

15 November 2019

Deputy Secretary
EPA Tasmania
Department of Primary Industries, Parks, Water and Environment
GPO Box 1550
Hobart TAS 7001

By email: Enquiries@epa.tas.gov.au

Dear Sir/Madam,

Draft Environmental Management and Pollution Control (UPSS) Regulations 2020

Reference is made to the email invitation issued by your organisation for comments on the draft *Environmental Management and Pollution Control (Underground Petroleum Storage Systems) Regulations 2020*.

The below constitutes ACAPMA's submission to this consultation.

1. About ACAPMA

ACAPMA is the national peak body representing fuel wholesale and fuel retail businesses in Australia. The Association is first and foremost an employer organisation that is formally recognised under Australian law as the industrial advocate for fuel marketing and fuel distribution businesses.

First established in 1976, the Association started operations as the Australian Petroleum Agents and Distributors Association (APADA) and subsequently changed its name to ACAPMA in 2007. The name change was accompanied by a change in the Association's Constitution to incorporate national representation of fuel retailers.

Today, the Association directly represents 95% of fuel distributors in the country and directly and indirectly (via franchisees and distributor-owned retailers) around 74% of the estimated 7080 service stations operating in Australia.

The scope of ACAPMA's membership extends from 'refinery gate' through to the forecourt of Australia's national network of service stations and petrol convenience outlets – including fuel wholesale, fuel distributors, fuel retailers, petroleum equipment suppliers and petroleum service providers.

ACAPMA's member businesses range from Australian-owned subsidiaries of international companies, to Australian-owned businesses, to independently owned mid-cap Australian companies, and small single retail site family-owned businesses.

Given the diversity of its membership base, ACAPMA strives to assemble a position that reflects the views of most of its' members in accordance with Board-approved public policies.

There are, of course, times when one or more of ACAPMA's members will have a dissenting view – either in part or in whole. Consequently, it is possible that one or more of ACAPMA's members may have elected to provide an individual submission that differs – either in part or as a whole – from the views presented in this paper.

2. General comments

ACAPMA is committed to working with all stakeholders to ensure that Australian fuel businesses take all reasonable precautions to prevent environmental contamination of the built and natural environment in which they operate. This commitment is advanced under Clause 3.6 (Environmental Responsibility) of the Association's *Public Policy Framework (2019)* which can be accessed via <https://www.flipsnack.com/ACAPMA/acapma-2019-public-policys.html>

The Association's commitment in this area extends to the promotion of adherence to *AS4897: The design, installation and operation of underground petroleum storage systems (2008)*, together with strict compliance relevant State/Territory UPSS regulations where such specific regulations exist.

In addition, ACAPMA has published a *Best Practice Guideline* in relation to the management and operation of UPSS entitled: *Loss Monitoring of Underground Petroleum Storage Systems (2017 version)*. This document can be downloaded via: https://acapma.com.au/wp-content/uploads/2017/09/ACA127_BPG_UPSS.pdf.

ACAPMA notes that one of the challenges associated with the development of regulatory frameworks in this area relates to variance in both the age of UPSS infrastructure across the national network and variance in the sophistication of systems and processes used by individual fuel retail businesses (ACAPMA estimates that there are more than 2500 fuel retail businesses operating the Nation's 7000 fuel retail sites, with different businesses using different processes for environmental monitoring).

Any failure to accommodate such variance in the design of new regulations therefore risks the introduction of laws that carry an unnecessarily high enforcement burden, an unnecessarily high compliance cost, or both – possibly leading to ineffective enforcement practices that generate distortion of market competition and/or increase fuel costs for consumers.

Accordingly, ACAPMA believes that UPSS regulations should be developed on a *performance basis* as opposed to prescription of specific practices and processes (and equipment) that may be *fit for purpose* for some sections of the fuel retail industry, but wholly inappropriate for others.

3. Specific comments on the draft Regulations

Within the context of the general comments provided above, the following specific comments are provided in respect of the draft *Environmental Management and Pollution Control (Underground Petroleum Storage Systems) Regulations 2020* and the supporting explanatory statement, noting that there are some significant inconsistencies between these two documents:

3.1 The regulations propose an arbitrary threshold for loss monitoring which goes well beyond accepted industry practices, is contingent on specific technologies, does not appear to be warranted on environmental or legal grounds, and will potentially give rise to an increased incidence of false fails (Part 1).

Contrary to nationally accepted loss monitoring protocols, the new regulation (or rather the explanatory statement) foreshadows the halving of the current ‘fail’ threshold of 0.76 litres/hour (18.24 litres/day). The justification for the departure from this current and widely accepted threshold for loss monitoring is not clear.

ACAPMA estimates that the achievement of this threshold would require installation of new loss monitoring processes and capital equipment (i.e. Automatic Tank Gauging). It is estimated that approximately 70% of the State’s estimated 370 service stations are still using manual dip methods and therefore, the prescriptive nature of this change will likely constitute a capital upgrade cost of around \$25k per site with increased operational and monitoring costs of around \$1500 per year (which in aggregate represents a one-off capex industry investment of \$5.2M and ongoing capex of around \$0.4M per year).

Application of the proposed lower threshold will also potentially result in an increased incidence of ‘false’ fails, where the source of the ‘fail’ is actually temperature/pressure variation (or other system factors) rather than a physical loss of liquid from the UPSS.

As a consequence, fuel retailers will likely be exposed to an increased incidence of additional and unnecessary OPEX costs associated with the conduct of unnecessary and expensive leak investigations—significantly increasing the cost of fuel retailing in Tasmania relative to other Australian State/Territory jurisdictions.

Within this context, it is worth noting that the current 0.76 litres/hour threshold was developed to minimise the incidence of false fails – as opposed to merely being developed around limitations of previous measurement technology.

ACAPMA believes that the additional capital and operation costs imposed on industry (and ultimately passed through to consumers) as a result of the proposed threshold, would likely

far exceed any associated community benefit – and would, in all estimates, be negated by an increase in the average cost of fuel sold to Tasmanian motorists.

Given the absence of any evidence of any environmental harm occurring as a result of a large number of leaks detected between 0.76 litres/hour and 0.38 litres/hour – and the fact that the higher limit is an established limit that strikes a good balance between commercial reality and a fit for purpose environmental safeguard - ACAPMA considers the proposed fail threshold of 0.38 litres/hour to be an arbitrary one without any scientific or legal foundation.

3.2 Notification requirements (Part 1)

ACAPMA notes, and is supportive of, the provisions in the new Regulations that require notification of instances where UPSS Monitoring results in three consecutive months of monitoring. This support, however, is premised in the fact that the nationally and internationally accepted threshold of 0.76litres/hour is maintained and that the legal responsibility for notification rests solely with the fuel retailer (as opposed to any third party contracted entity).

ACAPMA does not support this notification requirement at a lower threshold level under any circumstances owing to the fact that a lower threshold would likely result in an increased number of ‘false’ fails, leading to an unnecessary compliance burden for industry and regulator alike.

3.3 Suitably qualified person (Part 1)

ACAPMA is supportive of the definition and scope of a *suitably qualified person*, as outlined in the draft Regulation.

It is suggested, based on past adverse enforcement experiences, that the Regulation should place equal onus on the Regulator (i.e. Tasmanian EPA) to ensure that it’s enforcement officers are appropriately trained. Specifically, in cases where an environmental assessment (or decommissioning report) duly prepared by a *suitably qualified person* is challenged by the EPA, such a challenge should be premised in the findings of a supplementary assessment undertaken by a suitably qualified person and commissioned by the EPA.

3.4 Equipment Integrity Test requirement for new storage systems (Part 2, Cl. 10.1.b)

This clause stipulates that an EIT for a new installation should be completed “after all installation work, including concreting and sealing, has been completed”.

Such a requirement is considered wholly inappropriate in that a ‘fail’ result would require the site operator to break the newly laid concrete at considerable expense and then repair the hardstand area in the hope that the next test delivers a ‘pass’ result. In short, the proposed staging of the EIT in this Clause (and repeated in Part 2, Clause 11.1.b) is considered unrealistic.

It is suggested that the words “including concreting and sealing” in both clauses might be replaced with the words “*including backfill material in preparation for concreting and sealing*”.

3.4 Decommissioning of UPSS (Part 6, Clause 35.2)

ACAPMA notes that the proposed regulation requires that the decommissioning times proposed in the new Regulations are half that of the current regulations.

It is suggested that the words ‘in use’ are inappropriate in this context, as the wording of this clause means that a forced sale of a site (e.g. as a result of an operator becoming insolvent) would have to be completed within 2 months of ceasing trading. Such a requirement would substantially, and unnecessarily, devalue the commercial sale value of the site.

Accordingly, it is suggested that there is a need to include provision in this clause for circumstances where a site may not be trading (i.e. site not ‘in use’) but be the subject of a genuine sale process.

4. Operational Protocols

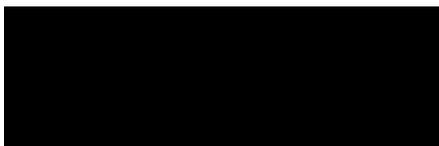
ACAPMA notes reference to the development of a UPSS Protocol to be used for the purposes of “operationalising” the new Regulations. ACAPMA is keen to be involved, alongside other industry and government stakeholders, given that the particulars of this ne protocol could potential have severe adverse commercial consequences for fuel retailers.

5. Further information

ACAPMA welcomes the opportunity to provide feedback on the draft Regulations.

Should you require any clarification of the items discussed in this submission, please contact me directly.

Yours sincerely,

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Mark McKenzie
Chief Executive Officer