



The Department of Minerals and Energy Hydrocarbons and Energy Planning Branch – Liquid Fuels

Charter for the South African Petroleum and Liquid Fuels Industry: Empowering Historically Disadvantaged South Africans

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Preamble

Being mindful of:

- The imperatives of redressing historical social and economic inequalities as stated by the Constitution of the Republic of South Africa, *inter alia* Section 9 on Equality (and unfair discrimination) in the Bill of Rights, and section 217.2 on procurement where the "organs of state" may implement a "procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination";

- The policy objective stated in the Energy Policy White Paper to achieve "Sustainable presence, ownership or control by historically disadvantaged South Africans a quarter of all facets of the liquid fuels industry or plans to achieve this"; and
- The Black Economic Empowerment Commission's definition of Empowerment as "an integrated strategy aimed at the substantially increasing black participation at all levels of the population.

And noting:

- The enactment of the Preferential Procurement Framework Act 2000, Act 5 of 2000;
- The Employment Equity Act 1998, Act 55 of 1998;
- The Competition Act 1998, Act 89 of 1998 (Also refer to the Amendment Act 1999, Act 35 of 1999 and subsequent amendments); and
- The Skills Development Act 1998, Act 97 of 1998.

The signatories have developed this Charter to provide a framework for progressing the empowerment of historically disadvantaged South Africans in the Liquid Fuels Industry.

Scope of Application

This Charter applies to the privately owned parts of the industry, and to all parts of the value chain, *inter alia*:

- Exploration and production of Oil;
- Liquid fuels pipelines; Single Buoy Mooring's; depots and storage tanks;
- Oil refining and synthetic fuel manufacturing plants, including lubricants;
- Transport, including road haulage and coastal shipping; and
- Trading, including import and export v Wholesale and retail assets/infrastructure.

Interpretation

For the purposes of interpreting the White Paper on Energy Policy, the following terms apply:

- The term Historically Disadvantaged South Africans (HDSA) refers to all persons and groups who have been discriminated against on the basis of race, gender and disability;
- HDSA companies are those companies that are owned or controlled by historically disadvantaged South Africans which operate on a basis to meet all aspects of this Charter. These companies, which operate within and supply the industry, submit affidavits to Government reconfirming their ownership status in December of each year. Government publishes this list annually;
- Ownership refers to equity participation and the ability to exercise rights and obligations that accrue under such ownership;
- Control of a business entity can be achieved in a number of ways;
 - a. A majority shareholding position, i.e. 50% + 1 share;
 - b. An effective controlling shareholding;
 - c. A majority of a board of directors; and/or
 - d. A shareholders agreement.
- Sustainability refers to:
 - Medium to long-term viability and adaptability through a presence across all facets of the liquid fuels value chain; o ventures with prospects of long term profitability; and

- Requisite levels of skills and access to technology.
- A quarter of all facets of the liquid fuels industry or plans to achieve this The 25% ownership and control of all facets of the industry that the parties to this Charter are seeking to bring about over a ten year period means HDSAs owing in total, by the end of that period, not less than 25% of the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry. The parties to the Charter agree that the measurement of the extent of the achievement of this target of 25% of the aggregate value of the equity will be based on the asset values per the audited accounts of the entities concerned.

Supportive Culture

The success of this program depends on the disposition of those who have responsibility for managing the process.

Member companies and government therefore undertake to appoint to such positions, managers who will understand the spirit and background under which these policies were conceived in order to create a supportive and enabling environment for business success.

It is noted that the process that gave rise to this Charter has increased the understanding and cooperation between established industry players and HDSA companies.

Companies undertake to foster a supportive culture with regard to all aspects of this Charter when dealing with HDSAs. Companies subscribe to incorporating and driving a process of transformation and a change of culture in their statements of business principles.

Capacity Building

The South African labour market does not produce enough of the skills required by the petroleum industry, especially the HDSA oil companies. Organized industry and government work together in addressing this skills gap.

In its bi-lateral relations with relevant countries, government endeavours to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with oil companies operating outside of South Africa.

Industry undertakes to build skills of its employees and report on progress annually in an agreed format. The industry, through the standing consultative arrangements, interfaces with statutory bodies such as SETA (Sectoral Education and Training Authority), in the development of skills development strategies

Employment Equity

Companies publish their employment equity targets and achievements and subscribe to the following:

- South African subsidiaries of multinational companies and South African companies focus their overseas placement and / or training programmes on historically disadvantaged South Africans;
- Identifying a talent pool and fast tracking it;
- Ensuring inclusiveness of gender;
- Implementing mentorship programmes; and
- Setting and publishing "stretch" (i.e. demanding) targets and their achievement.

It is noted that the Capacity Building efforts referred to above will assist in this process.

Private Sector Procurement

Participants in the industry subscribe to and adopt supportive procurement policies to facilitate and leverage the growth of HDSA companies. Such policies include criteria that favour HDSA companies, all else being equal.

Scope:

- The scope of procurement shall include supplies (e.g. Crude), products and all other goods and services;
- HDSA companies are accorded preferred supplier status as far as possible;
- List of suppliers: It is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist in compiling such a list that will *inter alia* be published by government on the Internet and updated regularly; and
- All participants shall continue to deploy every effort to ensure that vessels used in the transportation of supplies or products shall meet all prescribed health, safety and environmental standards.

Public Sector Procurement

Government will engage with State Tender authorities to draw their attention to the White Paper milestones with respect to economic empowerment of historically disadvantaged South Africans, with the aim of giving effect to supportive procurement policies within this sector.

Access and Ownership of Joint Facilities

Access to large infrastructure for the movement and storage of crude oil and petroleum products, such as SBMs, pipelines and depots and storage tanks, is acknowledged as a critical weakness in the supply chain of emerging companies. In this regard owners of such facilities provide third parties with non-discriminatory access to uncommitted capacity. HDSA companies are to be given fair opportunity to acquire ownership in such facilities.

Refining Capacity

Access to refining capacity also represents a key weakness in HDSA companies' supply chain. Oil refiners and synthetic fuel manufacturers seriously consider:

- Selling shares in their facilities to HDSA companies;
- Making capacity available to HDSA companies e.g. through toll refining agreements; and
- Including HDSA companies as joint venture partners in any expansions or upgrades.

Retailing/Wholesaling

The parties agree to create fair opportunity for entry to the retail network and commercial sectors by HDSA companies

State Assets

Government undertakes to deal with state assets in a manner that promotes the objectives of the White Paper on Energy Policy and this Charter.

Upstream

The activity of oil and gas exploration and production is acknowledged as a high-risk activity that provides limited opportunities for new entrants. Government continues to make licenses subject to the following conditions:

- All licenses for exploration and production in the country's offshore area reserve not less than 9% for HDSA buy-in; and
- All licensees contribute funds toward the "Upstream Training Trust" to fund skills development at various levels. As discoveries are made, further skills development strategies are devised to empower historically disadvantaged South Africans in this sector.

Financing

Finance is a serious constraint for HDSA companies.

- Government assists industry in explaining the milestones in the White Paper on Energy Policy, as well as explaining the needs and characteristics of the industry to financing institutions, both private and public;
- Companies investigate and implement internal and external financing mechanisms for giving HDSA companies access to equity ownership within the South African context; and
- Companies to consider engaging HDSA companies in viable strategic partnerships.

Terms of Credit to HDSA Companies

Industry participants acknowledge that terms of credit are important to HDSA companies and agree to take this into account in bilateral activities.

Regulatory Framework and Industry Agreements

Government's regulatory framework and industry agreements strive to facilitate the objectives of this Charter.

Synfuels Supply

Parties to the Synfuels Supply agreements will strive to accommodate HDSA companies, which lack the facilities to comply fully with such agreements in the fairest way possible.

Consultation, Monitoring, Evaluation and Reporting

It is recognized that the achievement of the objectives set out herein entails an ongoing process. The DME conducts an annual survey of the industry to evaluate progress in achieving the objectives of the White Paper. Companies submit such data as is required at the end of each year, including employment equity data, procurement targets, etc. The aggregated information is published and forms the basis of the annual forum.

Oil companies have taken major initiatives in this regard and have participated in a first survey earlier this year. Parties hereto participate in an annual forum for the following purposes:

- Monitoring progress in the implementation of plans;
- Developing new strategies as needs are identified;
- Ongoing government/industry interaction in respect of these objectives;
- Developing strategies for intervention where hurdles are encountered;
- Exchanging experiences, problems and creative solutions;
- Arriving at joint decisions; v reviewing this Charter if required; and
- Giving notice of withdrawal