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## GENERAL NOTICE

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### NOTICE 2050 OF 2001

### DEPARTMENT OF MINERALS AND ENERGY

### DRAFT PETROLEUM PIPELINES BILL

The Draft Petroleum Pipelines Bill, 2001, is hereby published for public comment. Comments should be submitted in writing to:

The Director-General  
Attention: Mr. H T Burger  
Department of Minerals and Energy  
Private Bag X 59  
PRETORIA

Written comments may also be faxed to (012) 317-9388 or sent by e-mail to [theuns@mepta.pwv.gov.za](mailto:theuns@mepta.pwv.gov.za)

Copies of the draft Bill can be obtained from:

- Government Printers (Pretoria);
- Communications Chief Directorate at the Head Office of the Department; and
- Department's Home page ([www.dme.gov.za](http://www.dme.gov.za))

**Written comments must be received not later than 15 October 2001.**

## EXPLANATORY NOTES TO THE DRAFT PETROLEUM PIPELINES BILL

1. A network of pipelines is used to transport crude oil and petroleum products between the port of Durban, the Durban refineries, the crude and synthetic fuels refineries in Gauteng and Mpumalanga and between depots.
2. The petroleum industry and markets is highly dependent on this network. The pipeline network is thus of strategic importance to the economy as the economy depends on the stable supply of liquid fuels and hence the ongoing effective operation of the petroleum pipeline and storage infrastructure.
3. To date, the state has managed the operation of much of the pipeline network.
4. It has now become a possibility that parties other than National Government may become active in the ownership and operation of petroleum pipelines. It is therefore incumbent on Government to introduce regulatory measures to ensure the efficient operation of the pipelines network and the orderly development of the network in future.
5. To respond to the need for regulatory intervention Petroleum Pipelines Bill has been drafted. The main features of the Bill are the following:
  - 5.1. The establishment of a petroleum pipeline regulator with regarding the following:
    - powers, duties and functions of the Regulator;
    - constitution of the Regulator;
    - staffing and functioning of the Regulator; and
    - funding of, accounting by and reporting by the Regulator.
  - 5.2. The requirement for licensing or registration in respect of the construction, operation and the provision of prescribed commercial services in relation to a crude oil pipeline, petroleum product pipeline or an off-leading facility.
  - 5.3. The process of licensing or registrations and the condition of license.

**DRAFT**

**PETROLEUM PIPELINES BILL**

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**PETROLEUM PIPELINES BILL**

**To establish a national regulatory framework for petroleum pipelines, to establish a Petroleum Pipelines Regulator as the custodian and enforcer of the national regulatory framework, to provide for the issuing of licenses relating to the construction and operation of petroleum pipelines and the delivery of certain commercial services in connection therewith, to provide for the registration of offloading facilities, storage facilities and certain commercial services related thereto, and for matters connected therewith.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa:-

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## CHAPTER I

### INTRODUCTION

#### Definitions

1. In this Act, unless the context otherwise indicates -

**"chief executive officer"** means the person appointed in terms of section 3;

**"commercial service"** in relation to a pipeline, offloading facility or storage facility means the provision of prescribed commercial services by the owner or operator thereof in return for payment or any other consideration of whatever nature; (commercial service replaces def of service)

**"crude oil"** includes condensate and any gas used in the manufacture of petroleum products;

**"crude pipeline"** means a pipeline in which crude oil is transported as a commercial service ;

**"licensee"** means any person holding a license granted by the Regulator under this Act;

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

**"offloading facility"** means any facility that is or can be used to offload crude oil, any substance used in the manufacture of petroleum products, or petroleum products, and includes any pipeline used for the transport of such oil, substance or petroleum product between that offloading facility and a storage facility;

**"operate"** means to operate an offloading facility, storage facility or crude or product pipeline on behalf of or in terms of an agreement with the owner thereof, and **"operation"** and **"operator"** have similar meanings;

**"owner"** in relation to a pipeline, offloading facility or storage facility means the person who has the normal rights associated with the ownership of such facility;

**"payment"** includes commercial services in lieu of payment provided to the owner or operator of an pipeline, offloading facility or storage facility ;

**"person"** includes any organ of state as defined in section 239 of the Constitution ;

**"petroleum products"** means any product derived from crude oil, condensate, gas or any product derived from any other carbon based substance that is intended for use as a liquid fuel, and includes any gas in a liquefied state that is intended for use as such fuel;

**"prescribed"** means prescribed by regulation;

**"products pipeline"** means a pipeline in which petroleum products are transported as a commercial service for any other person by the owner or operator of that pipeline;

**"regulation"** means a regulation made under section 30;

**"Regulator"** means the Petroleum Pipelines Regulator established by section 3;

**"storage facility"** means any storage facility that is or can be used for the storage of crude oil or petroleum products as a commercial service for another person by the owner or operator of that facility, and includes any pipeline, between or linking such facility with another storage facility, that is not used as a crude- or products pipeline as defined in this Act;

**"tariff"** means a written statement of rates and terms and conditions under which commercial services related to the use of pipelines, offloading facilities or storage facilities are sold; and

**"this Act"** includes the regulations promulgated and directives issued thereunder.

**Objects of Act**

2. The objects of this Act are to -

- (a) promote competition in the provision of commercial services and limit anti-competitive practices in the construction and operation of pipelines, offloading facilities and storage facilities;
- (b) promote the efficient, effective, sustainable and orderly development, operation and use of pipelines, offloading facilities and storage facilities from a national and industry-specific perspective;
- (c) ensure the safe, efficient, economic and environmentally responsible transport and storage of crude oil and petroleum products with regard to pipelines, offloading facilities and storage facilities; and
- (d) promote fair and equitable access to pipelines, offloading facilities and storage facilities, and to commercial services connected therewith.

## CHAPTER II

### THE PETROLEUM PIPELINES REGULATOR

#### **Powers, duties and functions of Regulator.**

#### **3. The Regulator shall –**

- (a) issue licenses for -
  - (i) the construction of crude oil pipelines, petroleum product pipelines and off-loading facilities; (iii) the operation of crude oil pipelines, petroleum product pipelines and offloading facilities; and
  - (iii) any prescribed commercial service in connection with crude oil, petroleum product pipelines and off-loading facilities
- (b) register storage facilities;
- (c) gather and store information relating to the construction, operation and the provision of commercial services relating to crude and product pipelines, offloading facilities and storage facilities; ;
- (d) issue directives to licensees and registered persons;
- (e) act as mediator or arbitrator in accordance with the provisions of this Act;
- (f) consult with Government Departments and other bodies and institutions regarding issues of importance to the petroleum pipeline industry;

- (g) in a prescribed manner set tariffs and charges charged by licensees in the operation of crude oil pipelines, petroleum product pipelines and off-loading facilities and the provision of commercial services in connection therewith with due regard of the impact of such tariffs on the broader economy;
- (h) monitor and take appropriate action, if it deems it necessary, to ensure that access to pipelines, offloading facilities and storage facilities are provided in a non-discriminatory, fair and transparent manner;
- (i) within the ambit of its powers, promote competition in the petroleum industry;
- (j) expropriate land or any right in, over or in respect of such land as is necessary for the exercise of a licensee's or registered person's rights;
- (k) exercise any power or perform any duty or function assigned to it under any other law.

**Constitution of Regulator.**

- 4. (1) The Regulator consists of five part-time members appointed by the Minister for four years at a time, and such members may be re-appointed.
- (2) The Minister shall designate one of the members appointed under subsection (1) as chairperson of the Regulator.
- (3) If the chairperson for any reason is unable to perform his or her duties, the other members shall choose another person from among themselves to act as chairperson until the chairperson can resume his or her duties or another chairperson is appointed by the Minister.
- (4) If a member of the Regulator for any reason ceases to hold office the Minister may appoint another person in his or her stead for the remainder of the term of office of such member.

- (5) A member of the Regulator shall be paid for his or her commercial services such remuneration and allowances as the Minister may from time to time determine.

**Disqualification and requirements regarding appointment to Regulator**

5. (1) No person may be appointed as a member of the Regulator if that person -
- (a) is not a South African citizen resident in the Republic of South Africa;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offense involving dishonesty;
  - (d) has any other conflict of interest that may affect his or her position as a member.
- (2) The Minister must appoint, as members of the Regulator, persons--
- (a) who have adequate legal, technical, business, economic, development or other experience relevant to the petroleum pipeline industry;
  - (b) who are available to fulfill their role as members;
  - (c) who demonstrate impartiality and objectivity;
  - (d) in such a manner that a fair balance between continuity and capacity building is achieved.
- (3) All members shall on appointment disclose to the Minister their personal, professional and business interests on appointment to the Regulator and notify the chairperson when these change.

**Vacation of office and termination of appointment**

6. (1) A member of the Regulator shall vacate his or her office if that member -
- (a) becomes of unsound mind;

- (b) has been absent from more than two consecutive meetings without leave of the chairperson for each such absence;
- (c) resigns and has notified the chairperson in writing of his or her resignation, or in the case of the chairperson, has notified the Minister of such resignation in writing;
- (d) materially transgresses any duty imposed on him or her under this Act; or
- (e) becomes disqualified from being a member on any of the grounds referred to in section 6(1).

(2) The Minister may terminate the appointment of a member of the Regulator if such member behaves in a manner contrary to the provisions of section 9.

#### **Meetings of Regulator**

7. (1) The Regulator shall meet as often as may be required for the proper performance of its functions.
- (2) The chairperson shall, upon a written request of the chief executive officer or two other members, convene a special meeting to be held as soon as possible but not later than one week after the date of receipt of such request.
- (3) Unless other procedures are prescribed, the Chairperson of any meeting of the Regulator shall determine the procedures to be followed at such meeting.
- (4) The quorum for any meeting of the Regulator is three members.
- (5) (a) The decision of the majority of the members present at a meeting constitutes a decision of the Regulator.
- (b) In the event of an equality of votes on any matter the person presiding at a meeting has a casting vote in addition to his or her deliberative vote.



- (6) No decision or act authorised by the Regulator is invalid merely because--
- (a) of a vacancy on the Regulator; or
  - (b) any person not entitled to sit as a member sat at such meeting at the time the resolution was taken:

Provided that the decision or act was authorised by a quorum constituted by the rest of the members present at the meeting and entitled to sit as members at such meeting.

- (7) (a) Any meeting of the Regulator shall be open to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, in which case an affected person shall indicate why such information should not be disclosed to the public.
- (b) If the Regulator takes a decision in any other manner than at a formal meeting such decision comes into effect immediately but must be reduced to writing, signed by the majority of members and submitted for notification at the first formal meeting of the Regulator following the decision.
- (c) The Regulator shall cause a record of its proceedings to be kept.

#### **Duties of members of Regulator**

8. Members of the Regulator shall exercise all their powers under this Act and must
- (a) perform all their duties under this Act;
  - (b) act in a justifiable and transparent manner whenever the exercise of their discretion is required;
  - (c) at all times act in the interest of the Regulator and not in their own or sectoral interests;
  - (d) act independently of any undue influence or instruction;



- (e) recuse themselves from and refrain from voting on any matter pending before the Regulator in which they have a direct or indirect interest; and
- (f) act in a manner that is required and expected from the holder of a public office.

#### **Decisions of Regulator**

9. (1) Any decision of the Regulator shall --
  - (a) be taken within a procedurally fair process in which all affected persons have the opportunity to submit their views and present relevant facts and evidence to the Regulator;
  - (b) be based on facts and evidence that shall be recorded with the decision;
  - (c) be in writing; and
  - (d) be set out clearly as to its factual and legal bases and include the reasons therefor.
- (2) Any person adversely affected by a decision of the Regulator shall have access to a copy of such decision and the reasons therefor.
- (3) Any person adversely affected by a decision of the Regulator may appeal against the decision or take it on review to a court having jurisdiction in the matter.

#### **Personnel of Regulator.**

10. (1) The Regulator shall designate a person as chief executive officer of the Regulator.
- (2) Subject to the directions of the Regulator, the chief executive officer is responsible for--
  - (a) the day-to-day management of the affairs of the Regulator; and

- (b) administrative control over the employees appointed under subsection (3).

(3) The chief executive officer may appoint employees, or contract with any person to supply such commercial services as may be necessary to perform the work connected with the powers, functions and duties of the Regulator.

(4) The chief executive officer and other members of the personnel of the Regulator shall be paid such remuneration, allowances, subsidies and other benefits as may be approved in accordance with the requirements of the Public Finance Management Act.

(5) Notwithstanding subsections (1) and (3), the Minister may in writing direct the Regulator to assign the position of chief executive officer or any other employee to any person employed by another licensing or regulatory authority falling under the Minister's jurisdiction.

#### **Funding of Regulator.**

11. The funds of the Regulator shall consist of -

- (a) appropriations from the National Revenue Fund;
- (b) monies allocated in terms of section 3 of the Central Energy Fund Act;
- (c) levies imposed under separate legislation;
- (d) application and maintenance fees for licenses and registration;
- (f) charges for mediation, arbitration and other commercial services rendered.

#### **Accounting by Regulator.**

12. (1) The Regulator shall exercise its fiscal, accounting and reporting duties in accordance with the provisions of the Public Finance Management Act, 1999 (Act No.1 of 1999).

- (2) The financial records of the Regulator shall be audited by the Auditor-General.
- (3) The financial year of the Regulator is the period ending on 31 March in each year.

**Reporting by Regulator.**

13. The Regulator shall, in addition to any report required in terms of the Public Finance Management Act, 1999 (Act No.1 of 1999), submit an annual report to the Minister within three months after the end of a financial year that shall include information on –

- (a) licence applications considered, licenses granted, refused, amended or withdrawn;
- (b) registration applications received, given, refused or scrapped;
- (c) regulations made and directives issued;
- (d) the implementation of its strategies by the Regulator;
- (e) the status and envisaged developments with respect to the construction, operation and commercial service delivery of crude and product pipelines, offloading facilities and storage facilities;
- (f) the status and envisaged developments relating to health, safety and environmental issues in the industry,
- (g) such other matters as the Regulator may deem necessary; and
- (h) any other matters required by the Minister.

CHAPTER III

LICENSES AND REGISTRATION

**Activities requiring a license or registration**

- 14.** (1) No person may, without a license issued by the Regulator –
- (a) construct a crude oil pipeline, products pipeline or an off-loading facility;
  - (b) operate a crude oil pipeline, petroleum products pipeline; or an off-loading facility; or
  - (c) provide prescribed commercial services in relation to a crude oil pipeline, r petroleum product pipeline, or an off-loading facility.
- (2) Any person constructing or operating a storage facility or providing any prescribed commercial service relating to such facilities must register with the Regulator in accordance with the provisions of this Act.
- (3) The Regulator may -
- (a) determine whether any person is engaged in any of the activities requiring a license or registration;
  - (b) direct that any person engaged in any of the activities requiring a license in terms of subsection (1) who is not in possession of the necessary license to cease such activity
- (4) (a) Nothing in this Act precludes any potential licensee from discussing the contemplated construction of pipelines or off-loading facilities, the operation thereof or the envisaged commercial services to be provided in relation thereto with the Regulator prior to filing a license application.

(b) The Regulator shall furnish an applicant contemplated in paragraph (a) with all information that it may deem necessary to facilitate the filing of an application in terms of this Act.

(5) No request for further information, notification or discussions referred to in subsection (4) shall in any way be construed as conferring any right or expectation upon an applicant.

#### **Application for license**

15. (1) Any person who has to apply for a license in terms of section 15 must do so in the prescribed form and in accordance with the prescribed procedure, and an application shall be accompanied by the prescribed application fee.

(2) Any application contemplated in subsection (1) shall include -

(a) a description of the applicant, including relationships with other persons engaged in the construction or operation or the provisioning of commercial services in relation to pipelines or off-loading facilities;

(b) documentary evidence of the administrative, financial and technical abilities of the applicant;

(c) a description of the proposed pipeline or off-loading facility to be constructed or operated or the proposed commercial service to be provided, including maps and diagrams where appropriate,

(d) an environmental impact study if applicable;

(e) a general description of the type of customer to be served and the tariff and price policies to be applied;

(f) the plans and the ability of the applicant to comply with applicable labour, health, safety and environmental legislation, subordinate legislation and other requirements as may be applicable;

- (g) a detailed specification of the commercial services that will be rendered under the license; and
- (h) such other particulars as may be prescribed.

**Advertising of application for license**

17. (1) When application is made for a license contemplated in section 16, the applicant must publish a notice of the application in appropriate newspapers circulating in the area of the proposed activity in any two official languages (one of which must be English)

- (2) The advertisement must state –(a) the name of the applicant;
- (b) the objectives of the applicant;
- (c) the place where the application will be available for inspection by any member of the public;
- (d) that any objections to the issue of the license may be lodged with the Regulator within 30 days of publication;
- (e) the address of the Regulator where any objections may be lodged; and
- (f) that objections must be substantiated by way of an affidavit or solemn declaration.

(3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a newspaper as may be prescribed.

**Particular information to be supplied by applicant**

17. Before considering an application for a license in terms of this Act, the Regulator –

- (a) must furnish the applicant with all substantiated objections contemplated in section 17(2)(e) in order to allow the applicant to respond thereto; and

- (b) may request such additional information as may be necessary to consider the application properly.

#### **Finalisation of application**

- 18.** (1) The Regulator must decide on an application in the prescribed manner within 60 days --

- (a) after the expiration of the period contemplated in section 17(2)(d), if no objections have been received; or

- (b) after receiving the response of the applicant as contemplated in section 18(b).

- (2) The Regulator must provide the applicant with a copy of its decision as well as a list of the factors on which the decision was based.

- (3) Separate or combined licenses may be issued for -

- (a) the construction of crude oil pipelines, petroleum product pipelines and off-loading facilities;

- (b) the operation of crude oil pipelines, petroleum product pipelines and off-loading facilities; and

- (c) the rendering of any prescribed commercial service in relation to crude oil pipelines, petroleum product pipelines and off-loading facilities.

- (4) Any person owning or operating crude oil pipelines, petroleum product pipelines or off-loading facilities or providing prescribed commercial services relating to crude oil pipelines, petroleum product pipelines or off-loading facilities prior to the effective date of this Act shall have a legitimate expectation to become a licensee and shall be issued with a license forthwith: Provided that -

- (a) such person must apply for a license within the prescribed period;



- (b) such person may continue with his or her activities until a license is issued;
- (c) such license may be made subject to any licensing condition authorised under this Act that the Regulator deems appropriate; and
- (d) the Regulator may refuse to issue such license if it is convinced that the applicant is unable to comply with the provisions of this Act.

**Conditions of License.**

19. (1) The Regulator may impose license conditions within the following framework of requirements and limitations:

- a) The setting and approval of tariffs,
- b) The period of validity of the license,
- c) The maintenance and extension of the license;
- d) Standards of construction, operation and commercial service delivery,
- e) Health, safety and environmental concerns,
- f) The amendment of a license or the conversion thereof into another type of license;
- g) Competition issues,
- h) Ownership and cross-ownership and vertical and horizontal integration,
- i) Non- discriminatory practices,
- j) Advisory services
- k) The keeping of records and the furnishing of information to the regulator
- l) xThe separate management (with separate accounts, data and no cross-subsidisation) of transportation, storage, and trading activities of vertically integrated companies
- m) Access by third parties (in the prescribed manner) on commercially reasonable terms to uncommitted capacity in crude oil pipelines, petroleum product pipelines and off-loading facilities;



n) The rights of interested parties to negotiate with the owners or operators of crude oil pipelines, petroleum product pipelines and off-loading facilities changes in the routing, size and capacity of proposed crude oil pipelines petroleum product pipelines and off-loading facilities: Provided that the owners and operators of such facilities are not obliged to incur any additional expenditure to provide the changes requested and the total cost for the facilities must be shared equitably between the owners and operators of such facilities and the parties requesting the change;

o) Allowing of interconnections between facilities as long as the interconnection is technically feasible and the person requesting the interconnection bears the increased costs occasioned thereby p) The maintenance by licensees of their facilities  
(Seeing as subsection (1) now applies to all license, the difference is no longer needed)

(2) A licensee shall be compelled to comply with any license condition imposed by the Regulator under this Act, and upon non-compliance the Regulator may in accordance with prescribed procedures –

(a) impose such penalties for non-compliance as may be set out in the license;

(b) direct the licensee to comply with the conditions set out in such license;

(c) suspend the license on continued transgression of any one or more of the conditions thereof;

(d) revoke the license if, after it has been suspended, the licensee continues with the transgression of one or more of the conditions thereof.

The review process presently is to the courts – how can the regulator both impose the condition and review it?

**Non-discrimination**

20. (1) Licencees may not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or commercial services except for objectively justifiable and identifiable differences regarding such matters as quantity, distance, length of contract, load profile, interruptible supply or other distinguishing feature approved by the Regulator.

(2) The prohibition of discrimination referred to in subsection (1) applies to actions by licensees in favour of their related undertakings in particular.

**Period of validity, maintenance and extension**

21.(1) A license shall be valid for the period set out therein as part of the licensing conditions, and shall lapse –

- (a) upon the expiry of such period;
- (b) upon the Regulator approving a licensee's application to terminate their license; or
- (c) upon the license being revoked.

(2) A licensee shall on an annual basis pay to the Regulator the prescribed maintenance fee in respect of each license in its possession, and such maintenance fee shall form part of the conditions of the license.

(3) Notwithstanding the provisions of subsection (1), the license may, prior to its lapsing, in the prescribed manner and at the request of the licensee be extended by the Regulator.

(4) A license may not be transferred to any other person: Provided that nothing shall preclude the performance of any function or commercial

service on behalf of a licensee if the Regulator approves thereof as part of its licensing conditions.

#### **Amendment of licence**

**22.** (1) The Regulator may vary, suspend or remove any of the licence conditions, or may include additional conditions—

- (a) on application by the licensee;
- (b) with the permission of the licensee;
- (c) upon non-compliance by a licensee with a licence condition;
- (d) if it is necessary for the purposes of this Act; or
- (e) on application by any affected party.

(2) The procedure to be followed in varying, suspending, removing or adding any licence conditions is as prescribed.

#### **Revocation of licence on application**

**23.** (1) The Regulator may revoke a licence on the application of a licensee if—

- (a) the licenced facility or activity is no longer required;
- (b) the licenced facility or activity is not economically justifiable; or
- (c) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.

(2) Licensees must give the Regulator at least 12 months notice in writing of their intention to cease their activities.

(3) The form and procedure to be followed in revoking a licence under subsection (1) is as prescribed.

### **Standards of construction**

- 24.** (1) Any pipeline or off-loading facility shall be constructed to the standards that the Regulator may approve of and such approved standards shall form part of the conditions of license.
- (2) The Regulator may by reference incorporate any existing standard in terms of other legislation or sub-ordinate legislation as a license condition contemplated in subsection (1).

### **Health, safety and environment**

- 25.** (1) Any pipeline or off-loading facility shall be constructed and operated and any prescribed commercial service in relation thereto provided in accordance with such health, safety and environmental requirements as the Regulator may approve of and such approved requirements may form part of the conditions of license.
- (2) The Regulator may by reference incorporate any existing health, safety or environmental legislation, sub-ordinate legislation or other requirement as a license condition contemplated in subsection (1).
- (3) The Regulator may require of a licensee to submit such security, or make such other arrangements as may be acceptable to the Regulator, to ensure compliance with any condition relating to health, safety or the environment, prior, during or after the period of validity of the license.

### **Setting and approval of tariffs**

- 26.** (1) The Regulator shall set as a condition of a license the tariffs to be charged by a licensee in the operation of a product pipeline and the provision of any prescribed commercial services in relation thereto.
- (2) A tariff charged in terms of subsection (1) –

- (a) shall be determined in accordance with prescribed price formulating methodology;
  - (b) shall become effective from the date set out in the license;
  - (c) shall be reviewed by the Regulator within the period set out in the license; and
  - (d) may be adjusted by the Regulator on review.
- (3) A licensee may request the Regulator to review its tariff from time to time and submit a proposal to the Regulator in this regard, and –
- (a) such new tariff shall come into effect from the date determined by the Regulator;
  - (b) the existing tariff shall remain in force until a new tariff takes effect, or if the new proposed tariff is not approved.
- (4) A licensee may not charge any other tariff for the licensed activity concerned than that approved by the Regulator under subsection (2) or (3).
- (5) The Regulator may, if it is of the justifiable opinion that a crude oil pipeline is being operated in a manner that is contrary to acceptable competitive practices, or that any commercial service in connection therewith is being provided in such a manner, set the tariff to be charged by the licensee of that pipeline as a condition of the license of such licensee, and on setting such tariff the provisions of subsections (2) to (4) shall *mutatis mutandis* apply.

#### **Conversion of license, transfer of license**

**27** Any conversion of a license into a license of another type, or any proposed transfer thereof shall be dealt with as a new license application.

### **Contravention of License.**

**28. (1)** If a licensee contravenes or fails to comply with a condition of the license or any provision of this Act the Regulator may serve a notice on such licensee directing the licensee to comply with the condition or provision of the Act within a reasonable period specified in the notice.

**(2)** If a licensee fails to comply with a notice contemplated in subsection (1) the Regulator may sit as a tribunal and, with due regard to section 10, decide on the matter and may –

- (a)** suspend or revoke the license;
- (b)** impose a penalty of a fine not exceeding R 2000 000,00 per day for each day on which the contravention or failure to comply continues; or
- (c)** suspend or revoke such license, and impose such penalty.

**(3)** Any person adversely affected by a decision of the tribunal may bring such a decision under appeal to the High Court.

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

**(5)** Notwithstanding the provisions of subsection (1) and (2), any contravention of or non-compliance with a condition of a license or the provisions of this Act shall constitute an offence and a Court may, upon conviction, impose a penalty not exceeding R 2000 000,00 per day for each day on which the contravention or failure to comply continues.

### **Revocation of license by court**

**29. (1)** The Regulator may, pending a tribunal hearing referred to in section 28(2) or pending criminal proceedings referred to in section 28(5), by way of application on notice of motion apply to the High Court for an interim order to suspend a license, to compel a licensee to comply with a license condition, or to stop a licensee from contravening a license condition.



(2) The court before which an application is made under subsection (1) may grant or refuse such application and may make it subject to such conditions or such order relating to costs as it may deem fit.

**Registration with Regulator.**

30. (1) Any person constructing or operating a storage facility or providing a prescribed commercial service in connection therewith shall, within the prescribed period and on payment of the prescribed registration fee, register with the Regulator in the prescribed manner.

(2) On receipt of an application under subsection (1) the Regulator shall register such person and activity forthwith: Provided that the Regulator may refuse to register such person or activity if –

- (a) the application is not made within the prescribed period;
- (b) the application is contrary to the objectives of this Act;
- (c) applicable or prescribed health, safety and environmental requirements in the construction or operation of the storage facility or the provision of prescribed commercial services in connection therewith have not been complied with or are not being complied with; or
- (d) the Regulator on justifiable grounds has reason to believe that such health, safety and environmental requirements will not in future be met.

(3) The Regulator may by reference incorporate any existing health, safety or environmental legislation, sub-ordinate legislation or requirement in a regulation contemplated in subsection (2)(a).

(4) Any person registered with the Regulator under subsection (2) shall pay to the Regulator prescribed yearly maintenance fees for its continued registration.

(5) The registration of a person shall lapse if –

- (a) that person no longer performs that particular activity and such person informs the Regulator thereof in the prescribed manner;
- (b) the maintenance fees referred to in subsection (4) are not paid to the Regulator within the prescribed period; or
- (c) the activity concerned becomes a licensed activity.

**Conversion of registered activities into licensed activities**

31. (1) The Regulator may, after having arbitrated on a matter referred to in section 35, refer the record of such arbitration to the Minister, and on receipt thereof the Minister may, after consultation with the Regulator, prescribe any activity to which that arbitration relates or that is directly connected to such arbitration as an activity that has to be licensed under this Act.
- (2) Upon the Minister prescribing an activity as a licensed activity under subsection (1), the provisions of section 15(5) shall *mutatis mutandis* apply thereto..
- (3) A license issued under subsection (2) may be made subject to any condition referred to in section 16, and the provisions of section 18, 19, 20, 21, 22, 23 and 24 shall *mutatis mutandis* apply thereto.



## CHAPTER IV

### GENERAL PROVISIONS

#### **Entry, inspection and information gathering by Regulator.**

32. (1) For the purposes of this Act, any person authorised thereto in writing by the Regulator may -

(a) at all reasonable times enter any property on which a licensed or registered activity is taking place and inspect any facility, equipment, machinery, book, account or other document found thereat; and

(b) require any person to furnish to the Regulator such information, returns or other particulars as may be necessary for the proper administration of this Act.

(2) The Regulator may require that the accuracy of any information, return or particular furnished under subsection (1) be verified on oath or by way of solemn declaration.

(3) A person authorised by the Regulator as contemplated in subsection (1) shall on request show his authorisation to any person requesting it.

(4) No information obtained by the Regulator which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court.

#### **Voluntary resolution of disputes by the Regulator**

33. (1) (a) The Regulator may, with the approval of all parties to a dispute, act as mediator or arbitrator in any matter falling within the ambit of this Act.

(b) When acting as arbitrator the Regulator must issue a decision on the matter, and such decision shall be binding on the parties.

- (2) (a) The Regulator may, with the approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf in any matter contemplated in subsection (1).
- (b) Any decision of an arbitrator so appointed shall be deemed to be an act or decision of the Regulator.
- (3) The fees payable to the Regulator when acting in terms of subsection (1) shall be prescribed.

**Compulsory dispute resolution by Regulator**

- 34. (1) The Regulator shall act as arbitrator in any dispute –
  - (a) where a party to a dispute alleges that an operator of a products pipeline or a person providing prescribed commercial services in connection with a products pipeline is allegedly discriminating through pricing or other methods in providing equitable access to such pipeline or commercial service, or is operating such pipeline or providing such commercial services in contravention with the provisions of this Act or any license issued thereunder;
  - (b) where a party to a dispute alleges that it has or should have a right of access and the operator of a pipeline, offloading facility or storage facility or a person providing prescribed commercial services in connection with a pipeline, offloading facility or storage facility is refusing to provide such access or is allegedly through pricing or other methods refusing equitable access to such pipeline, offloading facility or storage facility or commercial service, or is operating such facility or providing such commercial services in contravention with the provisions of this Act.
- (2) The provisions of the Arbitration Act, 1967 shall apply to an arbitration contemplated in subsection (1).
- (3) The fees payable to the Regulator when acting in terms of subsection (1) shall be prescribed.

- (4) A decision taken by the Regulator in an arbitration referred to in subsection (1) shall be final and binding on the parties.

**Expropriation of land by Regulator.**

35. (1) The Regulator may, in order to facilitate the construction of pipelines, offloading facilities or storage facilities, expropriate on behalf of the owner of such pipeline, offloading facility or storage facility any land or acquire any right over, in or in respect of such land.

- (2) The provisions of the Expropriation Act shall *mutatis mutandis* apply to any expropriation referred to in subsection (1) and any reference in that Act to the State or an official of the State shall be construed as a referral to the Regulator and the chief executive officer of the Regulator, respectively.

- (3) The Regulator shall only exercise powers referred to in subsection (1) if it is satisfied that -

- (a) a licensee or registered person, is unable to acquire land or a right in, over or in respect of land by agreement with the owner; and
- (b) the land or right in, over or in respect of land is reasonably required by a licensee or registered person for the performance of its functions.

**Promulgation of regulations**

36. (1) The Minister may, by notice in the *Gazette*, make regulations regarding --
- (a) the procedures to be followed at meetings of the Regulator;
  - (b) the keeping of records by the Regulator;
  - (c) the form, and manner and contents of license applications and the provision of commercial services by licensees;
  - (d) (what is this) (fees payable for license applications)

- (e) the publishing of license applications and the contents thereof;
- (f) the form and manner and time within which objections to license applications shall be lodged and the furnishing thereof to the applicant for his or her response thereto;
- (g) the procedure and timing to be followed in considering license applications;
- (h) license maintenance, extension and revocation fees;
- (i) the incorporation of labour, health, safety and environmental legislation and sub-ordinate legislation by referral;
- (j) the methodology to be followed by the regulator in setting and approving tariffs, price regulation principles and applicable procedures;
- (k) the conversion of a registered activity into a licensed activity;
- (l) the rehabilitation of land used in connection with the construction and operation of pipelines, offloading facilities and storage facilities, the provision of security for rehabilitation purposes and the composition and amount of such security;
- (m) the procedure to be followed in the extension, revocation, variation, suspension or removal of license conditions or of a license;
- (n) monetary penalties payable for the non-compliance with or violation of this Act, regulations or a license;
- (o) the form in which registration shall be lodged;
- (p) registration fees and registration maintenance fees;
- (q) the procedure to be followed and fees to be paid in mediation and arbitration proceedings;

- (r) the procedure to be followed at and the time within which expropriation proceedings should be conducted;
- (s) the inspection into the construction and operation of any facility or commercial service;
- (t) the keeping of records and the rendering of information;
- (u) mechanisms to promote historically disadvantaged South Africans; and
- (v) any other matter that may or has to be prescribed, determined or provided for in this Act.

**Prohibition on agreements contrary to Act**

37. (1) No agreement may contravene any -
- (a) provision of this Act;
  - (b) license granted by the Regulator;
  - (c) condition attached to a license granted by the Regulator;
  - (d) regulation or directive issued under this Act.
- (2) Any agreement in contravention of subsection (1) shall be unenforceable between the parties thereto in a court of law.

**Short title and commencement.**

38. This Act shall be called the Petroleum Pipelines Act, 2001.
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