

Industry Discussion Paper on Enhancing Safety & Compliance of Mobile Fuelers in the Cayman Islands



Issue Date: July 29, 2021

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Addressing Mobile Fueling Equipment Compliance in the Cayman Islands

A. Introduction and Background/Overview

The Utility Regulation and Competition Office (**'OfReg'**, or the **'Office'**), is the independent multi-sector regulatory body, with responsibility for the information & communication technology (**'ICT'**), energy, electricity, water, wastewater and fuels sectors. The Office was established by section 4(1) of the Utility Regulation and Competition Act, 2021 Revision (the **'URC Act'**) and commenced operation on 16 January 2017.

In the fuel sector and markets, the Office monitors competition, facilitates and encourages innovation, ensure market efficiencies and has wide powers to take such action as it deems necessary, to promote and sustain competition. The Office is also responsible for compliance with, and enforcement of the Dangerous Substances Act (**'DS Act'**) to ensure safety and wellbeing of the public remain paramount.

In carrying out its function under the DS Act and the Dangerous Substances Regulation, 2017 (**'DS Regulations'**), the Office continually engages the sector through its annual inspection program, calibration regime and other legally mandated initiatives and programs, to ensure the sector is meeting its minimum obligations under the relevant codes and standards adopted by the Office to regulate the sector. The process by which fuel is transported within sites or between locations (regulated premises) via public roadways continues to be a key focus area of the Fuels Inspectorate and recently, both the age of equipment in use, their operating condition, and challenge to consistently comply with the various requirements under the DS Act and Regulation is becoming a concern. The Office is aware of the significant costs associated with replacing mobile fueling equipment and assets, however the paramountcy of public safety in safeguarding lives and protecting properties and the environment necessitate the Office engages the sector (and public) on an appropriate and timely solution.

B. Legislation and Obligations

The Office derives its powers, functions and obligations in the fuel sector from the URC Act, the **DS Act** and DS Regulations, and the Fuels Market Regulation Act, 2017 (**'FMR Act'**). The primary legislation which addresses safety and compliance in the sector is the DS Act and its Regulation, and this set out the broad minimum requirements for equipment used in the handling, storage and transport of dangerous substances. Key provisions of these legislations are as follows:

1. Section 4 of the DS Act sets out that the operator of a permitted vehicle shall not operate or cause such a vehicle to be operated without a valid operating permit

from the Office. The grant of an operating permit shall be in accordance with Regulations 16 to 29 of the DS Regulation.

2. Section 12 of the DS Act set out the obligation relating to the avoidance of pollution and safe conduct of activities at regulated premises and permitted vehicles.
3. Section 13 of the DS Act sets out the requirement relating to the reporting of pollution to the Office, arising from the handling, storage and transport of dangerous substances.
4. Section 15 of the DS Act sets out various requirement including the assessment of safety, integrity and release detection system of permitted vehicles, among other things.
5. DS Act section.24 sets out provisions for the making of regulations by Cabinet to address broader matters relating to the dangerous substances.
6. Sections 25 and 26 sets out the provisions relating to recovery of cost by the office in discharging its function under the Law, and emergency powers of the Chief Fuels Inspector in carrying out his function under the Law including directing and or detaining permitted vehicle for legitimate reasons.
7. The DS Regulation sets out enabling provisions which include the requirement for loading, unloading, calibrations, fees, administrative penalties and other related matter for the safe operation and compliance of permitted vehicles.
8. The URC and FMR Acts sets out the other related requirements for safety under URC Act section.6 and section.87, and section 5 of FMR Act.
9. The key codes and standards employed by the Office to oversee and regulate compliance in the sector include NFPA 385 and Code of Federal Regulation (49CFR).

The Office recognises that the way it functions, makes decisions, and acts in accordance with its jurisdiction under the various laws, will affect persons and entities in various ways and to varying degrees. As such and in order to facilitate discussions on enhancing the safety and compliance of mobile fueling in the Cayman Islands for public safety and the preservation of properties and the environment, this discussion paper lays out the initial consideration of the Office for broader engagement. In the spirit of dialogue with the industry and the public, the Office is hereby seeking your input which will be used, where relevant, to inform further consultation and ultimately, the Office's determination on the adoption of a final position in this area of its responsibility.

C. Discussion Consideration/ What we are proposing?

Mobile fueling vehicles operating in the public domain are required to meet minimum requirement in the areas of road safety and fueling safety. Roadworthiness of the vehicles

are primarily enforced under the Department of Vehicle and Drivers' Licensing (DVDL) inspection regime, however an established collaborative agreement exists between OfReg and DVDL to further strengthen and ensure all mobile fueling vehicle are compliant with the relevant codes and laws of the Cayman Islands. Currently, joint inspections are done on all mobile fueling vehicles at DVDL facility, with plans for future augmentation of the combined oversight and compliance regime between these two entities.

Recently, the annual inspection program (of mobile fueling vehicles) has identified areas where opportunities for improvement exists. Owners and operators generally make effort to address areas of concerns identified in the Office's inspection reports, however with ageing and in some cases near-obsolete equipment where replacement parts are difficult to source, it presents a formidable challenge for equipment to be maintained to an acceptable standard. These challenges spur on other issues such unconventional approaches to rectifying issues, which compromises equipment and material integrity, safety system and other key interrelated operating systems on these equipment which then poses a challenge for the Office to approve these equipment for continued use in the jurisdiction. The jurisdiction also does not have facilities and competent private entities to review and certify certain repairs on mobile fuel tanks in particular. This in turn places significant strain on the Office to assist, however in some cases, operators have had to retire mobile equipment which could not be permitted by the Office.

The following highlight some of the common challenges observed during the recent series of inspection on mobile fueling vehicles:

- Excessive rust predominantly on chassis and key components such as emergency release valves and dome covers.
- Dents and heavy scoring (deep scratches) on the tanks.
- Hairline cracks observed at stress points at the base of tanks.
- Interlock (pneumatic) systems being bypassed or simply not working.
- Improvisations involving the use of rope, pins and zip ties to hold malfunctioning equipment or components in place.
- Minor leaks or excessive 'sweating' from various components or connections.
- Worn out and unreadable name plates on tanks
- Hanging loose and improper wiring.
- Broken or malfunctioning gauges.
- Electrical, pneumatic or hydraulic switches not being properly installed.
- Improper installation and location of Fire Extinguishers.
- Missing spill equipment on mobile refuelling equipment.

Public safety remains the priority for the Office, and mobile fuel equipment, by virtue of their operations, translates to a mobile hazard which requires important checks and balances consistently being in place for compliance. All of the deficiencies outlined above contributes to unsafe situations which can potentially result in incidents. By requiring all mobile fuelling equipment in the Cayman Islands to meet or surpass the current standards

set which are in place, the Office is ensuring the safety of the public is safeguarded in accordance with the provision of section 5. (1) (J) of the FMA. Based on the foregoing observations and ongoing efforts to attain an acceptable level of compliance, the Office considers that maintaining a younger fleet in operation in the fuel sector will significantly enhance compliance and provide a greater degree of assurance of safety to the public.

To achieve this, all mobile fuelling vehicles will be permitted under DS Act, if either the vehicle/chassis or the cargo tank and main components are within a maximum allowable period from the date of manufacturer or date of entry to the Island (“relevant dates”), providing certain revalidations or recertification were conducted immediately prior to importation. The Office is proposing this period to be fifteen years and not exceeding twenty years from the relevant dates, where the permitted vehicle is maintained to an acceptable standard on a consistent basis. In cases where the cargo tank is newer/younger than the truck, then the tank can be transferred or fitted to newer/younger truck which will allow the cargo tank to be operated until it reaches the term limit to be set by the Office following this consultation. The same reasoning applies if the truck is newer/younger than the tank. Further, to ensure mobile fueling vehicle are permitted for a reasonable period from the date there are imported into the Cayman Islands, the Office considers that mobile fueling vehicle older than fifteen years will not be allowed into the Islands, however operator may request a waiver for vehicle up to ten years old to supply their fuel trade. For the avoidance of doubt, both the truck and the cargo tank can be repurposed with approval from the relevant authority to be used for other purposes after it has been decommissioned from fuel services. The Office acknowledges the financial implications this would have on entities operating in the industry and in order to address these concerns, the date of implementation of this new directive will be staggered. Additionally, grant of extension may be considered in cases where operators may be faced with significant financial burdens to comply, to allow for continued operations. However, there may be added layers of inspection and testing of the equipment, to be granted extensions beyond 20 – 25 years from the relevant dates for continued operation in the fuel sector. That exception would be given to mobile refuelling equipment that are meticulously maintained on a yearly basis, with no recurring or major compliance issues based on the codes and standards in force.

As an extension to the primary consideration of having more updated mobile fuel equipment in the sector, the Office consider it would be convenient to incorporate the requirement of all mobile fueling vehicle converting to Propane (LPG¹) propulsion, with the option for further conversion to LNG², if and when it becomes commercially viable in the Cayman Islands. This is an optional consideration and operators are welcome to provide initial comments as they see fit.

¹ Liquefied Petroleum Gas

² Liquefied Natural Gas

D. Why This is Being Proposed and How it Fits into OfReg's Regulatory and Compliance Agenda

As outlined in section B of this paper, the Office is mandated under the various legislation, to ensure that the safety of persons on islands is safe guarded. While a number of mobile fueling vehicles are in generally good order, there are others, which will require significant investment to bring their status into full compliance. If nothing is done in cases where issues are emerging in relation to mobile fueling equipment, the current and future status of these operations will lead to public safety concerns and incidents. Most of the mobile fueling equipment are at least 10 years or older since they have been imported to the Cayman Islands. Operators have been using various way and means, at which in some cases appear to be unconventional to fix issues in order to keep their mobile equipment operational. The Office understands that part of the reason some of the approaches are used by operators, is due to the lack of availability of (OEM³) replacement parts or equipment for these older trucks. Notwithstanding, circumstances where operators may be required to bypass safety and interlock system and equipment to keep their vehicle operational for commercial purposed is in breach of the laws.

The Office considers that a younger and compliant fleet, would significantly enhance and assure public safety. These will decrease the probability of equipment malfunctioning and reduces the need for operators to come up with unsafe ways to “temporarily” fix issues. A younger fleet would also incorporate newer technology including combustion and propulsion systems which aligns with the National Energy Policy. While the change would involve reasonable levels of (initial) capital investment, the Office believes that requiring a younger fleet would translate to lower amounts spent by businesses in the industry on yearly upkeep and maintenance. In defining a “younger fleet”, the Office is proposing vehicles should maintain a mean age of 10 years but not older than 15 years of age from the relevant dates outlined earlier.

Incidents relating to improper handling and transport of dangerous substances for which the Office is found to be negligent places a significant liability on the Office and government.

E. Treatment of Outcomes of this Process

All feedback and input provided in relation to this discussion paper will be taken into consideration to inform a refined proposal and subsequent consultation paper. The formal consultation document will set out the Office's substantial position on the determination it wishes to implement which will include draft of rules and an implementation plan for the policy, rules and guidelines derived from the process. Comments received from persons or entities on the content of this discussion paper, will be treated as confidential, if desirous.

³ Original Equipment Manufacturer

G. High Level Implications Considered

G.1 Consideration 1: Cost of Implementation

The Office is aware that these requirements is likely to have an impact on cost in the sector. The true cost of maintenance and repairs for older equipment with significant defects is anticipated to be significant and may not provide the guarantee of reliability and full compliance required under the laws. The Office is open to reviewing cost-benefit analysis with the sector to quantify and qualify this impact. Achieving consistency in this area across the sector also aids consistency in the cost associated with operating mobile fueling vehicles in the sector. In order to ensure the financial impact on the industry is optimised, a phased implementation can be considered for everyone in the industry with a firm future deadline where all fleet must be compliant.

G.2 Consideration 2: Managing the Disposal of Mobile Fueling Equipment

Disposal of mobile fueling equipment, whether in part or the complete unit may present a challenge to the industry and Islands as a whole. The Office will engage further on options to minimise the costs or implications associated with disposal to ensure, where necessary, the process is cost effective. In order to avoid disposal, where practical, the equipment can be repurposed for alternative use, which will exclude certain uses such as utilising the cargo tank for transport of potable water. Other options include demolishing the equipment for sale as scrap metal and recycling parts which can be reused. The trucks per se, can be retrofitted with other equipment (flatbed, tray, etc) and reused for transporting miscellaneous cargo, cylinders, etc. among other things. There is also the option of (selling and) re-exporting the mobile fueling equipment.

G.3 Consideration 3: Adjustment Period

The changes being proposed in this discussion paper will require an implementation period which may vary depending on the state of equipment and an entity's ability to bear the cost of the change out. The Office acknowledges that changing out an entire fleet in a short period of time will be cost prohibitive and will implement a criteria based on equipment age and condition, customer served (or customer base), history, any location consideration, and other relevant factors to determine change out phase/timing. Certain exemptions based on objective criteria will be published and considered for operators to continue to operate until the future cut of period/date. Where exemption requirements are not strictly

adhered to, the equipment will automatically be identified for decommissioning as a mobile fueling equipment.

H. Seeking your Views/ Broad questions For Consideration

The Office invites comments, reactions and suggestions within the context of the following:

- a) Do you or do you not support the proposed requirement and why?
- b) What are your thoughts on how the phased implementation should be conducted?
- c) What implementation timeline(s) would you consider to be reasonable?
- d) What factors should determine how long a company has to fully comply with the term limit requirement set out in the discussion paper?
- e) What exemptions should be considered and how do you propose the exemption process be structured?
- f) What are your thoughts on how to manage old mobile fueling equipment when compared to how these are handled in other (comparable) jurisdictions?
- g) What are the financial and other implications this requirement would have on your business?
- h) Any other comments you wish to provide?



I. How to Respond to this Discussion Paper

1. Respondents are asked to provide input and comments on this document. All submissions on this document should be made in writing and should be sent to the Office by **5:00 p.m. on 20 August 2021.**
2. Submissions may be filed as follows:

By e-mail to:

fuels@ofreg.ky

or by post:

Utility Regulation and Competition Office
P.O. Box 2502
Grand Cayman KY1- 1104
CAYMAN ISLANDS

or by courier:

Utility Regulation and Competition Office
3rd Floor, Alissta Towers
85 North Sound Rd.
Grand Cayman
CAYMAN ISLANDS