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PETROLEUM INDUSTRY ACT, No.6, 2021
UPSTREAM PETROLEUM ENVIRONMENTAL REMEDIATION
FUND REGULATIONS, 2024



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SCHEDULE

S. I. No. 62 of 2024

PETROLEUM INDUSTRY ACT, No.6, 2021

UPSTREAM PETROLEUM ENVIRONMENTAL REMEDIATION
FUND REGULATIONS, 2024

[13th Day of March, 2024]

Commence-
ment

In exercise of the powers conferred on it by sections 10(f) and 103 of the Petroleum Industry Act, No. 6, 2021 (“the Act”) and all other powers enabling it in that behalf, the Nigerian Upstream Petroleum Regulatory Commission (“the Commission”) makes the following Regulations —

PART I — OBJECTIVES AND APPLICATION

1.—(1) The objectives of these Regulations are to provide a —

Objectives

(a) framework for the establishment and administration of the Environmental Remediation Fund (“the Fund”) provided for under section 103 of the Act ; and

(b) source of funding for the rehabilitation or management of negative environmental impacts from upstream petroleum operations pursuant to the Act.

2. These Regulations shall apply to petroleum operations conducted under —

Application

(a) oil prospecting licences and oil mining leases preserved under the Act ; and

(b) petroleum prospecting licences and petroleum mining leases.

PART II — ESTABLISHMENT OF THE ENVIRONMENTAL REMEDIATION FUND

3.—(1) The Commission shall within six months from the effective date of these Regulations, establish the Upstream Environmental Remediation Fund (“the Fund”).

Establishment
of
Environmental
Remediation
Fund

(2) The Fund established under subregulation (1) of this regulation shall be an interest yielding account in a commercial bank which shall consist of —

(a) the contributions from licensees and lessees engaged in upstream operations pursuant to the Act and in accordance with the criteria set out in these Regulations ; and

(b) any accrued interest of the Fund.

(3) The Fund shall be administered by the Commission for the specific purpose of rehabilitation and management of negative environmental impact resulting from upstream petroleum operations that are —

(a) of undetermined origin ;

(b) not attributable to the act or omission of the operator of the upstream petroleum operations; or

(c) not remedied by the operators responsible for the negative environmental impact.

(4) The Fund account shall be accessed where —

(a) an incident of negative environmental impact is mysterious or of undetermined origin ; or

(b) a licensee or lessee who engages in petroleum operations fails or is unable to undertake necessary rehabilitation or management of negative environmental impacts of such petroleum operations, despite the Commission having given notices to the licensee or lessee in this regard.

(5) Where the Commission makes a decision to apply the Fund to rehabilitate or manage a negative environmental impact resulting from upstream petroleum operations it shall notify all licensees or lessees in the operational area.

(6) The administration of the Fund shall be in accordance with the procedure and criteria set out in these Regulations and guidelines issued by the Commission and published on its website from time to time.

(7) The Financial Regulations made by the Accountant-General of the Federation for the administration of similar Funds shall apply to the Fund.

(8) Notwithstanding the application of the Fund by the Commission to rehabilitate or manage negative environmental impacts of upstream petroleum operations under these Regulations, in cases where the negative environmental impact was caused by a licensee or lessee, the licensee or lessee shall nevertheless be responsible to the full extent of the law for any damage to any person, property or the environment caused by the negative environmental impact from its upstream petroleum operations.

Determina-
tion of
contributions
to the Fund

4.—(1) Contributions to the Fund shall be determined by a formula prescribed in these Regulations based on the terrain or area where the operation under a licence or lease is carried out.

(2) The formula referred to in subregulation (1) of this regulation shall be $\text{Financial contribution for a year} = \text{Fixed Contribution} + (\text{Upstream Capital Expenditure} \times \text{CER}) + (\text{CL} \times \text{CLR}) + (\text{CG} \times \text{CGR})$, where —

(a) Fixed Contribution is the fixed contribution in US\$ per day, as determined in accordance with Table 1 of the Schedule to these Regulations ;

(b) Upstream Capital Expenditure is the expenditure, characterised as expenditure of a capital nature, incurred during a year for which the financial contribution is payable ;

(c) CER is the rate applicable to the capital expenditure, as determined in accordance with Table 1 of the Schedule to these Regulations ;

(d) CL is the average daily capacity of facilities under a licence during a year for which the financial contribution is payable, in barrels per day ;

(e) CLR is the rate in US\$ per bbl/day for average daily capacity for liquid hydrocarbons (CL), as determined in accordance with Table 1 of the Schedule to these Regulations ;

(f) CG is the average daily capacity of facilities under a licence during a year for which the financial contribution is payable, in thousand cubic feet (Mcf) per day ; and

(g) CGR is the rate in US\$ per Mcf/day for average daily capacity for gaseous hydrocarbons (CG), as determined in accordance with Table 1 of the Schedule to these Regulations.

(3) For the purpose of determining the financial contribution, the upstream capital expenditure shall not include contributions to a Decommissioning and Abandonment Fund.

(4) The capital expenditure under the formula set out in subregulation (2) of this regulation shall be the actual capital expenditure incurred by the company in that year.

(5) Where the capacity changes due to additional investment or decommissioning 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.

(6) The result of the calculation under subregulation (5) of this regulation shall be rounded up to the entire barrels or thousand cubic feet, as the case may be.

(7) The financial contribution shall be calculated in United States Dollars and may be wholly or partly paid in Naira at the Central Bank of Nigeria applicable exchange rate on or before the due date of 31st January each year.

(8) The terrain or area shall be —

(a) Onshore High-Risk defined to include —

(i) mangrove areas,

(ii) wetland and swamp areas,

(iii) a zone of 500 meters along any river or lake, and

(iv) such other areas as the Commission may determine as high-risk ;

(b) Shallow Water High-Risk defined to include —

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

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

(c) other Onshore Area, 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 Area, being the part of Nigeria that is defined as shallow water in the Act, other than Shallow Water High-Risk Areas ; and

(e) Deep Water Area, being the part of Nigeria that is defined as deep offshore in the Act.

Payment of
the financial
contribution
and
reporting

5.—(1) Payment of the financial contribution by a licensee or lessee to which these Regulations apply shall be made in the following manner —

(a) existing licensees and lessees shall —

(i) upon the coming into effect of these Regulations, commence payment by contributing an amount equal to the fixed cost relating to licenced facility in their operational area multiplied by the remaining days in the year of the coming into effect of these Regulations, and

(ii) thereafter, make an annual financial contribution for any succeeding year that a licenced facility is in operation on or before 31st of January of every year ; and

(b) the contribution pursuant to subregulation (1)(a) of this regulation shall consist of the fixed contribution, the capital expenditure and production volume for the current year, provided that the capital expenditure and production volume shall be determined based on estimated capital expenditures and average capacity for the previous year multiplied by 365 days.

(2) A new licensee or lessee shall —

(a) pay an initial contribution prior to the granting of a licence or lease for upstream petroleum operations in the first year of a grant, which shall consist of the fixed contribution provided for in these Regulations multiplied by the remaining days in the year of the grant of license or lease ; and

(b) thereafter, pay an annual financial contribution for any succeeding year that a licenced facility is in effect on or before the 31st of January of every year.

(3) The contribution pursuant to sub-regulation (2)(b) of this regulation shall consist of the fixed contribution, the capital expenditure and production volume for the current year, provided that the capital expenditure and production volume shall be determined based on estimated capital expenditures and average capacity for the previous year multiplied by 365 days.

(4) The applicable financial contribution shall be paid prior to the expiration of a licence or lease, where the period of a licence or lease expires prior to the anniversary of the effective date of such a licence or lease.

(5) Licensee and lessee shall use the formular provided in subregulation 4(2) of this regulation, to determine their annual contribution and made payment in accordance with this regulation.

(6) Licensee and lessee shall make payment as at when due, whether demanded by the Commission or not and any financial contribution paid by a licensee or lessee under these Regulations shall not be refunded.

(7) Where an over-payment is made due to an error, such over-payment may be applied to offset future financial contributions pursuant to these Regulations.

(8) Upon payment of any financial contribution pursuant to this regulation, the licensee or lessee shall submit to the Commission evidence of payment and the calculations upon which the payment made was derived, in a Form prescribed by the Commission and published on its website.

(9) The Form shall also contain the necessary adjustments for the previous year, where the actual capital expenditures or actual production volumes are different from the estimated figures used for the payment in that previous year.

(10) The Commission shall, within 30 days of the submission of evidence of payment by the licensee or lessee inform the licensee or lessee where it is not satisfied with the assessment upon which the financial contribution was determined and may appoint an independent assessor at no cost to the licensee or lessee to conduct a re-assessment and determine the applicable financial contribution which shall be paid by the licensee or lessee within the time specified by the Commission.

(11) The Commission shall exercise the right pursuant to subregulation (9) of this regulation, where it reasonably believes that based on evidence, the financial contribution, determined by the licensee or lessee is based on an error in the size of the operations or the level of environmental risk that may exist from the petroleum operations under a licence or lease, or both.

(12) An independent assessor to be appointed by the Commission under subregulation (9) of this regulation shall be a competent person with expertise and experience in environmental matters, natural resources planning and management, management of petroleum operations, and environmental rehabilitation practices.

(13) The Commission shall give the licensee or lessee 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.

(14) Upon the completion of the re-assessment, the Commission shall notify the licensee or lessee in writing of the adjusted financial contribution, within 30 days of completion of any adjustments in payments to be made and require the licensee or lessee to make the payment within a specified period.

(15) Where the Commission fails to notify a licensee or lessee of the intention to carry out a re-assessment within the timeline prescribed in subregulation (12) of this regulation, the contribution made by the licensee or lessee in that applicable year for the operations under its licence or lease shall be deemed accepted by the Commission.

(16) The category of operational area, under which a licence or lease or petroleum operations under a licence or lease falls, shall be confirmed in a written notice by the Commission prior to the first payment of the financial contribution.

PART III — ENVIRONMENTAL MANAGEMENT AND REHABILITATION

Ad hoc
environmental
management
and
rehabilitation
committee

6.—(1) Where a negative environmental impact occurs under regulation 3(4) of these Regulations and the Commission makes a decision to access the Fund, the Commission shall, give notice of its intention to access the Fund to all licensees and lessees in that operational area.

(2) The notice in subregulation (1) of this regulation shall direct the licensees and lessees in that operational area to set up an ad hoc environmental management and rehabilitation committee for the purpose of carrying out a rehabilitation programme under the Fund.

(3) The committee shall submit a programme of rehabilitation to the Commission describing the intervention work to be carried out, the duration, cost, and implementation framework for the conduct of the programme.

(4) The rehabilitation programme submitted by the Committee shall consist of either remediation, reclamation, restoration or any combination of the three as the case may be.

(5) The Commission shall, where it is 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 Commission.

(6) The funds released pursuant to subregulation (4) of this regulation shall be from the portion contributed by the licensees and lessees in that operational area.

(7) The Committee shall be responsible for accounting for all the monies released for the rehabilitation programme and shall submit a report to the Commission upon the conclusion of the programme.

(8) In this regulation operational areas include —

- (a) Onshore High-Risk Areas ;
- (b) Onshore – Other Areas ;
- (c) Shallow Water – High-Risk Areas ;
- (d) Other Shallow Water Areas ; and
- (e) Deep Water Areas.

7. The following shall be the procedure for the release of monies from the Fund —

Procedure for release of funds

- (a) the Committee shall request the Commission to release monies for the implementation of the approved programme ;
- (b) the request shall be in a form prescribed by the Commission and published on its website ;
- (c) the request shall contain a bank account presented by the Committee and the designated administrator of the account who shall be accountable for all monies released for the programme ;
- (d) the release of monies shall be authorised by the Commission ; and
- (e) the release of monies may be based on milestones ; and
- (f) the Commission shall monitor disbursements from the Fund.

8.—(1) The Commission 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 Commission shall ensure that contributions and expenditure from the Fund shall be subject to auditing by an independent auditor in line with extant procedures for auditing such funds.

PART IV — MISCELLANEOUS

9.—(1) The Commission shall determine negative environmental impact from upstream petroleum operations for which the Fund may be utilized for intervention, where the negative environmental impact adversely affect —

Incident qualification procedure

- (a) land pollution (whether for agricultural or other purposes), air pollution, water pollution (seas, rivers, and ground water), soil pollution, waste production, noise pollution, damage to ecosystem and loss of biodiversity ; or
- (b) public infrastructure such as access roads, bridges, public drainage systems, utility facilities, rail lines and other transportation infrastructure.

(2) In making a determination for intervention under subregulation (1) of this regulation, the Commission shall consider the scale, severity of the impact and the social and economic consequences of not managing the negative environmental impact.

General administrative requirements

10.—(1) A licensee or lessee who contributes to the Fund may upon request to the Commission at any time, carry out an audit of the books of the Fund at its own cost.

(2) The Commission shall, not later than one year from the establishment of the Fund, make rules or guidelines for the conduct of audit of the Fund by licensees or lessees.

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

Penalties for non-compliance

11.—(1) A licensee or lessee who fails to make its annual contribution to the environmental remediation Fund is in breach of these Regulations and is liable to pay an administrative fine of USD100,000 or the Naira equivalent.

(2) A licensee or lessee under subregulation (1) of this regulation shall be notified in writing by the Commission of the breach and be liable to the payment of an administrative fine of USD10,000 or the Naira equivalent for each day the contravention continues after the notification.

(3) In addition to payment of administrative fines under this regulation, failure to make contributions to the fund may be a ground for revocation of the licence or lease pursuant to section 96 of the Act.

Interpretation

12. In these Regulations —

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

“*applicable law*” shall be the applicable laws and regulations of Nigeria ;

“*name plate capacity*” means the intended full-load sustained output of a facility under this regulation ;

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

Citation

13. These Regulations may be cited as the Upstream Petroleum Environmental Remediation Fund Regulations, 2024.

SCHEDULE

[regulation 4 (2) (a)(c)(e) and (g)]

RATES FOR THE FINANCIAL CONTRIBUTION CALCULATION

TABLE 1 — Rates for the financial contribution for the upstream operations :

<i>Column 1</i> <i>Location of petroleum operation under a licence</i>	<i>Column 2</i> <i>Contribution in USD or Naira equivalent per day (Fixed Contribution)</i>	<i>Column 3</i> <i>Rate for annual Upstream Capital Expenditure (CER)</i>	<i>Column 4</i> <i>Rate for average daily capacity for liquids in USD or Naira equivalent per bbl/day (CLR)</i>	<i>Column 5</i> <i>Rate for average daily capacity for natural gas, in USD or Naira equivalent per Mcf/day (GCR)</i>
Onshore High-Risk Areas	US\$ 40	0.0010%	US\$ 0.0020	US\$ 0.000200
Onshore – Other Areas	US\$ 32	0.0008%	US\$ 0.0010	US\$ 0.000100
Shallow Water – High-Risk Areas	US\$ 24	0.0006%	US\$ 0.0005	US\$ 0.000050
Other Shallow Water Areas	US\$ 16	0.0003%	US\$ 0.0002	US\$ 0.000020
Deep Water Areas	US\$ 8	0.0001%	US\$ 0.0001	US\$ 0.000010

MADE at Abuja this 13th day of March, 2024.

ENGR. GBENGA KOMOLAFE, FNSE
Commission Chief Executive
Nigeria Upstream Petroleum Regulatory Commission