

## **Agbiz expresses concern about various aspects of the Petroleum Products Draft Bill**

### **Background**

The Petroleum Products Draft Bill was published for comment on 21 October 2024. The deadline for comments is 20 December 2024. Agbiz submitted our written comments on the Bill on 6 December 2024.

There is an existing Petroleum Products Act dating from 1977. In 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, the Bill now provides for more detailed control measures through Regulations, including, “additional powers, duties and functions of the controller, regional controllers and inspectors.” The stated purpose of this Bill is to streamline the licensing and appeals processes, improve compliance and enforcement by increasing the powers of the controller, regional controllers and inspectors. The Bill also prohibits vertical integration and introduces offences for non-compliance with the Act and licence conditions. The draft bill further introduces a new category of wholesaler, traders, and end consumers and require all end consumers to obtain an end consumer certificate to store petroleum products. The Bill also brings in efficiency, transformation and environmental considerations in the allocation of licences.

A better balance is required

In its submission, Agbiz argues that a better balance between the objectives of the Bill balance and other objectives which are in the national interest such as food production and access to affordable food must be struck. Agbiz cautions that many of the provisions of the Bill 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.

### **Overlap with other pieces of legislation**

In terms of clause 7(3) of the Bill, 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 BBEE Act and the Employment Equity Act. Agbiz believes that the Bill should merely refer to these pieces of legislation – and not try to replicate any of the provisions or take over functions that are within the jurisdiction of other government departments.

### **Non-transferrable licences**

In terms of clause 7(3)(r) of the Bill, licences are non-transferable. This is problematic, as the inability to transfer a retail license may lead to unnecessary economic hardship for licence holders facing business challenges, such as insolvency or market shifts. It also implies a zero-market-value linked to the asset which the licensee operates.

### **Broad powers of inspection**

Broad powers of inspection are granted to inspectors to question people, request documents, inspect articles and machinery, all without prior notice. This may cause disruptions and potential interference with commercial operations. The exercise of such broad powers without clear guidelines, may lead to arbitrary decision-making and a lack of accountability.

### **End user certificates**

The Bill requires all consumers who store petroleum products in a tank, building, dispensing pump etc. for 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 provision in the form of insurance, a bank guarantee or cash. The proposed methodology is impractical and unimplementable. The introduction of the issuance of end consumer certificates presents significant challenges, costs and potential complications for end consumers. This requirement will place a huge administrative burden on end consumers, many of whom are small businesses.

In its submission, Agbiz proposes that installations under 23 000 litres at end user facilities be excluded from the requirement of obtaining a certificate. Only fixed end user facilities should be subject to the provisions in the Bill. To further ease the burden, a phased implementation or tiered system based on facility size and risk level should be considered, ensuring that smaller operations are not unfairly penalized.

### **Inspections, offences and penalties**

In terms of the Bill, the controller, regional controller, or any inspector has the power to conduct inspections without a warrant under this Bill. Agbiz takes the view that, save for in cases where there is reasonable suspicion of a violation of the provisions of this Bill, or where there is an immediate need to prevent harm or preserve evidence all inspections should be conducted with a warrant issued by a competent authority, as required under clause 22 of the Bill. Inspections should be subject to a reasonable notice period. Also, closing a site based solely on suspicion that prohibited activities are taking place is unfair and could lead to arbitrary enforcement. Suspending operations or shutting down a site without concrete evidence or a formal investigation infringes on the rights of licensees who may be operating lawfully. We submit that any decision to close a site should be based on clear,

verifiable evidence of prohibited activities, and the licensee should be provided with an opportunity to respond or contest the closure before such an action is taken.

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. This is especially concerning in the context of businesses operating under tight margins, like those in the petroleum and agricultural sectors, where financial penalties could result in business closures, impacting not only the businesses but also the broader economy and workforce. In particular, the petroleum sector, which is already grappling with regulatory changes, cannot afford further punitive measures that could stifle competition and disrupt supply chains. The imposition of an administrative penalty may lead to businesses closing with resulting undesirable consequences for employee and consumer welfare.

By Annelize Crosby Agbiz Legal Intelligence Manager