

**DRIVING ENVIRONMENTAL CONSCIOUSNESS
AND ACCOUNTABILITY IN THE MIDSTREAM
AND DOWNSTREAM SECTOR OF THE
PETROLEUM INDUSTRY**

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INTRODUCTION

The Midstream and Downstream Environmental Regulations, 2023 (Environmental Regulations) and the Midstream and Downstream Environmental Remediation Fund Regulations, 2023 (Fund Regulations) (together, the “Regulations”) were made by the Midstream and Downstream Petroleum Regulatory Authority (Authority) on 10 May 2023 to address and mitigate the negative environmental impacts associated with midstream and downstream petroleum operations in Nigeria.

Other African countries, such as South Africa and Tanzania have enacted laws and implemented policies toward reducing the negative environmental effects of industrial activities including operations in the midstream and downstream petroleum sector. The Environmental Regulations define the responsibilities of licensees and permit holders (Regulated Entities) in midstream and downstream petroleum operations in relation to health and environmental standards. On the other hand, the Fund Regulations set out guidelines for establishing and financially supporting the Midstream and Downstream Environmental Remediation Fund (Fund) which is dedicated to managing and mitigating adverse environmental effects resulting from the operations of Regulated Entities¹.

This article highlights the major provisions of the Regulations, outlining the obligations of the parties they apply to, and provides an insight into the significance and potential implications of the Regulations on the industry and environmental accountability.



Submission of Environmental Management Plans and Mandatory Maintenance of Environmental Management System

The Environmental Regulations require Regulated Entities to establish an Environmental Management System (EMS) for their petroleum operations which must be in line with the guidelines issued by the Authority².

1. Para. 3(1) and 4(1) of the Fund Regulations
2. Regulation 3 of the Environmental Regulations

Regulated Entities are also required to conduct environmental studies and assessments prior to and during the implementation of a project, after the occurrence of an incident³ and for special activities as directed by the Authority⁴. This is similar to provisions for environmental management, rehabilitation of mining sites, and community participation in resource development projects under the Mineral and Petroleum Resources Development Act, 2002 of South Africa⁵ and the Tanzanian Petroleum Act 2015, that generally mandates license holders, contractors, or any other person operating under the law to comply with the environmental principles and safeguards prescribed by law⁶.



WASTE MANAGEMENT

Regulated Entities must submit Waste Management Plans (WMP) and register liquid and gaseous effluent points in facilities with the Authority⁷. The WMP is to provide for the “end-to-end” management of waste generated from licensed petroleum operations and must be approved by the Authority prior to the commencement of activities by the regulated entity⁸. Additionally, the Regulated Entities are to seek the directions from the Authority on the management of new hazardous waste that was not captured in the WMP within a month of generating such waste⁹.

CLIMATE RESPONSIBILITY

Regulated Entities are required to monitor and estimate the volume of Green House Gases (GHG) generated from their activities or operations and report the information periodically in accordance with guidelines issued by the Authority¹⁰. To manage climate change, Registered Entities are to develop and submit a strategy for the carbon capture, decarbonisation, and achievement of net-zero targets¹¹ in addition to monitoring and controlling methane emission from new and existing facilities or projects¹².

3. such as oil spill, accidental waste discharge, etc

4. Para 7 of the Environmental Regulations

5. Section 39

6. Section 208 of the Tanzania Petroleum Act 2015

7. Para 19 of the Environmental Regulations

8. Para. 17 of the Environmental Regulations

9. Para. 17(3) of the environmental Regulations

10. Para. 20(1) of Environmental Regulations

11. Para 21(2) of the Environmental Regulations

EMERGENCY RESPONSE AND POLLUTION ABATEMENT

Regulated Entities are required to have a Spill or Release Contingency Plan (SRCP) and carry out an annual drill exercise scheduled by the Authority for the activation of the SRCP¹³. Upon the discovery of any spill, a licensee or permit holder must contain and recover such spill within its operational area. Spills must be reported to the Authority within twenty-four (24) hours. On receipt of such a report, a joint spill investigation team (comprising the Authority, the licensee or the permit holder and other stakeholders) will be set up within twenty-four (24) hours¹⁴. This joint spill investigation team will, thereafter, conduct a joint investigation visit to the site of the spill.

Where the licensee or the permit holder is responsible for the spill, it will be required to conduct a Post Impact Assessment (PIA) study of any adversely impacted environment within a time to be prescribed by the Authority¹⁵ and include the site in the register of potentially polluted sites or past impacted spill sites¹⁶.

Furthermore, any remediation and rehabilitation method to be adopted for the restoration of an impacted site following the joint investigation visit must be approved by the Authority¹⁷. The spiller (or spillers where there are more than one) shall be individually liable for the cost incurred from a clean-up or remediation¹⁸. This means that regardless of how much each spiller contributed to the spill, they can be held legally accountable for the full cost, even if other spillers are also involved¹⁹. This is an advancement on the position in Tanzania where the license holder and contractor operating within an area negatively affected by petroleum activities shall be liable for pollution damage regardless of who is at fault or the cause of the damage²⁰.

Where the licensee or permit holder fails or is unable to undertake the rehabilitation or management work of any impact on the environment arising from its operations, the procedure or criteria for incidence qualification as prescribed in Fund Regulations will be applied²¹.

NON-COMPLIANCE

The Authority is empowered to issue a potential incidence of non-conformity notice and commence an investigation to determine whether a Regulated Entity followed the expected measures upon the occurrence of a negative environmental impact within the licensee's or permit holder's area of operation. Where the Regulated Entity failed to follow the appropriate measures, the Authority may issue an 'Incidence of Non-conformity Notice' and impose an administrative penalty equivalent to one hundred percent (100%) of the licensee's or permit holder's annual contribution to the Fund²². In addition, the Regulated Entity will implement measures for reducing or mitigating the impact within a specified period in accordance with the EMP or as deemed

12. Para 21 of the Environmental Regulations

13. Para 26 of the Environmental Regulations

14. Para. 28(2) of the Environmental Regulations

15. Para 28(3) of the Environmental Regulations

16. Para 29(3) of the Environmental Regulations

17. Para 30(1) of the Environmental Regulations

18. Para. 29 of the Environmental Regulations

19. Para 29 (2) of the Environmental Regulations

20. Para. 210 of the Petroleum Act 2015 of Tanzania

21. Para. 30(3) of the Environmental Regulations

22. Para. 32(1)(a) - (b) of the Environmental Regulations

fit by the Authority or be subjected to an administrative penalty equivalent to one hundred and fifty percent (150%) of the licensee's or permit holder's annual contribution to the Environmental Remediation Fund²³.



CONTRIBUTIONS TO THE FUND

Licensees in the midstream and downstream petroleum sector are mandated to make contribution to the Fund for each calendar year by 31 December (including the year the license was granted) for each licence they hold²⁴. The amount payable by the licensee is self-assessed using a formula that includes the fixed contribution, midstream or downstream capital expenditure, the rate applicable to the capital expenditure, the average daily capacity of the facilities under a license during a year, the United States Dollars (USD) rate for the average daily capacity for liquid hydrocarbons²⁵ produced per barrel/day, the average daily capacity of facilities and the USD rate for average daily capacity for gaseous hydrocarbons as set out in the Schedule to the Fund Regulations²⁶.

The rates for the factors outlined in the paragraph above are calculated based on the category within which the licensee is operating. These categories are onshore high-risk areas, shallow water high-risk areas, onshore and frontier acreages as provided for under the Petroleum Industry Act (other than onshore high-risk areas), other shallow water areas (other than shallow-water high-risk areas), and deep-water areas²⁷. As such, before the deadline for the first payment to the Fund, the Authority must notify a licensee of the category under which their operations belong²⁸. Where part of the area of a licensee's operations is situated between two categories, the following rules shall apply²⁹:

23. Para. 32 (1) (c) - (d) of the Environmental Regulations

24. Para. 5 of the Fund Regulations

25. per thousand standard cubic feet per day

26. Para. 5(1) & (2)(d)(e) of the Fund Regulations

27. Para. 5(2) of the Fund Regulations

28. Para. 5(3) of the Fund Regulations

29. Para. 5(3) of the Fund Regulations

Involved Areas	Considered
Onshore High-Risk Area and any other area (including shallow water)	Onshore High-Risk Area
Shallow Water High-Risk Area and any other shallow water area	Shallow Water High-Risk Area
Shallow Water Area and Deep Offshore Area	Shallow Water Area

Table: Categorization of licensee operations, which determines quantum of fund contribution.

Existing licensees must make contributions from the release of the Fund Regulations, while prospective licensees are required to make initial contributions prior to acquiring the license³⁰. In any event, the annual financial contributions for a succeeding year must be made by 31 March of every year or before the expiration of the relevant license where the license is to expire before 31 March³¹. The Fund Regulations did not differentiate between the contributions due by 31 December and the annual contributions due by March 31.

Financial contribution may be refunded to a licensee two (2) years after it has surrendered its licence in accordance with the Petroleum Industry Act; or it has satisfactorily complied with decommissioning and abandonment obligations under the Act. However, the contribution will not be refunded where the Authority has utilised the contributions in accordance with the Fund Regulations or for the rehabilitation or management of the negative impact associated with mystery spill³².

UTILISATION AND DISBURSEMENT OF THE FUND



30. Para. 6(1) of the Fund Regulations

31. Para. 5(1) and 6(2) of the Fund Regulations

32. Para. 6(5) and 6(6) of the Fund Regulations

The Fund may be applied by the Authority towards the rehabilitation or management of the negative environmental impact when a licensee fails to undertake such rehabilitation. By designating funds specifically for the purpose of remedying the negative effects of operations within the industry, the Fund Regulations indicates targeted efforts towards mitigating the ecological footprint associated with accidents and environmentally polluted activities in the sector. The Fund may be applied:

- i. on written notice to the relevant or affected licensee by the Authority;
- ii. subject to the laws applicable to public procurement during the procurement of goods, works or services in addition to the exhibition of transparency; and
- iii. is not to be utilised for operations undertaken in accordance with section 8(d) of the Petroleum Industry Act³³.

When the Authority determines that a negative environmental impact incident has occurred in a particular area, it shall require all the licensees in that area to set up an ad hoc environmental management and rehabilitation committee. This committee is entrusted with the pivotal role of formulating a rehabilitation program for remediation, reclamation, restoration, or a combination of these actions in relation to the environmental negative event which shall be approved by the Authority.

Upon approval of the programme by the Authority, it shall release funds to the committee to conduct the rehabilitation under the Authority’s supervision³⁴. Funds shall be released upon request by the committee and in milestones³⁵ and the committee is obligated to submit a comprehensive report upon completion of the rehabilitation programme.

NAVIGATING POTENTIAL CHALLENGES

The implementation of these Regulations may increase the cost of doing business for Regulated Entities. However, these costs are necessary for operating a business that is conscious of the environmental and social impacts of the activities of Regulated Entities.

Notably, the rehabilitation or management of a negative environmental event requires collaboration between Regulated Entities operating within the affected area and the Authority. Hence, to ensure that such projects are not stalled or otherwise negatively impacted where the parties are unable to reach an agreement, the Authority must exercise its powers under the Environmental Regulations to mediate such disputes and ensure that they are managed adequately³⁶.

Creating and implementing strong internal protocols is crucial for Regulated Entities to meet the requirements laid out in the Regulations. These protocols should streamline processes like calculating, making timely payments, and properly documenting financial contributions. Integrating environmental management practices into day-to-day operations and the development and implementation of strategies to counteract adverse environmental effects in alignment with the Regulations’ objectives will be vital. Additionally, maintaining transparent communication with the Authority is paramount. This involves timely reporting, responsive interaction with inquiries, and seeking clarifications as necessary for a harmonious compliance process.

33. Para. 4(1) of the Fund Regulations

34. Para. 8(1) - (3) of the Fund Regulations

36. Para. 33 of the Environmental Regulations.

37. Para. 6 of the Environmental Regulations

35. Para. 10 of the Fund Regulations

36. Para. 33 of the Environmental Regulations.

37. Para. 6 of the Environmental Regulations

We note that the Authority has not released the guidelines for the establishment of the EMS and the evaluation and reporting format for Regulated Entities on the performance of management in relation to the environmental aspects of their business³⁷ However, Regulated Entities should adopt global best practices and industry standards to report their compliance efforts until the guidelines are released.

CONCLUSION

The Regulations represent a pivotal step in environmental stewardship within the petroleum sector. The Regulations are necessary to proactively address environmental concerns, ensure responsible resource management, align with global standards, prioritize community welfare, strengthen the legal framework, and promote accountability within the petroleum industry. They signal a future where responsible petroleum operations are integral to industry practices. By complying with their obligations for financial contributions before the deadline (31 March), embracing the opportunities for improvement and collaboration, the industry can significantly contribute to sustainable and environmentally conscious practices. Moreso, the success of the Regulations may inspire other nations within the region to adopt similar frameworks.

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