

NEWSLETTER

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OVERVIEW OF THE NIGERIA UPSTREAM PETROLEUM DECOMMISSIONING AND ABANDONMENT REGULATIONS, 2023

INTRODUCTION

In last week's edition of our weekly newsletter, we assessed the key provisions of the Midstream and Downstream Decommissioning and Abandonment Regulations. This week, we take a look at its upstream counterpart – the Nigerian Upstream Petroleum Decommissioning and Abandonment Regulations, 2023. Issued by the Nigerian Upstream Petroleum Regulatory Commission ("Commission"), the regulations aim to ensure that Decommissioning and Abandonment ("D&A") activities within the upstream subsector are done in accordance with international petroleum industry best practices. Its provisions primarily focus on the decommissioning

and abandonment of petroleum wells, installations, structures, utilities, plants, and pipelines under respective licences or leases, and apply to all such facilities associated with upstream petroleum operations in Nigeria, whether they are located on the land or offshore.

Much like its midstream and downstream counterpart, the Regulations make provisions for similar requirements such as the establishment and administration of a D&A Fund, the creation of a D&A Plan, as well as other approval and reporting requirements designed to prevent arbitrary decommissioning or abandonment of facilities,

thereby safeguarding humanity and the environment. We shall now explore some of the key provisions of these Regulations.

DECOMMISSIONING AND ABANDONMENT PLAN

Licensees and lessees engaged in upstream petroleum operations are obligated to create and submit a comprehensive D&A Plan to the Commission within one year from the issue of the Regulations. For a new licensee or lessee, the D&A plan is to be submitted as part of its field development plan. This plan serves as a roadmap for the safe and responsible cessation of petroleum activities. It must cover technical details, such as the procedures for well plugging and infrastructure dismantling, alongside financial provisions such as the amount to be contributed to the Decommissioning and Abandonment Fund to ensure sufficient resources are available for future decommissioning costs. The regulations also require that periodic reviews of the plan be done as to the annual contribution to be made into the D&A Fund.

Environmental considerations, safety measures, a clear timeline, and adherence to all relevant regulations are also key components. The Commission is required to grant relevant approvals for the plan after which it shall be the effective plan for D&A activities on the relevant facility. Plans are deemed approved upon Field Development Plan approval. The plan essentially ensures that decommissioning and abandonment activities are conducted systematically, safely, and in compliance with environmental and legal requirements.

DECOMMISSIONING AND ABANDONMENT FUND

These regulations mandate the establishment of a Decommissioning and Abandonment Fund ("D&A Fund" or "Fund") by each licensee or lessee, with specific requirements for its setup and management. Licensees or lessees are mandated to create the Fund, with timelines varying based on the type of licence or lease. The Fund is to be maintained in an escrow account held by the Central Bank of Nigeria. For international oil companies (IOCs) in joint ventures with NNPC Limited or under Production Sharing Contracts with NNPC Limited, a portion of their annual contributions to the Fund must be held by the Central Bank, with the remainder potentially placed in a foreign financial institution meeting specific credit rating criteria.

Contributions to the Fund are made through yearly payments as stipulated in the decommissioning and abandonment plan. In joint ventures, individual parties are to contribute pro-rata based on their participating interests. If the Fund is partially held in both Nigerian and foreign financial institutions, the regulations specify conditions, including the percentages to be paid by NNPC Ltd and IOCs. These regulations ensure transparency and financial security for decommissioning and abandonment activities in the petroleum industry.

IMPLEMENTATION OF THE D&A PLAN

The Regulations stipulate that any licensee or lessee intending to suspend or abandon wells, decommission installations, structures, utilities,

plants, or pipelines within their upstream operations must obtain prior approval from the Commission and pay applicable fees. In cases of emergency, where there is an immediate risk to personnel, the environment, or assets, the licensee or lessee can proceed with suspension while promptly notifying the Commission in writing, providing details of the risk, action taken, and the suspension plan within 30 days.

The regulations also detail the procedures for well abandonment, emphasising the importance of submitting an application to the Commission upon knowledge of dry or uneconomic wells. The Commission is mandated to approve such applications promptly. Additionally, the regulations outline the suspension of wells, specifying a three-year period for suspension, extendable upon application. Failure to adhere to these regulations may result in the Commission accessing the decommissioning and abandonment fund to engage a third party for well-abandonment. For installations, structures, utilities, plants, or pipelines on land or oil fields, the licensee or lessee must apply for approval at least 12 months before the proposed decommissioning commencement, with detailed decommissioning programs, environmental evaluations, comparative assessments of alternative options, cost estimates, schedules, and post-decommissioning monitoring and maintenance plans.

Essentially, the Commission is empowered to monitor the implementation of the D&A programme, while licensees or lessees are required to submit periodic reports and attend review meetings, ensuring compliance with these regulations throughout the process.

DECOMMISSIONING OF OFFSHORE FACILITIES

In the context of decommissioning offshore infrastructure, the regulations stipulate specific timelines and requirements. Firstly, for the decommissioning of offshore installations, structures, utilities, plants, or pipelines without involving well abandonment, a licensee or lessee must submit an application to the Commission at least 60 months prior to the proposed start date of the decommissioning. Similarly, when planning to decommission and abandon all or part of an offshore oil or gas field, the same 60-month timeframe applies for submitting the application to the Commission.

These applications must be accompanied by a detailed decommissioning program, as prescribed by the Commission. This program should encompass a comprehensive description of items to be decommissioned, including support structures for offshore fixed and floating installations, topsides, subsea equipment, pipelines, flow lines, and umbilicals. Additionally, the program should cover aspects like seabed debris identification and removal, verification of seabed clearance by an independent organisation, removal and disposal methods for materials and remains on the seabed, post-decommissioning phase proposals including seabed sampling surveys and inspection and maintenance plans, and compliance with international standards set by the International Maritime Organization for offshore petroleum installations and structures. Residual liability is placed on the licensee or lessee for any installation, structure, or pipeline not removed in accordance with the approved decommissioning and abandonment plan.

ABANDONMENT OF WELLS

The regulations outline a clear process for the abandonment of wells. When a licensee or lessee applies for well-abandonment, the Commission is expected to review and decide on the application within 60 days of receiving it. If the Commission fails to communicate its decision within this timeframe, the application is automatically deemed approved. Additionally, if the permanent abandonment of a well is part of a larger decommissioning and abandonment plan for a field, the abandonment application should be included in the comprehensive decommissioning program. In such cases, the Commission's decision timeline will align with that of the overall decommissioning program.

In the event that the Commission rejects an application for well-abandonment, it must provide the applicant with a specified time frame for resubmitting the application. If the licensee or lessee fails to re-submit within the stipulated time and the Commission deems well-abandonment necessary, the regulations give it the authority to appoint a third party to carry out the abandonment. This third-party service will be financed from the decommissioning and abandonment fund. The regulations also require licensees or lessees to promptly inform the Commission in writing within 30 days of completing any well abandonment that was granted approval under these regulations.

PUBLIC CONSULTATION

Emphasis is also given to public consultations in the decommissioning and abandonment process. When an application for decommissioning and abandonment is received, the Commission, in

collaboration with the licensee or lessee, must conduct public consultations involving relevant stakeholders. These stakeholders include communities that might be impacted by the decommissioning activities, public authorities, and other interested parties related to the planned decommissioning.

During these consultations, the licensee or lessee is required to provide necessary information to the Commission for publication on its website, alongside a link to the consultation program. The mode of consultation should be chosen to ensure effective and inclusive engagement, taking into account the project's nature and location. Furthermore, the licensee or lessee must disclose appropriate information and risks to stakeholders in a clear and timely manner, hold meetings with relevant parties to explain impacts and mitigation measures, and ensure the convenience of venues and timing for these meetings. Comments received during consultations must be recorded and considered. However, it's important to note that these requirements do not apply when the decommissioning relates to well abandonment or emergency decommissioning.

POST-COMPLETION OF DECOMMISSIONING AND ABANDONMENT PROGRAMME

Upon finishing decommissioning and abandonment activities, a licensee or lessee is obligated to promptly notify the Commission in writing within six months. This notification must be accompanied by an end of operations report, which should encompass measures for monitoring, maintaining, and managing any abandoned well and the decommissioned site,

procedures for maintaining any remaining installations or pipelines, the actual incurred costs, and any other pertinent information. Additionally, the results of all post-completion monitoring surveys, established as part of the decommissioning plan, need to be submitted after the completion of each survey. Further actions following the last survey depend on the survey results and must be mutually agreed upon with the Commission.

DATABASE OF INSTALLATIONS, STRUCTURES AND ASSETS

The Commission is mandated to establish and maintain a comprehensive database containing information about both onshore and offshore petroleum installations, structures, and pipelines utilised in petroleum operations and their current status. This database is designated as a publicly accessible document and must be annually published on the Commission's official website. Licensees or lessees are obligated to provide relevant information concerning their upstream petroleum activities, including installations, structures, and pipelines, to the Commission in the prescribed format and within specified timeframes for the purpose of maintaining and updating this database.

CONCLUSION

These regulations establish a comprehensive framework for the decommissioning and abandonment of petroleum installations and infrastructure within the upstream petroleum industry in Nigeria. Like its counterpart in the midstream and downstream subsector, the regulations cover a wide range of critical aspects, including the submission of decommissioning plans, the creation and

management of dedicated funds, rigorous environmental considerations, public consultation, and penalties for non-compliance. They no doubt align with international best practices, aiming to ensure that decommissioning and abandonment in upstream activities are conducted safely, efficiently, and in an environmentally responsible manner. It is hoped that with the effective implementation of its provisions by all relevant stakeholders, our hopes of a more sustainable and secure future for Nigeria's petroleum sector are no doubt renewed.

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