

NEWSLETTER

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AN OVERVIEW OF THE MIDSTREAM AND DOWNSTREAM PENALTIES AND ENFORCEMENT MECHANISMS REGULATIONS, 2023

INTRODUCTION

The Midstream and Downstream Penalties and Enforcement Mechanisms Regulations, 2023 is one of 12 Regulations released so far by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (“Authority”). Aimed at contributing to the overall development of the Nigerian oil and gas industry, the Regulations were issued in line with the Authority’s mission to guide and regulate the operations of different aspects of the midstream and downstream petroleum sector.

In a bid to provide safe and sustainable operations in the midstream and downstream petroleum industry, the Regulations seek to provide a framework for the application, administration and enforcement of penalties, as well as provide instruments and notices for enforcing such penalties in midstream and downstream petroleum operations. In this newsletter, we shall be considering some of the key provisions of this Regulation with a view to underscoring its significance in ensuring compliance in the Nigerian midstream and downstream space.

WHEN MAY PENALTIES BE ISSUED?

Generally, penalties to be issued for regulatory breaches of any sort in midstream and downstream operations shall be in accordance with the Petroleum Industry Act (“Act”) and Regulations issued by the Authority. It is however important to note that these penalties shall be dependent on the nature and overall impact of the breach. The Regulations identify several situations in which breaches may arise. One of such situations is where there is a failure to undertake petroleum operations in a manner that ensures the safety of lives and property, safe and sustainable operations, and the protection of the environment.

A penalty may also be issued where there is a failure to undertake midstream and downstream petroleum operations according to the terms of a licence, permit or authorization granted by the Authority. Other instances include situations of financial impropriety; mal-operation of facilities; unfair market practices; unlicensed operations or services; and other unlawful practices or non-compliance prescribed by the Act.

ISSUANCE OF NOTICES

The Regulations further empower the Authority to issue four categories of notices in situations where it reasonably believes that a person has committed or is about to commit an offence. To prevent imminent penalties and provide an opportunity for corrective measures, a notice of potential incidence of non-conformity shall be issued where an activity prohibited under the Act, Regulations or directives is likely to be undertaken by any person – the notice shall specify the prohibited activity and direct such a person to desist from that activity.

Where on the other hand, one or more offence(s) have occurred, or where the concerned person has failed to address such an offence(s) in spite of an earlier notice of potential incidence of non-conformity shall be issued. In the same vein, where it is determined that a violation does not pose any danger to personnel, environment, equipment or midstream and downstream operations, an incidence of non-conformity shall also be issued.

In the event however, that a person fails to prevent the incident stated and no presentation was made to prevent a penalty being issued, a notice of non-compliance shall be issued by the Authority. The Authority may then issue a subsequent demand notice conveying its final decision regarding the incidents stated in the earlier notices as well as the applicable penalties to be imposed on a person who has failed to resolve such incidents.

ADMINISTRATION OF SANCTIONS

This covers situations where a notice of compliance is issued.

The Regulations provide that the notice shall state the facts that make a person liable to penalty, specify the penalty, and inform the parties involved of their rights to make representation to the Authority. Such representation must include evidence that no offence has occurred, or the corrective measures undertaken to minimise impact where there is no contention that an offence was committed.

Upon consideration of the representations made by parties involved, the Authority may prescribe a penalty and set a date for full payment of the prescribed penalty, or determine that no penalty

In the event that a person to whom a notice of non-compliance is issued, fails to make a representation as to why a penalty should not be issued, the Authority shall issue a demand notice and apply the administrative penalties in applicable Regulations. The Authority may also impose a cease and desist order as well as revoke the licence or permit, among other sanctions and fines as provided for in the Act.

It is worthy that before the Authority makes a decision to revoke a licence or permit, it is required to serve a notice of default on the licensee or permit holder, giving such a party 60 days to remedy the default. The revocation process will be discontinued where the Authority is satisfied with the remedy, otherwise, the licence shall be revoked. The revocation will then be sent to the licensee, and published in the Federal Government Gazette.

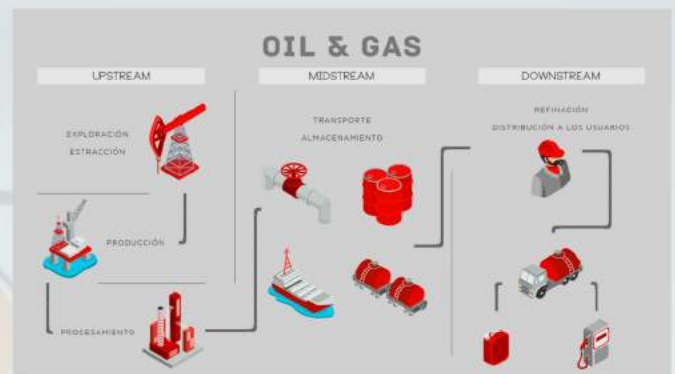
POWER TO ISSUE GUIDELINES

The Regulations also empowers the Authority to issue guidelines, directives, and notices for its effective implementation.

CONCLUSION

The introduction of these Regulations marks a significant step on the journey toward enhancing compliance, accountability, and environmental stewardship in Nigeria's midstream and downstream petroleum sector. By enforcing penalties and sanctions, the Authority aims to create a safer and more sustainable industry that upholds the highest standards of operation. The provision of a penalty framework that sees the imposition of sanctions gradually advance through 4 different stages of notices further underscores one unequivocal reality – that the

Authority is more eager to prevent rather than to impose sanctions on operators in the industry. These regulations send a strong message to industry participants, emphasising the importance of adhering to regulations and fostering a culture of responsibility. As Nigeria's petroleum industry continues to evolve, these regulations will play a vital role in shaping its future trajectory.



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