

Agenda Item No 3(a)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

10 January 2017

Report of the Strategic Director – Economy, Transport and Communities

SAFE STORAGE AND DISPENSING OF PETROLEUM

(1) **Purpose of Report** To inform the Cabinet Member of activities undertaken by the Trading Standards Division to ensure that local businesses are complying with legal requirements concerning the safe storage and dispensing of petroleum.

(2) **Information and Analysis** The Local Authority has a duty to enforce the provisions of Petroleum and other associated legislation that places a responsibility on local businesses to store petroleum safely. For many years, the enforcement of these provisions was delegated to Derbyshire Fire and Rescue Service (DFRS) but in July 2013, the decision was taken to bring this activity in-house as part of a cost saving measure and from April 2014 inspection and enforcement has been undertaken by Trading Standards personnel.

Legislation to control the storage and supply of petroleum was enacted in the 1920's after several accidents resulting in fatalities. Petrol is a dangerous substance; it is a highly flammable liquid that gives off vapour which can easily be set on fire and, when not handled safely, has the potential to cause a serious fire and/or explosion. Until recently, any 'petroleum dispensing site' (eg petrol station) had to be licensed with the local authority and comply with licensing requirements to ensure the safe storage of petroleum spirit and drainage systems to ensure that in the event of a spillage, petroleum does not get into the local drainage system and pose an environmental hazard. The Petroleum (Consolidation) Regulations 2014 (PCRs) replaced the licensing regime with a certification system. Any person wishing to store and dispense petroleum has to apply to the Petroleum Enforcement Authority (PEA) i.e. Derbyshire County Council, for a Petroleum Storage Certificate (PSC). Providing the PEA is satisfied that adequate provisions have been made for public safety, it is obliged to issue a PSC on payment of the statutory fee. Further details about the changes in petroleum legislation are provided in the appendix to this report.

There are currently 119 petroleum dispensing sites across Derbyshire, the total capacity of which at any time amounts to a total of between 7 and 8 million litres of petrol. Derbyshire Trading Standards Service (DTSS) enforces the legislation that permits the storage of petroleum and seeks to ensure the health and safety of persons, including the public, who work at or visit these sites to fuel their vehicles. The Division has a programme of inspections to storage sites to check on compliance with the licensing requirements.

Site Inspection and Enforcement

The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR) places duties on employers to ensure that people are protected from the risk of fire, explosion and other hazards arising from the presence of a dangerous substance.

At petrol dispensing sites, DSEAR requires site operators to:

- put control measures in place to either remove the risks associated with petroleum storage or, where this is not possible, control them;
- make sure employees are properly informed about and trained to control or deal with the risks from petroleum;
- put controls in place to reduce the effects of any incidents;
- prepare plans and procedures to deal with accidents, incidents and emergencies; and
- identify and classify areas of the workplace where explosive atmospheres may occur and avoid ignition sources in those areas.

Trading Standards officers, who have received specific training, carry out routine visits to petroleum storage sites to check that sites are being operated and maintained safely. Inspection priority is determined by risk-assessment to established criteria and may also be influenced by compliance history and location. This process typically indicates a bi-annual inspection is appropriate. For the purposes of this work, Trading Standards officers are authorised to act as Inspectors under the Health and Safety at Work, Etc. Act 1974 (HASAWA). In this capacity, officers can issue legal notices requiring operators to carry out improvements or, in cases of immediate risk, to prohibit activity.

Petroleum enforcement in practice rarely requires these measures to be executed because the site licensing/certification process ensures, to a large extent, that site operators are responsible businesses that recognise the importance of safety measures. Rectification of any shortcomings identified during inspections is normally undertaken on a voluntary basis by the site operator within a period agreed by the Inspector.

Since re-assuming enforcement duties, the Trading Standards service has carried out 128 inspection visits to petroleum sites within Derbyshire. In 57

cases, non-compliances were identified and there have been a further 57 follow-up visits to check that satisfactory remedial action has been taken.

Examples of non-compliances found on inspection include:

- An Electrical Safety Certificate for the site was unavailable. It was subsequently established that the Electrical Certificate then in force had classified the site as 'Unsatisfactory' with several actions marked as requiring 'immediate' attention. These included faulty earthing and unsealed cable ducts which could allow dangerous petrol vapour to enter the site kiosk area. In this case a prohibition notice was prepared, although not served, as the site operator voluntarily closed the site until the electrical defects were rectified and signed-off as satisfactory.
- A car-washing facility had been added to the kiosk building by means of a wooden 'lean-to' shed-type construction erected around the tank vent pipes. The area below vent pipes is a designated hazardous zone because explosive petrol vapour can be present. Inside the shed there were trailing electrical extension cables to which a compressor was connected. None of this wiring was intrinsically safe (i.e. suitable for use in hazardous areas) and several cigarette butts on the floor indicated that car-wash staff were using the shed as a rest area. The operator has been instructed to stop using this facility immediately. Formal prohibition will be issued if it is found on re-visit that the activity has not ceased.

Two incidents have been brought to the Trading Standards attention serving to indicate the need for vigilance at petroleum storage sites:

- A tanker driver executing a delivery to a site in Dronfield was blown backwards by a small explosion which occurred when vapour in a manhole ignited. An investigation established that the likely cause was the combination of an earth lead in the manhole having broken due to wear and tear and a static discharge from some part of the driver's clothing which, although anti-static, may have lost some of its protective characteristics due to general deterioration.
- A worker was hospitalised after an explosion occurred whilst decommissioning works were taking place on a Long Eaton site. Investigations indicated that the blast was caused by residual petrol vapour in an old fuel line being ignited by metal burning equipment. It is a requirement that redundant petrol tanks are made safe by an approved method and, ironically in this case, the incident occurred during this process.

Petroleum Fees

The annual fee for maintaining a PSC is set on behalf of the Government by the Health and Safety Executive. The fee structure is based on the total capacity of the petroleum containment system. The PSC fees were introduced with the PCRs in 2014 and were increased in April 2016.

Total Capacity (litres)	Annual Fee (from October 2014)	Annual Fee (from April 2016)	Number of sites (Nov 2016)
2,500	£42	£44	1
2,500-50,000	£58	£60	34
Over 50,000	£120	£125	84

The fee income from PSCs in any one year is now subject to variation as the fee received is determined by the amount of years the keeper in each case wished to pay for. Operators of larger capacity sites generally pay for either 5 or 10-year periods, whereas smaller operators tend to continue to pay annually or for a period of 3 years.

Income (to November 2017) resulting from the issue of PSCs since the PCRs came into force is as follows:

Renewal period	2014-15	2015-16	2016-17 (to date)
multiple years	£9,428	£12,678	£5,495
annual	£6,496	£5,104	£1,905

Since April 2014, DTSS has overseen the installation and certification at three new petroleum dispensing installations:

- Euro Garages Ltd – Markham Vale Service Station (M1J29a)
- Tesco Stores Ltd – Ilkeston
- Wm Morrison Supermarkets plc – Ilkeston.

In each case officers have been consulted over the proposals and suitability of containment systems, site layout and drainage systems, and suitable access and egress for tanker deliveries are amongst the features scrutinised against published industry guidance.

In the case of new sites, particular attention is paid to below-ground infrastructure during construction as some aspects, such as tank fixing and surrounding material, cannot be checked once buried. Officers have attended tank installations in each case to check that the proposed arrangements are adhered to and that underground works were completed to the required standard before the forecourt groundwork was completed. Further checks

during site construction, which typically takes place over several months, are carried out prior to issue of a PSC when petroleum is introduced to the site.

The Tesco site in Ilkeston was of particular interest as the proposal was for an above-ground tank installation. These had, until recently, only been considered and approved in special cases, such as locations where environmental concerns had dictated that underground storage was unsuitable. Modern developments in petrol tank construction and revised risk-assessments have allowed above-ground storage to become routinely acceptable. As the Ilkeston site was the first of other similar above-ground sites that Tesco were proposing to construct elsewhere in the UK, Tesco's Primary Authority for petroleum matters (Hertfordshire County Council) was asked to give 'assured advice' that the proposals met the criteria for health and safety.

Installation of new tanks has also been overseen at two existing sites during major refurbishments:

- Asda Stores Ltd – Ilkeston
- Euro Garages Ltd trading as Nether Green Service Station, Langley Mill

A total of 37 site visits to check site works and that 'Prescribed Material Changes' as required to be notified to the PEA have been carried out satisfactorily; these include major site refurbishments at:

- Central England Co-operative Ltd – Wirksworth
- Asda Stores Ltd - Woodville

Environmental requests

Information about petrol storage sites is occasionally requested by persons involved with redevelopment works. Subject to authorisation from the landowner/site operator, DTSS responds to such requests and makes a charge for providing this information which is usually obtained from historic petrol storage files previously maintained on behalf of the licensing authority by DFRS. Cabinet approval for charging for these services was granted in September 2014; annual income from which was then estimated at around £2,000.

There have been a total of 47 environmental requests to the Trading Standards service since charging was introduced, resulting in the following income:

	2014-15	2015-16	2016-17 (to date)
Search fees	£1,517	£2,083	£651

A further 12 potential searches were either not followed up by the client or refused due to no authorisation.

(3) **Social Value Considerations** Petrol filling stations are petroleum sites for the purposes of petroleum and associated health and safety legislation. It is taken for granted that such venues are safe, but it is clearly important that all petroleum sites are inspected on a regular basis, in accordance with a risk-based regime, to ensure that they remain compliant with legal requirements. It is also important that local businesses can compete on a fair and equal basis and that no business can gain a competitive advantage by cutting corners and putting the safety of the public, and employees, at risk.

In preparing this report the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(4) **Key Decision** No.

(5) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(6) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(7) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the report.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Appendix – Changes to Petroleum Legislation

Legislation relevant to the licensing of petroleum storage was the Petroleum (Regulation) Acts 1928 and 1936. Derbyshire County Council was a Petroleum Licensing Authority (PLA) for the purpose of these Acts.

The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR) made under the Health and Safety at Work, Etc. Act 1974 (HASAWA) govern the safe operation of petroleum storage sites and gave PLAs enforcement responsibility for petroleum storage at licensed 'dispensing premises'.

Dispensing under DSEAR is defined as 'manual or electric pumping of petroleum-spirit from a storage tank into the fuel tank of an internal combustion engine, whether for the purposes of sale or not'.

Licensing and Certification of Petroleum Storage

In 2014, the Petroleum (Regulation) Acts were replaced by the Petroleum (Consolidation) Regulations 2014 (PCRs) made under the HASAWA and which came into force on 1 October 2014. The main changes introduced by the PCRs were:

- Replace **licences** for petroleum storage with **Petroleum Storage Certificates** (PSCs).
- Re-designate PLAs as Petroleum Enforcement Authorities (PEAs).
- Place a duty on PEAs to grant PSCs to dispensing premises where:
 - they are properly applied for; and
 - the PEA is satisfied that the containment system would not create an unacceptable risk to the health or safety of any person.
- Require that a PSC is issued in relation to a storage site, rather than a legal 'person', subject to the payment of a fee to the PEA.
- Allow for the PSC fee to be paid (by the person keeping petroleum at the site) for any period from 1 year to 10 years.
- Introduce requirements for the keeper of petroleum to notify the PEA of:
 - prescribed Material Changes* to an existing storage site;
 - ceasing to occupy a storage site; and
 - keeping petrol on a site where a PSC exists (change of keeper).

*Prescribed material changes are:

- Ceasing to use a petrol storage tank.
- Removal or permanent decommissioning of storage tanks.
- Installation of any petrol tank, pipework.
- Installation of any petrol pump in a new location.

Since the introduction of the PCRs, the Trading Standards service has issued PSCs in replacement of licences as and when existing licences have expired.

(There remains a provision under the PCRs to licence bulk storage of over 275 litres petroleum at non-dispensing, non-workplaces; e.g. private stores)