authority strongly endorses the proposal to introduce a risk-assessment approach which, as the consultation paper suggests, is the commonly accepted methodology for managing safety worldwide and which would complement the approach already taken in the Chemicals Act 2008, the Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001 (S.I. No. 619 of 2001) and the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006 (S.I. No. 74 of 2006). The latter Regulations are often called the COMAH or Seveso II Regulations. A written, site-specific risk assessment should be required for all fuel stores and oil jetties and should cover all of the issues identified in the consultation paper. This is already covered in a more general sense for workers by Section 19 of the Safety, Health and Welfare at Work Act 2005.

The site-specific risk assessment would outline the technical requirements and operating conditions which would need to be in place for the fuel store or oil jetty to be considered to be operating safely. One possibility would be to make it an offence for fuel suppliers to deliver fuel to a site which is not applying the arrangements for fuel delivery specified in their risk assessment. This could be done by extending the Schedule 4 requirements associated with Regulation 20 and 21 of the Dangerous Substances (Retail and Private Petroleum Stores) Regulations 1979 (S.I. No. 311 of 1979) and by linking this to the fuel delivery arrangements in the risk assessment.

### **3 Scope of the Review**

The Health and Safety Authority supports the proposal to try to cover new and emerging fuels as well as the more traditional petroleum products. Furthermore, the Authority considers that it may be timely and appropriate to consider framework legislation which would introduce a risk assessment requirement (with or without licensing) for all enterprises involved in the transfer, storage and dispensing of certain categories of other dangerous goods in bulk.

At present, the vast majority of bulk stores of chemicals are not covered by any regulatory regime in that they are not petroleum products and, therefore, do not fall within the remit of the Dangerous Substances (Retail and Private Petroleum Stores) Regulations 1979 or the Dangerous

Substances (Petroleum Bulk Stores) Regulation 1979 (S.I. No. 313 of 1979) and they also fall below the thresholds for inclusion in the COMAH Regulation 2006 (S.I. No. 74 of 2006). The categories of substances covered could extend beyond the traditional and emerging fuels addressed in the consultation paper and might include, for example, all explosive, oxidising and flammable substances above a certain threshold. The criteria used to identify such substances may be similar to the criteria included in the ADR Agreement or the COMAH Regulations. If this approach was taken, it would be desirable to set a minimum threshold which would exclude the storage of fuel for personal use, domestic use, use in vehicles and machinery.

#### **4 Licensing Regime**

The Health and Safety Authority is not convinced that a licensing regime is not associated with an improved level of safety, as suggested by Arup Consulting Engineers. Although the report refers to the fact that many other countries (Australia, Canada, UK and USA included) have a licensing/permitting regime in place, it does not address whether these systems were considered to be effective or not. It appears that the Consultants based their assumption that licensing is not effective in improving safety on their observations at 25 petrol stations in Ireland, 9 of which were licensed. However, one could argue that the current licensing system in Ireland has not been effective, largely because it has not been actively implemented and enforced throughout the various local authority areas. It may not, therefore, be the best basis for assessing how effective a fully functional licensing scheme might be.

In those local authority areas where the licensing regime has been actively implemented, resourced and associated with site visits (rather than being treated as a paper exercise), the Authority's observations are that the system has led to improved levels of health and safety. Therefore, the Authority would like to see the current licensing regime retained, linked with active enforcement (site visits associated with granting and renewal of the license) and where there are consequences associated with not applying for a license and/or maintaining the site in accordance with the site's own risk assessment. The consequences and dissuasive sanctions should be commensurate with the potential risk. If site visits were necessary when a license application was first issued and at each renewal, this would mean that all sites in the country were inspected at regular intervals and compliance with their risk assessment addressed. The license application fee should be set so that it covers the costs of processing the application, including associated site visits and appropriate follow-up.

A registration system is put forward as an alternative to licensing in the Department's consultation document. Both the registration and licensing schemes, if compulsory, would provide the relevant authorities with a clear overview of the number of existing sites and proposed new sites. This would allow the enforcing authority(ies) to target and prioritise their inspection programme. However, the registration scheme would not necessarily lead to site visits to determine if the arrangements in the risk assessment were being applied on site in practice, as the licensing system would.

As mentioned above, the Authority recommends that consideration be given to the introduction of an offence involving delivery of fuel to an unlicensed/unregistered site or one which is not being operated in accordance with the arrangements specified in the site's risk assessment.

## **5 Enforcement**

The Health and Safety Authority is convinced that the success of any regulatory regime depends largely on having consistent, clear, transparent and active enforcement. Whatever regulatory approach is chosen must address worker health and safety, public health and safety and environmental safety in a comprehensive manner and the enforcement authority(ies) must be clear about their respective and relative roles and responsibilities. It is important not to replicate the current system where responsibilities for various aspects of health and safety are spread across various authorities (the HSA, EPA and local authorities) with no clear inter-relationships or overall responsibility. The Health and Safety Authority would have some concerns about the Arup suggestion of establishing a national support network unless the relative roles and responsibilities for all parties are clearly defined in the legislation and commitment to fulfil their obligations has been obtained from all parties.

Under the Safety, Health and Welfare at Work Act 2005, the Authority currently has responsibility for worker safety in all places of work including petrol stations, fuel stores and oil jetties. It is likely that the Authority will retain this responsibility regardless of which regulatory regime is selected to deal with the public safety and environmental safety aspects of fuel stores.

## **6 Codes of Practice**

It is the Authority's view that to ensure legal certainty and to facilitate enforcement, as many of the technical and organisational issues and requirements should be clearly spelled out in the legislation. The level of detail in the legislation will largely determine whether or not Codes of Practice need to be approved at national level. The APEA Blue Book already covers many of the technical issues associated with construction, maintenance, repair, commissioning and decommissioning of petrol stations. However, operational issues need to be addressed either in the legislation or in a Code of Practice. These would include issues such as general operating procedures, instruction and training of staff, procedures for delivery and dispensing of fuel, fire prevention measures, emergency procedures and wet stock management. It is worth noting that the COMAH Regulations 2006 introduced a risk assessment methodology to high risk sites, many of them very technical in nature, without the need for detailed or approved Codes of Practice. Both the regulatory authority(ies) and the industry rely on well-recognised international Codes of Practice or 'best practice' documents. This may also be possible in this context.

## **7 Competence, Instruction and Training**

The Health and Safety Authority would support a requirement for those who operate a fuel store or oil jetty to appoint a competent person capable of managing all of the risks associated with flammable substances at the specific workplace, i.e. requirement for competence linked to risks on site. Competence is generally regarded as a combination of suitable qualification(s) and training, experience and knowledge in the handling of dangerous substances.

Any definition of competence in the new legislation would have to dovetail into the definition of 'competent person' as set out in Section 2(2) of the Safety, Health and Welfare at Work Act 2005. To fulfil the educational component of competence, it would be appropriate to develop a suitably recognised course which could be offered at relatively low cost to the owners and operators of fuel stores. This could potentially be administered by FAS, FETAC or some other State Agency. This would be analogous to the requirement under ADR to appoint a Dangerous Goods Safety Adviser who has been certified as competent. Some of the more proactive fuel

suppliers already have well-structured training courses which could perhaps form the basis of such a course.

In addition to training of one or more competent persons for each fuel store or jetty, it would be important to include a requirement that *all* staff working in the stores /jetties are fully trained in the risks associated with flammable substances, safe operating procedures, what is considered to constitute an emergency and the procedures to be followed in such an instance.

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