

NEWSLETTER

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EXAMINING THE MIDSTREAM AND DOWNSTREAM DECOMMISSIONING AND ABANDONMENT REGULATIONS

INTRODUCTION

In response to growing safety and environmental concerns within the petroleum industry, relevant regulatory agencies through the issuance of key Regulations, have shown commitment to ensuring responsible and environmentally conscious practices are at the hallmark of all operations. To this end, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (“Authority”) has recently issued Regulations governing the decommissioning and abandonment of midstream and downstream petroleum facilities in Nigeria as a direct response to these concerns. The objectives of the regulations are to establish rules for creating a

Decommissioning and Abandonment Fund for midstream and downstream petroleum operations, regulate decommissioning and abandonment activities, administer the Fund's requirements, and provide penalties for non-compliance.

These regulations are strategically designed to prevent arbitrary decommissioning or abandonment of facilities, setting clear processes that operators must adhere to. By placing stringent guidelines on the decommissioning and abandonment of midstream and downstream petroleum facilities, the regulations aim to safeguard both human safety and the environment,

ensuring that these critical processes are carried out in a systematic and controlled manner. In this review, we delve into the core provisions of these regulations, elucidating their key objectives and mechanisms while exploring their potential implications for the industry and the ecosystem at large.

REQUIREMENT OF DECOMMISSIONING AND ABANDONMENT PLAN

The regulations mandate that midstream and downstream petroleum decommissioning and abandonment activities must be carried out according to a Decommissioning and Abandonment Plan (Plan), which must be approved by the Authority.. This Plan is a crucial document that outlines the method, scope, and timeline for decommissioning and abandonment activities. It applies to all midstream and downstream petroleum operations, regardless of whether a similar plan had been approved before the enactment of the Act. Existing licensees need to submit their Plans within 120 days of the regulations' initiation, while those intending to construct new facilities must incorporate a Plan into their application.

The Plan itself must incorporate a decommissioning and abandonment philosophy that takes into account economic, social, and environmental sustainability. It should also include an executive summary, background information, descriptions of items to be decommissioned and abandoned, removal and disposal methods, an environmental evaluation study report, a comparative assessment of alternative options, consultation reports, details of interested party consultations, cost

estimates, schedules, and arrangements for post-decommissioning monitoring and maintenance. These comprehensive requirements ensure that the Plan is well-rounded, covering various aspects and impacts of the decommissioning and abandonment process. The regulations also stipulate that a licensee proposing any changes to the approved Plan must seek the Authority's review and approval, ensuring that modifications align with the safety and environmental standards.

ESTABLISHMENT OF A DECOMMISSIONING FUND

The regulations require licensees to establish respective Decommissioning Funds in respect of midstream and downstream operations. They stipulate that each approved Decommissioning and Abandonment Plan ("Plan") must spell out an annual contribution to be made to the Decommissioning Fund. This Fund serves as a financial resource for covering the costs associated with decommissioning and abandonment activities. The contributions are obligatory for midstream facilities and designated downstream facilities.

The annual contribution amount is to be determined based on an estimate provided by the licensee, considering the projected decommissioning and abandonment costs over the facility's lifespan. It is expected that this estimate shall be reviewed every five years, aligning with the duration of the license or until the cessation of petroleum operations linked to the Plan. The intention behind these provisions is to ensure that adequate funding is available to execute the decommissioning and abandonment activities responsibly and in

adherence to the approved Plan. By clearly defining the requirements for annual contributions, the regulations aim to guarantee that facilities' eventual decommissioning and abandonment are financially secure and well-prepared, minimizing environmental and safety risks.

APPROVAL TO DECOMMISSION AND ABANDON

The regulations establish a clear process for obtaining approval to decommission and abandon midstream and downstream facilities located on land. A licensee must apply to the Authority for such approval at least 24 months before the proposed start date of the decommissioning and abandonment program. This application should be accompanied by a comprehensive Program, as outlined in a specified form by the Authority. The Program must include essential details, such as the facility's location, items to be decommissioned, removal and disposal methods, environmental evaluation, cost estimates, and maintenance plans.

The Authority has the responsibility to review and approve the Program, ensuring that it aligns with regulatory requirements, safety standards, and environmental considerations. The regulations also grants the Authority the power to mandate the decommissioning and abandonment of midstream and downstream facilities when it deems it necessary in accordance with international petroleum industry best practices.

APPROVAL OR REJECTION OF AN APPLICATION FOR A PROGRAMME

By the tenor of the regulations, once a licensee submits a proposed program to the regulatory Authority, the Authority has a specified timeframe, which is 120 days, to review and approve the program. This review ensures that the proposed program aligns with the established regulations and requirements, including environmental sustainability, safety, and technical feasibility. The Authority's decision is communicated in writing to the licensee, either approving the program or providing reasons for its rejection if it fails to meet the necessary criteria. If the program meets the specified requirements, it becomes the official guideline for executing the decommissioning and abandonment activities related to the facility in question. This process ensures that the regulatory body has oversight over the decommissioning and abandonment process, safeguarding against arbitrary actions and ensuring adherence to established standards.

PUBLIC CONSULTATION AND COMPLIANCE

The regulations emphasize the importance of public consultation in the decommissioning and abandonment process. A licensee is required to engage in a thorough and inclusive consultation with stakeholders, communities affected by the activities, public authorities, and other interested parties. This engagement aims to ensure that all relevant parties are informed about the planned decommissioning and abandonment activities and have the opportunity to provide their views, concerns,



and suggestions.

The regulations specify several aspects of the public consultation process, including the announcement of the program through newspaper notices and the licensee's website, provision of detailed information to stakeholders, conducting meetings to explain impacts and mitigation measures, and recording and considering the feedback received. The intention is to ensure transparency, provide a platform for local communities and other concerned parties to voice their opinions, and incorporate their input into the decision-making process. This approach contributes to the responsible and accountable execution of decommissioning and abandonment activities, taking into account various perspectives and potential impacts.

ENFORCEMENT AND RECOVERY

The regulations establish a framework for enforcing compliance with their provisions and facilitating recovery in cases of non-compliance. If a licensee's obligations regarding decommissioning and abandonment are not met, the Authority is empowered to enforce compliance through certain measures. For instance, if a license has expired, been surrendered, or terminated without proper decommissioning and abandonment, the former licensee can be directed by the Authority to execute those actions in line with the previously approved Plan. Additionally, if a license has been assigned or transferred before fulfilling decommissioning and abandonment obligations, the responsibility for executing the Plan will be enforced against the new license holder.

In cases where a licensee fails to comply with the regulations' requirements, the Authority has the right to access the Decommissioning and Abandonment Fund (Fund) to cover the cost of performing the licensee's obligations. This access is granted after the licensee has been notified of their non-compliance and has been given a reasonable period to rectify it. These measures are aimed at ensuring that decommissioning and abandonment obligations are fulfilled, reducing potential environmental and safety risks, and safeguarding the Fund for its intended purpose.

ASSET DATABASE

The regulations stipulate that the Authority must establish and maintain a comprehensive database containing information about midstream and downstream petroleum facilities or infrastructure located onshore, in swamp areas, and offshore in Nigeria. This database must include details about various installations, structures, and pipelines used in petroleum operations, along with their current status. The information in the database should be regularly reviewed and updated to ensure accuracy.

Furthermore, the database must be publicly accessible and published on the Authority's official website. This provision aims to enhance transparency and enable stakeholders, including the public, to access information about existing petroleum facilities, their status, and other relevant details. The requirement for an accurate and publicly available asset database is intended to support effective regulatory oversight, informed decision-making, and overall safety and environmental management within the midstream and downstream petroleum sectors.

CONCLUSION

The Midstream and Downstream Decommissioning and Abandonment Regulations mark a significant milestone in the journey toward responsible midstream and downstream petroleum operations. With a strong emphasis on safety, environmental sustainability, and transparent processes, these regulations aim to mitigate the potential risks associated with uncontrolled decommissioning and abandonment. By fostering collaboration between industry players, regulatory bodies, and the community, these regulations pave the way for a more sustainable and secure future for Nigeria's petroleum sector.

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