



**SOUTH AFRICAN PETROLEUM INDUSTRY ASSOCIATION
(SAPIA) OIL INDUSTRY AGREEMENT ON THE
MANAGEMENT OF HYDROCARBON
CONTAMINATION OF GROUNDWATER
FROM UNKNOWN SOURCE(S) 2020**

THE AGREEMENT

a) SCOPE

1. This agreement is entered into between the SAPIA members in South Africa (including integrated and non-integrated members), which are signatories to this agreement (the “**Member(s)**”).
2. This agreement is applicable to all petrochemical sites or a combination of sites, where there is more than one Member within a radius. The radius may be extended considering local circumstances, technical issues and/or other practical considerations and after discussion with the Members identified as being, or potentially being, involved.
3. This agreement is further applicable to historically owned/operated sites within the radius where there is no evidence to exclude such a site.
4. This agreement is further applicable to sites that store petrochemical products for their own use within the radius.
5. In the case where the site is owned, leased or operated by a third party (“**Third Party**”) but carries the branding of a Member, the Member will be requested to join the Working Group established in terms of clause 9 (*The Process*) below, and to investigate the matter by virtue of the existing relationship with the Third Party. Should the Third Party fail to co-operate, the matter will be referred to the relevant authority or regulatory body (together the “**Authorities**”).
6. This agreement will apply to situations where multiple Members are required to carry out investigations on the same matter.

b) EXCLUSIONS

1. This agreement is not applicable to SAPIA members who are not signatories to this agreement. In such cases, the matter will be referred to the relevant Authorities, who will determine the course of action needed.
2. The agreement does not apply to individual Member investigations.

c) EFFECTIVE DATE

1. Notwithstanding the various dates of signature of this agreement by each of the Members, this agreement will only come into effect on the date on which the last of the SAPIA integrated member has signed this agreement, and will apply immediately to any Member signing thereafter.
2. This agreement shall endure indefinitely unless terminated by replacement, or by agreement between the parties, or at the election of SAPIA.

d) PURPOSE

1. This agreement has been established to ensure that action is taken to address groundwater contamination issues where the source(s) of the contamination bears the signature of a typical petroleum source but is not immediately identifiable.
2. The objectives are to:
 - i. minimise the risk to human health and the environment by early risk assessment and minimising the delay in initiating appropriate remedial actions to address the source(s) and to initiate corrective actions to address the contamination. This action is required to minimise the further spread of the contamination and subsequent related environmental impacts and reputational impacts amongst other negative consequences; and
 - ii. manage the situation during the process of identifying the source(s) liable for the contamination. If this is not possible, it is then expected that all Members operating or which have previously operated within the radius of the site where the contamination is present, to equally share the costs of the required actions to address the risks identified. This is to ensure that the hydrocarbon contamination from the unknown source(s) is addressed appropriately and does not cause an unacceptable risk to human health or the environment.

e) THE PROCESS

1. SAPIA will play a co-ordination and facilitation role. SAPIA will not carry costs associated with such investigations or corrective actions. SAPIA does not carry any legal accountabilities or liabilities of its Members.
2. If hydrocarbon contamination (contaminated borehole, leaching into groundwater basement or tunnel, etc.) is detected and the source(s) of the contamination is not immediately apparent, then the SAPIA Head of Health, Safety, Security and Environment (“**HSSE**”) (the “**SAPIA Head: HSSE**”), is to be immediately informed in writing and telephonically. Investigations may also be triggered by the Authorities and/or Third-Party complaints.
3. The SAPIA Head: HSSE, with the support of the Members, will identify operating and closed sites of Members within the identified radius, as well as such sites which may have contributed to the contamination.
4. The SAPIA Head: HSSE will request owners and/or operators of sites within the identified radius who could possibly, in SAPIA’s discretion, have contributed to the contamination (the “**Relevant Member(s)**”), to investigate the possibility of the contamination having originated from their site. This will include, but not be limited to:
 - i. an examination of stock inventory records and explanations of any discrepancies;
 - ii. a review of loss of containment history at the site and appropriate investigation reports;
 - iii. an examination of historical asset integrity records and conducting integrity testing on the underground tanks and the ancillary equipment using an accredited service provider and methodology;
 - iv. site assessment reports and modelling consulted by an independent consultant;
 - v. due diligence reports upon site closure or exit and equipment replacement;
 - vi. relevant photographic images and/or video recordings; and
 - vii. providing any other information deemed necessary to assist the investigation.

This information must be provided to the SAPIA Head: HSSE.

5. Emergency measures will be taken by the Relevant Member(s) to immediately investigate and address any immediate risk as identified. The investigation report must be made available within 4 months from the time the issue has been reported. In high risk scenarios e.g. contaminated drinking water, this timeline may be shortened, to what is reasonable considering the local circumstances. The time period of 4 months may only be extended in cases where there are delays experienced from the Authorities. These shortened or extended periods will be decided by the Relevant Members collectively.
6. All information shared by the Relevant Members will be treated as confidential and used solely for the purpose of managing the hydrocarbon contamination. In fulfilment of this Agreement, members need to ensure that competitively sensitive information is only shared with SAPIA.
7. Should any Relevant Member need to sample any monitoring well that does not belong to such Member, consent is required in writing from the owner of the monitoring wells before sampling. This is the responsibility of the Relevant Member and such consent may not be unreasonably withheld or delayed if the owner is also a Member.
8. Should the site investigation identify the source(s) of the contamination, then the liable Member(s) of the site that caused the contamination will be responsible for carrying out the required corrective action and cover all the costs thereafter. Member(s) not liable for the source of the contamination will exit the process and be reimbursed as contemplated in clause 9 IX below.
9. Should the site investigation identify multiple plausible sources for the contamination, then a working group (“**Working Group**”) shall be established to address the contamination investigation and corrective action:
 - I. The Working Group shall consist of at least one SAPIA representative and at least one Member representative involved in the investigation. Technical experts and other adhoc members as agreed by the Working Group in accordance with clause IV below may be included in the Working Group.
 - II. The project manager from the Working Group shall be appointed by the Relevant Members to co-ordinate the assessment and remediation actions. The project manager may be a nominated Working Group representative, the ‘housekeeper’ for multiple sites, a Member who

initiated the investigations or a Member closest to the contamination location. The role of project manager may be rotated for long term projects. The project manager may be supported by a service provider appointed in accordance with the Terms of Reference contemplated in clause III below.

- III. A 'Terms of Reference' will be established to govern the activities of the Working Group. The Working Group shall determine the contents and sign-off on the 'Terms of Reference'.
- IV. All decisions made by the Working Group will be through a majority vote.
- V. The Relevant Members will consider the costs, benefits, effectiveness and technical feasibility of available options to identify the source(s) and if applicable, accept equally shared associated costs of the corrective action required. The Relevant Members will, by way of majority, vote and agree on these considerations.
- VI. The project manager will keep all Relevant Members informed of the planned actions and anticipated costs.
- VII. Remediation works must be safe for all workers and local communities and should minimize impacts on the environment. The HSSE standards and the procurement processes of the Member managing the project shall be used. SAPIA will assist to ensure independence on contractor selection in accordance with the SAPIA Procedure on the Appointment of a Single Supplier for Joint Oil Industry HSSE Related Projects.
- VIII. SAPIA is mandated to handle all media enquiries for multi-Member site investigations. SAPIA will follow the messaging agreed by all Relevant Members. A holding statement and 'frequently asked questions' will be developed for applicable sites by the Working Group. The Working Group shall sign-off on all communication materials following internal consultation.
- IX. If the source(s) is established at any stage, then the liable Member(s) will be required to reimburse costs already committed by other Members and will be liable for future remediation costs. The liable Member(s) will also be required to take over the role of project manager. Costs recovery is not retrospective.

10. The agreed entity or entities as determined by the relevant Authorities, being SAPIA Head: HSSE, the Project Manager and/or the owner of the affected land, must keep the relevant Authorities informed of actions being taken to address the situation. Legal responsibilities and accountabilities as per legislative requirements remain the obligation of the Relevant Members concerned.

11. All Members will work together to resolve issues amicably and in the interest of human health and safety and protection of the environment. The intended working spirit will be a common understanding, objectivity, transparency, co-operation and fairness. Decision making is a collective process and will be taken by the Members by way of majority vote, unless a Working Group has been established, in which case the Working Group shall make the decisions as contemplated in clause 9 IV.

f) Dispute Resolution

1. In the instance where a Member(s) does(do) not take the necessary accountability for the contamination despite the technical evidence substantiated by the other Relevant Members, or in the case of any other dispute arising between the parties to this agreement in relation to the subject matters hereof, the Relevant Members will agree on the most appropriate course of action to resolve such dispute (“**Dispute**”) from the options available under clause 3. Failing to agree such course of action within 7 business days following the Dispute arising, the matter shall be escalated to the SAPIA Board of Governors for a decision, as contemplated in clause f)3.iii.

2. All Relevant Members will need to manage and equally share the costs of the required remedial actions until such time the Dispute is resolved as the associated risks will need to be managed.

3. Potential options to resolve the Dispute could include:
 - i. appointment of an independent arbitrator to seek resolution;
 - ii. appointment of an independent consultant to audit the presented data and provide a technical opinion based on the balance of probabilities;
 - iii. escalation to the SAPIA Board of Governors for a decision;
 - iv. escalation to the relevant Authority(ies) for further action; or
 - v. any action a Relevant Member deems necessary to protect their own interests. This may be actioned independently by the Relevant Member.

4. Costs associated with dispute resolution, where such action is jointly agreed by the Working Group, will be carried by the Relevant Members, but may subsequently be claimed from such Member(s) found to be liable for the contamination.
5. A decision taken by any authorized person / body to settle the Dispute, shall be binding on all parties.

Signed on Behalf of the Member (who warrants that he/she is duly authorised thereto):

| | |
|-----------------------------|-------|
| COMPANY: | |
| NAME IN FULL: | _____ |
| DESIGNATION IN FULL: | _____ |
| SIGNATURE: | _____ |
| DATE: | _____ |
| COMMENT: | _____ |