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PETROLEUM INDUSTRY ACT, NO. 6, 2021
MIDSTREAM AND DOWNSTREAM PENALTIES
AND ENFORCEMENT MECHANISMS REGULATIONS, 2023



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S. I. No. 14 of 2023

PETROLEUM INDUSTRY ACT, NO. 6, 2021
MIDSTREAM AND DOWNSTREAM PENALTIES
AND ENFORCEMENT MECHANISMS REGULATIONS, 2023

[14th Day of March, 2023]

Commence-
ment

In exercise of the powers conferred on it by sections 33(i) and 231 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 — GENERAL PROVISIONS

1. The objectives of these Regulations are to— Objectives
 - (a) provide a framework for the application, administration and enforcement of penalties in the midstream and downstream petroleum operations ; and
 - (b) provide instruments and notices for enforcement of penalties.
2. These Regulations shall apply to the administration and enforcement of penalties and sanctions in midstream and downstream petroleum operations. Application
- 3.—(1) Penalties in midstream and downstream petroleum operations shall be as prescribed in the Act and regulations made by the Authority based on the nature and impact of regulatory breaches. Penalties
 - (2) Penalties in midstream and downstream petroleum operations may arise as a result of —
 - (a) a failure to undertake midstream and downstream petroleum operations in a manner that ensures —
 - (i) the safety of lives and property,
 - (ii) safe and sustainable operations, and
 - (iii) the protection of the environment ;
 - (b) a failure to undertake midstream and downstream petroleum operations in accordance with the terms of a licence, permit or authorisation granted by the Authority ;
 - (c) financial impropriety ;
 - (d) mal-operation of facilities ;
 - (e) unfair market practices ;
 - (f) unlicensed operations or services ; and
 - (g) other unlawful practices or non-compliance prescribed by the Act.

PART II — CONSEQUENCE MANAGEMENT NOTICES

- Notices **4.** Where the Authority reasonably believes that a person is about to commit an offence or has committed an offence, the person shall be issued the following notices —
- (a) potential incidence of non-conformity ;
 - (b) incidence of non-conformity ;
 - (c) notice of non-compliance ; or
 - (d) demand notice.
- Potential incidence of non-conformity **5.** The potential incidence of non-conformity is the notice issued by the Authority to —
- (a) prevent an imminent penalty ; and
 - (b) provide an opportunity for corrective measures.
- Incidence of non-conformity **6.** The incidence of non-conformity is the notice issued to a person where —
- (a) one or more offences have occurred or deemed to have occurred ;
 - (b) the failure to address such offence has arisen despite earlier notifications specified by the potential incidence of non-conformity ; and
 - (c) an opportunity is provided for a person to make representations as regards the incident.
- Notice of non-compliance **7.** A notice of non-compliance, subject to Regulations 5 and 6, is issued where —
- (a) a person fails to prevent the incident stated ; or
 - (b) no representation was made to prevent a penalty being issued.
- Demand notice **8.** A demand notice is a formal notification conveying the Authority’s decision and penalties to be imposed on a person who has failed to resolve the incidences as stated in the notices.

PART III — PRE-SANCTION PROCEDURES

- Issuance of potential incidence of non-conformity **9.** Where an activity prohibited under the Act, Regulations or directives of the Authority, is likely to be undertaken by any person, the Authority may serve a potential incidence of non-conformity notice specifying the activity and directing the person to desist from such activity within the specified timeline as stated in the notice.
- Issuance of incidence of non-conformity **10.** Where the Authority determines that a violation poses no danger to personnel, environment, equipment or midstream and downstream petroleum operations, the Authority may—
- (a) serve an incidence of non-conformity notice on the person specifying the act or activity ;

- (b) direct the person to whom the notice is issued to do or not to do, the specified act or activity ; or
- (c) specify the time frame for compliance with the notice.

PART IV — ADMINISTRATION OF SANCTIONS

11.—(1) A person whom the Authority suspects will either commit an offence or has committed an offence shall be issued a notice of non-compliance which shall —

Issuance of notice of non-compliance

- (a) state the facts and circumstances that make the person liable to a penalty ;
- (b) specify the penalty ; and
- (a) inform the person of their right to make representation to the Authority.

(2) The person to whom notice in subregulation (1) is sent may make representation to the Authority, within 30 days after receipt of the notice.

12. The representation of the person to whom the notice of non-compliance is issued shall include —

Representation on notice of non-compliance

- (a) circumstances leading up to the offence,
- (b) evidence that no offence occurred, or
- (c) corrective measures provided to minimise impact,

where there is no contention from the representation that an offence was committed.

13.—(1) The Authority, upon consideration of representation made in regulation 12, may —

Decision on issuance of penalties

- (a) assess a penalty and set a date by which the penalty is to be paid in full ; or
- (b) determine that no penalty be assessed.

(2) The Authority shall serve a copy of its decision in subregulation (1) on the person who made the representation within 30 days after the receipt of the representation.

14.—(1) Where a person to whom a notice of non-compliance is issued, fails to make a representation or fails to provide a compelling reason why a penalty should not be issued, the Authority shall issue a demand notice and —

Issuance of demand notice

- (a) apply the administrative penalties in applicable Regulations ; or
- (b) impose the sanctions and fines provided in the Act.

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Decision on failure to comply with cease-and-desist order

15. Where a person fails to comply with a cease-and-desist order issued as provided in section 215 of the Act, the Authority may, subject to the provisions of regulations 10,11,12,13 and 14, levy a fine not exceeding 5% of the annual turnover of the company for the preceding year or revoke the licence of any person who fails to comply with a cease-and-desist order.

Revocation of a licence or permit

16.—(1) Prior to a decision by the Authority to revoke a licence or permit in section 120 of the Act, the Authority shall —

- (a) serve a notice of default on the licensee or permit holder setting forth in reasonable detail the default of the licensee or permit holder ; and
- (b) give the licensee or permit holder 60 days within which to remedy the default.

(2) Where the Authority is satisfied with the remedy of the licensee or permit holder in subregulation (1) (b), the revocation process shall be discontinued.

(3) Where, at the expiration of 60 days, the licensee or permit holder fails to remedy the default, the licence or permit shall be revoked.

(4) A notice of default shall be —

- (a) sent by the Authority to the last known address of the licensee or permit holder or its legal representative in Nigeria, or
- (b) published in the Federal Government Gazette or on the website of the Authority,

each of which shall constitute sufficient notice to the licensee or permit holder of the notice of default.

(5) Revocation shall be without prejudice to —

- (a) liabilities which the licensee or permit holder may have incurred ; or
- (b) claim, which the Authority, the Government or any third party may make against the licensee or permit holder.

(6) A revocation decision shall be published in the Federal Government Gazette and the Authority shall amend relevant registers maintained by it to reflect the revocation.

Consequences of operating without a licence or permit

17. A person who —

- (a) fails to obtain a licence, permit or authorisation required by the Authority,
- (b) fails to provide information required by the Authority,
- (c) makes a false declaration to the Authority or wilfully furnishes information so required which is in any respect false or insufficient,

(d) fails to comply with the provisions of these Regulations or directive given or condition of a permit or licence issued by the Authority, or

(e) obstructs or assaults an officer of the Authority or any person authorised by the Authority in the exercise of powers conferred on the Authority in the Act or other laws and regulations,

shall, in addition to the sanctions, fines and penalties contained in the Act, be liable to the relevant administrative penalties in regulations made by the Authority, and any licence, permit or authorisation granted to that person may be suspended or revoked.

PART V — MISCELLANEOUS PROVISIONS

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

Authority
to issue
guidelines

19. In these Regulations —

Interpretation

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

“*administrative penalties*” means monetary penalties that may be imposed by the Authority on individuals or companies for failing to comply with provisions of the Act, regulations or notices or directives made by the Authority ;

“*cease and desist order*” means a written notice directed to a person demanding the immediate cessation of a prohibited act or activity which is being, has been or is likely to be undertaken by the person ;

“*corrective measures*” means actions taken to eliminate non-conformities, undesirable acts or causes of non-conformities in midstream and downstream petroleum operations ; and

“*offence*” means an illegal act, activity or breach of the Act, regulations, notices or directives made by the Authority.

20. These Regulations may be cited as the Midstream and Downstream Penalties and Enforcement Mechanisms Regulations, 2023.

Citation

Made at Abuja this 14th day of March, 2023.

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