

*Extraordinary*



# Federal Republic of Nigeria

## Official Gazette

---

**No. 110**

**Lagos - 19th June, 2023**

**Vol. 110**

---

*Government Notice No. 74*

The following is published as supplement to this *Gazette* :

<i>S. I. No.</i>	<i>Short Title</i>	<i>Page</i>
36	Midstream and Downstream Environmental Remediation Fund Regulations, 2023	B845-856

---

Printed and Published by The Federal Government Printer, Lagos, Nigeria  
FGP 102/62023/350

Annual Subscription from 1st January, 2023 is Local : ₦50,000.00 Overseas : ₦65,000.00 [Surface Mail] ₦80,000.00 [Second Class Air Mail]. Present issue ₦3,000 per copy. Subscribers who wish to obtain *Gazette* after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

**PETROLEUM INDUSTRY ACT, NO. 6, 2021**  
**MIDSTREAM AND DOWNSTREAM ENVIRONMENTAL**  
**REMEDiation FUND REGULATIONS, 2023**



ARRANGEMENT OF REGULATIONS

*Regulation :*

PART I — OBJECTIVES AND APPLICATION

1. Objectives
2. Application

PART II — ESTABLISHMENT OF THE ENVIRONMENTAL REMEDIATION FUND

3. Establishment of the Environmental Remediation Fund

PART III — UTILISATION OF THE FUND

4. Utilisation of the Fund

PART IV — FINANCIAL CONTRIBUTION

5. Amount of the financial contribution
6. Payment of the financial contribution
7. Appointment of independent assessor

PART V — INTERVENTION AND INCIDENT QUALIFICATION  
PROCEDURE FOR THE FUND

8. Determination of intervention mechanism
9. Incident qualification procedure
10. Procedure for release of funds
11. Auditing and reporting requirement under the Fund
12. General administrative requirements
13. Authority to issue guidelines

PART VI — MISCELLANEOUS PROVISIONS

14. Interpretation
15. Citation

SCHEDULE

S. I. No. 36 of 2023

**PETROLEUM INDUSTRY ACT, NO. 6, 2021**  
**MIDSTREAM AND DOWNSTREAM ENVIRONMENTAL**  
**REMEDiation FUND REGULATIONS, 2023**

[10th Day of May, 2023]

Commence-  
ment

**In exercise of the powers conferred on it by section 33 (y) of the Petroleum Industry Act, No. 6, 2021 (“Act”) and all other powers enabling it in that behalf, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (“Authority”) makes these Regulations —**

PART I — OBJECTIVES AND APPLICATION

1. The objectives of these Regulations are to —

Objectives

(a) set out the general rules for the establishment and financial contribution of the Midstream and Downstream Environmental Remediation Fund for midstream and downstream petroleum operations ;

(b) ensure the rehabilitation or management of negative environmental impacts arising from midstream and downstream petroleum operations ;

(c) determine the amount of financial contribution based on the size of the petroleum operations and the level of the environmental risk that may exist ; and

(d) provide fines, sanctions and administrative penalties for failure to comply with these Regulations.

2. These Regulations shall apply —

Application

(a) to the establishment and administration of the Fund ; and

(b) where a licensee fails to rehabilitate, manage or is unable to undertake the rehabilitation or management of any impact on the environment arising from its operations.

PART II — ESTABLISHMENT OF THE ENVIRONMENTAL REMEDIATION FUND

3.—(1) There is established, the Midstream and Downstream Environmental Remediation Fund (“Fund”) which shall be for the rehabilitation or management of negative environmental impacts with respect to licensed midstream and downstream petroleum operations.

Establishment  
of the  
Environmental  
Remediation  
Fund

(2) The Authority shall administer and manage the Fund in accordance with these Regulations and other applicable laws.

(3) The Authority shall within six months from the effective date of these Regulations establish an interest yielding account to be known as the Midstream and Downstream Environmental Remediation Fund Account (“Account”).

(4) The Account shall be funded by contributions from licensees engaged in midstream and downstream petroleum operations under the Act in accordance with the criteria set out in these Regulations and the accrued interest from the Fund.

(5) The Account shall be administered by the Authority for the specific purpose of rehabilitation and management of negative environmental impact resulting from midstream and downstream petroleum operations.

(6) The administration of the Account shall be in accordance with the procedure and criteria set out in these Regulations, Guidelines and Rules made by the Authority and published on its website which shall be consistent with the financial rules set by the Accountant-General of the Federation for the administration of such funds.

**PART III — UTILISATION OF THE FUND**

Declaration of significant crude oil or gas discovery

**4.—(1)** The Fund shall be utilised to provide funding for the management of environmental impact, rehabilitation of negative environmental impacts caused by midstream and downstream petroleum operations, except where such operations are in accordance with section 8(d) of the Act.

(2) Where a licensee fails to rehabilitate, manage or is unable to undertake rehabilitation or management of any negative impact on the environment, the Authority may on written notice to the licensee apply the Fund to rehabilitate or manage the negative environmental impact.

(3) Where the Authority determines to apply the Fund, the procurement of goods, works or services required for the utilisation of the Fund shall be subject to the laws applicable to public procurement.

**PART IV — FINANCIAL CONTRIBUTION**

Amount of the financial contribution

**5.—(1)** The financial contribution shall be paid on or before 31st December of every calendar year for each licence including the year in which a licence has been granted.

(2) For the purpose of these Regulations, petroleum operations under each licence, shall fall under one of the following categories of areas where operations are located —

(a) onshore high-risk area being areas which includes —

- (i) land,
- (ii) mangrove areas,
- (iii) wetland and swamp areas,
- (iv) a zone of 500 meters along any river or lake, or
- (v) such other areas as the Authority may determine as high-risk ;

(b) shallow water high-risk area being—

(i) a zone of 10 km seawards of a high-water mark, and

(ii) such other shallow water areas as the Authority may determine as high risk ;

(c) other onshore areas being the part of Nigeria that is defined as onshore and frontier acreages in the Act, other than onshore high-risk areas;

(d) other shallow water areas, being the part of Nigeria that is defined as shallow water in the Act, other than shallow water high-risk areas ; or

(e) deep water areas, being the part of Nigeria that is defined as deep offshore in the Act.

Retention

(3) The Authority shall, prior to the first payment of the financial contribution, notify the licensee of which category the license falls, such that where all or part of an asset is situated —

(a) in an area that is considered an onshore high-risk area, the entire licence shall be considered as being located in an onshore high-risk area ;

(b) in a shallow water area that is considered a shallow water high-risk area, the entire licence shall be considered as being located in a shallow water high-risk area ;

(c) onshore and part in shallow water, the entire licence shall be considered onshore ;or

(d) in shallow water and part in deep offshore, the entire licence shall be considered shallow water.

(4) In determining the contribution to the Fund, the —

(a) formula for the annual financial contribution shall be —

Financial contribution for a year = Fixed Contribution + (Midstream or Downstream Capital Expenditure x CER) + (CL x CLR) + (CG x CGR) ;

(b) Midstream or downstream capital expenditure shall not include contributions to a decommissioning and abandonment fund ;

(c) amount of expenditure incurred during a relevant year, which is characterised as expenditure of capital nature under the Companies Income Tax Act, shall be included in the full amount incurred during the relevant year and shall not be depreciated under the initial and annual allowances rules for the purpose of the calculation of the financial contribution ;

Cap. C21,  
LFN, 2004

(d) average daily capacity of a facility shall be the name plate capacity, and where the capacity changes due to additional investment or abandonment during the year, the average daily capacity shall be determined by the sum of all capacities multiplied by the days such capacity is in existence and dividing this amount with the number of days in such year, and the result shall be rounded to entire barrels or thousand cubic feet ; and

**B 850**

(e) financial contribution shall be calculated and paid in USD, and for production delivered for local refining, the financial contribution may be paid in Naira at Central Bank of Nigeria investors and exporters window exchange rate for the applicable invoice date.

Payment of  
the financial  
contribution

**6.—(1)** Payment of the financial contribution by a licensee as set out in the Schedule to these Regulations, shall be made in the following manner —

Schedule

(a) existing licensee shall, on the coming into effect of these Regulations, commence payment by contributing an amount equal to the fixed cost relating to a licence in their operational area multiplied by the remaining days of that year, and an annual financial contribution for any succeeding year that a licence is in effect shall be paid on or before the 31st of March of every year, and the contribution shall consist of the fixed contribution, the capital expenditure and production or volume where applicable ;

(b) prospective licensee shall pay an initial contribution prior to the granting of a licence in the first year of a grant, and the initial financial contribution shall consist solely of the fixed contribution provided for in these Regulations multiplied by the remaining days in the year of the grant of license ; and

(c) an annual financial contribution for any succeeding year that a licence is in effect shall be paid on or before the 31st of March of every year, and the contribution shall consist of the fixed contribution, the capital expenditure and production/volume where applicable :

Provided that in paragraphs (a)-(c), the capital expenditure and production volume shall be determined based on the actual capital expenditures incurred and average capacity for the previous year.

(2) The applicable financial contribution shall be paid prior to the termination of a licence where the licence terminates prior to the 31st March of the relevant year.

(3) Payment of contributions under this paragraph shall be based on self-assessment by a licensee, whether demanded or not by the Authority.

(4) A financial contribution paid by a licensee under these Regulations shall not be credited to or offset against any liability due to the Authority from a licensee, provided that where an over payment is made due to an error, such overpayment shall be applied to offset future financial contributions to the Fund.

(5) Notwithstanding the provisions of subregulation(4), a financial contribution paid by a licensee may be refunded, two years after the —

(a) surrender of its licence in accordance with the Act ; or

(b) satisfactory compliance with decommissioning and abandonment obligations under the Act.

(6) A refund of a financial contribution shall not be made where the contribution has been —

- (a) utilised by the Authority in accordance with these Regulations ; or
- (b) utilised for rehabilitation or management of negative impact associated with mystery spill.

(7) On payment of any financial contribution under this regulation, the licensee shall submit to the Authority evidence of payment and the calculations on which the payment made was derived in a Form prescribed by the Authority and published on its website.

7.—(1) The Authority shall, within 30 days of the submission of evidence of payment by the licensee inform the licensee if it is not satisfied with the assessment on which the financial contribution was determined and may appoint an independent assessor to conduct a re-assessment and determine the applicable financial contribution which shall be paid by the licensee within the time specified by the Authority.

Appointment  
of  
independent  
assessor

(2) The Authority shall only appoint an independent assessor where the —

- (a) financial contribution does not reflect the size of the operations and the level of environmental risk ;
- (b) allocation to environmental categories under these Regulations is in error ;
- (c) capital expenditures, production or both are under-estimated ; or
- (d) Authority deems the assessment or financial contribution is unsatisfactory.

(3) An independent assessor to be appointed by the Authority under subregulation (1) shall be competent and have expertise and experience in environmental matters, natural resource planning and management, management of petroleum operations, and environmental rehabilitation practices.

(4) The Authority shall give the licensee a written notice within 30 days of appointing an independent assessor, that the financial contribution requires an adjustment and that a re- assessment has been initiated.

(5) On the completion of the re-assessment, the Authority shall notify the licensee in writing of any adjustment to the financial contribution and direct the licensee to make the payment within a specified period.

(6) Failure of the Authority to notify a licensee of the intention to carry out a re-assessment within the timeline prescribed in this regulation shall be deemed as final acceptance of any contribution made by the licensee in that applicable year for the operations under its licence.

PART V— INTERVENTION AND INCIDENT QUALIFICATION  
PROCEDURE FOR THE FUND

Determina-  
tion of  
intervention  
mechanism.

8.—(1) Where the Authority determines based on the intervention criteria prescribed in these regulations that a negative environmental impact incident has occurred in a particular operational area, the Authority shall require all the licensees in that area to set up an *ad hoc* environmental management and rehabilitation committee for the purpose of carrying out a rehabilitation programme under the Fund.

(2) The committee shall submit a programme of rehabilitation to the Authority describing the intervention work to be carried out, the duration, cost, and implementation framework for the conduct of the programme, and the rehabilitation programme submitted by the committee may consist of either remediation, reclamation, restoration or any combination of the three as the case maybe.

(3) The Authority shall, if satisfied with the programme submitted by the committee, approve the programme and release funds to the committee to carry out the rehabilitation under the supervision of the Authority, and the funds released under this subregulation shall be from the portion contributed by the licensees in that area.

(4) The committee shall be responsible for accounting for the money released for the rehabilitation programme and shall submit a report to the Authority on the conclusion of the rehabilitation programme.

Incident  
qualification  
procedure.

9.—(1) The Authority shall apply the following criteria in the determination of negative environmental impact from petroleum operations which the Fund may be utilised for intervention where the negative environmental impact affect—

(a) land (whether for agricultural or other purposes), air, water (seas, rivers, and ground water), soil, ecosystem, biodiversity and causes waste production or noise pollution ;

(b) public infrastructure such as access roads, bridges, public drainage systems, utility facilities, rail lines, cultural sites, religious sites, sacred sites, other transportation infrastructure ;

(c) public health ; or

(d) any other negative impact as may be determined by the Authority.

(2) The Authority may also, in determining that a licensee is unable to rehabilitate or manage any negative impact on the environment, apply the following criteria —

(a) the licensee is declared bankrupt or subject to winding up proceedings ;



(b) the licence is suspended or revoked in accordance with the Act or any other Regulations made by the Authority ; or

(c) the Authority is unable to enforce under the law that such rehabilitation or management of negative environmental impact is fulfilled by such licensee.

(3) In determining the intervention regarding any of the cases in subregulations (1) and (2), the Authority shall consider the scale, severity of the impact, social and economic consequences of not managing the negative environmental impact.

**10.** The following shall be the procedure for the release of money from the Account, the —

Procedure for release of funds

(a) committee shall request the Authority to release funds for the implementation of the approved programme ;

(b) release of funds shall be based on milestones and the Authority shall monitor disbursements from the Account ;

(c) request shall be in a Form prescribed by the Authority and published on its website ;

(d) request shall contain a bank account presented by the committee and the designated administrator of the Account ; and

(e) release of funds shall be authorised by the Authority.

**11.—**(1) The Authority shall keep proper accounts and records in relation to the Fund and shall, not later than 90 days after the end of a relevant financial year, publish on its website an annual statement containing details of negative environmental impact interventions, contracts issued, contributions and expenses.

Auditing and reporting requirement under the Fund

(2) The financial contribution to the Fund shall be subject to audit by licensees, in accordance with guidelines that the Authority may issue.

**12.—**(1) The assignment or transfer of a licence under the Act, or a licence saved under section 311 (9) of the Act, shall include the assignment or transfer of the assignor's or transferor's contributions to the Fund under these Regulations.

General administrative requirements

(2) A licensee who contributes to the Fund may on request to the Authority, carry out an audit of the Fund at its own cost.

(3) Within one year from the establishment of the Fund the Authority shall make rules or guidelines for the conduct of audit of the Fund by licensees.

(4) The provisions of these Regulations are without prejudice to the powers of the Authority to take any consequence management action prescribed by law against any licensee for any infringement of environmental laws.

**B 854**

Authority  
to issue  
guidelines

**13.** The Authority may issue guidelines, notices, and directives for the effective implementation of these Regulations.

PART VII — MISCELLANEOUS PROVISIONS

Interpretation

**14.** In these Regulations —

“*Act*” means the Petroleum Industry Act, No. 6, 2021;

“*bbl/day*” means barrels per day ;

“*CER*” means the rate applicable to the capital expenditure, as determined in accordance with the Schedule to these Regulations ;

“*CL*” means the average daily capacity of facilities under a licence during a year for which the financial contribution is payable, in barrels per day ;

“*CLR*” means the rate in USD per bbl/day for average daily capacity for liquid hydrocarbons (CL), as determined in accordance with the Schedule to these Regulations ;

“*CG*” means the average daily capacity of facilities under a licence during a year for which the financial contribution is payable, in MSCFD ;

“*CGR*” means the rate in USD per MSCFD for average daily capacity for gaseous hydrocarbons (CG), as determined in accordance with the Schedule to these Regulations ;

“*environmental remediation*” means the act of removing or reduction of contaminants from environmental components to prevent damage or loss ;

“*fixed contribution*” means the fixed contribution in USD per day, as determined in accordance with the Schedule to these Regulations ;

“*GCR*” means gross cash recovery ;

“*high risk*” means areas prone to high level of hazard ;

“*Midstream or Downstream Capital Expenditure*” means the expenditure characterised as expenditure of capital nature under the Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004 incurred within a year for which the financial contribution is payable ;

“*LCR*” means liquidity coverage ratio ;

“*MSCFD*” means thousand standard cubic feet per day ;

“*negative impact*” means the negative effect arising from midstream or downstream operations or activities on lives, property and environmental components ;

“*USD*” means United States Dollars ; and

“*year*” means a period of a year from any day during the year.

**15.** These Regulations may be cited as the Midstream and Downstream Environmental Remediation Fund Regulations, 2023. Citation

## RATES FOR THE FINANCIAL CONTRIBUTION CALCULATION TABLE

*Rates for the financial contribution for the midstream and downstream petroleum operations*

<i>Location of petroleum operation under a licence</i>	<i>Contribution in USD per day (Fixed Contribution)</i>	<i>Rate for annual Midstream or Downstream Capital Expenditure (CER)</i>	<i>Rate for average daily capacity for liquids in USD per bbl/day (LCR)</i>	<i>Rate for average daily capacity for natural gas, in USD Mcf/day (GCR)</i>
Onshore High-Risk Areas	USD 40	0.0010%	USD 0.0020	USD 0.000200
Onshore – Other Areas	USD 32	0.0008%	USD 0.0010	USD 0.000100
Shallow Water – High-Risk Areas	USD 24	0.0006%	USD 0.0005	USD 0.000050
Other Shallow Water Areas	USD 16	0.0003%	USD 0.0002	USD 0.000020
Deep Water Areas	USD 8	0.0001%	USD 0.0001	USD 0.000010

MADE at Abuja this 10th day of May, 2023.

ENGR. FAROUK AHMED  
*Authority Chief Executive*  
*Nigerian Midstream and Downstream*  
*Petroleum Regulatory Authority*