

Decision Notice 007/2011/ED

Decision of the 27th June 2011 issued in virtue of the Malta Resources Authority Act (Cap. 423 laws of Malta) and the Petroleum for the Inland (Retail) Fuel Market Regulations (S.L. 423.37) to Mr. Michael Galea, with regard to the closure of the storage of kerosene at Michael Garage” Sir Harry Luke Street, Mġarr Malta

Section I

Whereas the Authority has received a request from Mr. Michael Galea (ID. 257140M), owner of a storage being used to authorise the storage and retail of kerosene at “Michael Garage” Sir Harry Luke Street, Mġarr Malta, and for the Authority to rescind its verbal request given on the 2nd May 2011 to Mr. Michael Galea to cease from operating the aforementioned storage;

Whereas article 26 (1) of the Malta Resources Authority Act (Cap.423 of the Laws of Malta) (hereinafter “the Act”) provides that:

“Save as may otherwise be prescribed, no person shall carry out any activity or operation, or be engaged in such activity or operation, relating to energy, water and mineral resources unless such person is in possession of a licence, permit or other authorisation of the Authority under this Act”

Whereas in terms of the Petroleum for the Inland (Retail) Fuel Market Regulations (SL 423.37) hereinafter “the regulations” the operation of storage and the activity of retailing of petroleum requires an authorisation, which may be subject to any such conditions as the Authority may establish in the applicable authorisation;

Whereas Mr. Michael Galea is presently not in possession of a licence, permit or other authorisation of the Authority for the storage and retailing of kerosene from the aforementioned premises.

The MRA has taken note of this request and has investigated the matters related to it.

Now, therefore, for the reasons stated in Section II of this Decision, the MRA hereby determines as follows:

1. The carrying out of the operation of storage and the activity of retail of kerosene (or any other fuel) by means of any storage tank which is not covered by the Kerbside Pump license E/P/25/89 located at “Michael Garage” Sir Harry Luke Street, Mġarr Malta shall cease with immediate effect from the date of this decision, and that henceforth any tank that is not so licensed should be properly de-commissioned within 30 days from the date of issue of this decision.

Section II

Mr. Michael Galea (ID. 257140M) currently operates a kerb-side pump in Mġarr Malta (E/P/25/89) Mr. Michael Galea was also licensed by Enemalta Corporation as a Kerosene Hawker (MRA/LME/KH/E/P/26/1989).

Mr. Galea used to be supplied with kerosene by Enemalta, which kerosene used to be stored for the purposes of retailing to third parties by means of a stand-alone above-ground storage tank in a compound several meters away from the kerb-side pump’s precincts.

The two aforementioned operations are regulated by S.L. 423.37 ‘Petroleum for the Inland (Retail) Fuel Market Regulations, 2010’ whereby in terms of which, regulation 3 thereof requires that:

“3. The following activities shall require an authorisation:

- a) the operation of a petroleum-filling station; or*
- b) the operation of a secondary storage facility of petroleum; or*
- c) the carrying out of the activity of a fuel distributor.”*

Whilst Mr. Galea has applied to be issued with an authorisation to operate his kerbside pump under the regulations, and whereas presently he is operating under a license issued by Enemalta and 'saved' by article 37 of the Act, he is also refraining from applying with the Authority to continue operating as a fuel distributor (formerly known as "kerosene hawker"), where "fuel distributor" is defined in S.L 423.37 as:

"fuel distributor" means the holder of an authorisation issued by the Authority under these regulation, permitting such person to distribute petroleum to duly authorised facilities;

The storage in question is presently licensed in terms of the existing KH license. However, the activity being carried out by Mr. Michael Galea of retail of kerosene from the storage in question is presently not authorised and in terms of the law requires an authorisation.

Also, the kerosene storage owned by Mr. Galea cannot be classified as a **Secondary Storage** given that it is not intended for his own exclusive use. As defined by S.L.423.37, a "secondary storage facility of petroleum" means an authorised facility:

*"(a) used for the authorised person's own exclusive use;
(b) which is not a primary storage facility for the purposes of the Petroleum for the Inland (Wholesale) Fuel Market Regulations; and
(c) which is in excess of a lower limit of 300 litres:*

Provided that when a secondary storage facility of petroleum consists of one or more tanks it may be construed by the Authority of consisting of a single secondary storage facility of petroleum;"

Mr. Michael Galea has applied for a new authorisation under the regulations for the operation of a petroleum-filling station at the same address. However, he has not applied for the kerosene storage being used for retail purposes to be authorised as part of that authorisation.

It is to be noted that the policy-paper Paper "Liberalisation of the Inland Fuel Market – The way forward" that has been approved by Cabinet and constitutes Government Policy, states that no consent should be given to developments in kerbside pumps unless:

- The development is required to enhance the health and safety of the public, provide better service to consumers and/or environmental protection.
- The development takes place within the existing boundaries of the kerb side petroleum station and will not worsen the traffic management system.
- The volume of petroleum products stored after the development at the petroleum station shall remain equal or less than the amount stored prior the development.
- The number of petroleum product dispensers remains the same or decreases

The Authority considers that the above conditions are not being satisfied and is refusing the request being made by Mr. Michael Gales for public policy reasons.

Dr. Reuben Balzan
Chairman
Malta Resources Authority