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FLARE GAS (PREVENTION OF WASTE AND POLLUTION) REGULATIONS, 2018



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S. I. No. 9 of 2018

FLARE GAS (PREVENTION OF WASTE AND POLLUTION) REGULATIONS, 2018

[5th Day of July, 2018]

Commence-
ment.

In the public interest, and in the exercise of the powers conferred upon me by Section 9 of the Petroleum Act, Section 5 of the Associated Gas Reinjection Act, and of all other powers enabling me in that behalf, I, MUHAMMADU BUHARI, President of the Federal Republic of Nigeria, in my capacity as Minister of Petroleum Resources, make the following Regulations—

PART I—GENERAL

1. The objectives of these Regulations are the—

Objective.

- (a) reduction of the environmental and social impact caused by the flaring of natural gas ;
- (b) protection of the environment ;
- (c) prevention of waste of natural resources ; and
- (d) creation of social and economic benefits from gas flare capture.

2.—(1) Pursuant to Section 9 (1) of the Petroleum Act, Paragraph 35 (b) (i) of the First Schedule to the Petroleum Act and all other laws in this regard, the Federal Government takes natural gas produced with crude oil free of cost at the flare and without payment of royalty.

Right of
Federal
Government
to take all
Flare Gas.

(2) The provisions of these Regulations relating to the right exercised by the Federal Government in sub-regulation (1) of this regulation shall be applicable to all petroleum leases and licences, including Marginal Fields.

3.—(1) The Minister may, by a Permit to Access Flare Gas, authorise a Qualified Applicant selected further to competitive bid processes conducted by the Federal Government to take Flare Gas on behalf of the Federal Government at any Flare Site as specified in the Permit.

Bid
Processes.

(2) Subject to the provisions of these Regulations, any Producer may apply to the Minister to utilise Flare Gas for commercialisation, provided that such application shall—

(a) exclude any Flare Gas volume that is being offered in a bid process conducted by the Federal Government or has been assigned to a Permit Holder ; and

(b) be made by the Producer on behalf of a midstream subsidiary corporate entity, either existing or to be incorporated.

(3) Subject to the provisions of these Regulations, any Producer may utilise associated gas for its own purposes, provided that such utilisation shall not reduce or affect any Flare Gas volume that is subject to a bid

process conducted by the Federal Government or has been assigned to any Permit Holder.

(4) No Producer or Permit Holder shall be liable for the payment of royalties to any person or the Federal Government in respect of Flare Gas.

Flare Gas
Data.

4.—(1) The Department of Petroleum Resources may request a Producer to provide Flare Gas Data.

(2) Where a request for Flare Gas Data is made further to the provisions of sub-regulation (1) of this regulation, the Producer shall provide such Flare Gas Data and in the format required within 30 calendar days of the date of the request.

Penalty for
providing
inaccurate or
incomplete
Flare Gas
Data.

5. Any person who, acting on behalf of a Producer supplies inaccurate or incomplete Flare Gas Data to the Department of Petroleum Resources or to any other duly empowered lawful authority, commits an offence and is liable upon conviction to a fine of N50,000.00 or to imprisonment of a term of not more than 6 months or to both such fine and imprisonment.

PART II—PERMITS

Data Access
Permit.

6.—(1) No Person shall have access to Flare Gas Data except pursuant to a Data Access Permit issued by the Department of Petroleum Resources on a non-exclusive basis.

(2) An application for a Data Access Permit shall be made to the Department of Petroleum Resources in the manner prescribed in the tender documentation issued in respect of a bid process conducted in respect of the Flare Site pursuant to regulation 3 (1) of these Regulations and the guidelines approved by the Minister in respect of such bid process.

(3) A Data Access Permit issued pursuant to the provisions of this regulation shall authorise the holder to access Flare Gas Data held at the Department of Petroleum Resources in respect to any Flare Site specified in the Data Access Permit.

(4) A Data Access Permit shall be valid—

(a) during any period in which a Flare Site is open for bidding ; or

(b) with respect to any Flare Site for which a Permit Holder holds a Permit, until the expiration of a Permit to Access Flare Gas.

(5) Prior to presenting its bid in respect of a Flare Site, a Qualified Applicant may be authorised by the Department of Petroleum Resources to enter the Flare Site to make an assessment of the Flare Site and related facilities of the Producer, provided however that the—

(a) Producer shall be given no less than 7 days' prior notice of such assessment ; and

(b) assessment is conducted in compliance with applicable industry safety standards and regulations.

7.—(1) A Data Access Permit may be revoked, where the holder—

(a) fails to comply with the terms and conditions of a Data Access Permit ; or

(b) intentionally provides inaccurate information in connection with the issuance of the Data Access Permit or withholds significant information in connection with the issuance of the Data Access Permit.

Revocation
of Data
Access
Permit.

(2) The revocation of the Data Access Permit, surrender of rights, or lapse of rights thereunder shall not release its holder from any obligation arising from these Regulations, a Flare Gas bid process or any agreement in connection therewith.

8.—(1) The Minister may grant a Permit To Access Flare Gas, which shall authorise the Permit Holder on an exclusive basis to take Flare Gas from one or more Flare Sites as designated in the Permit on behalf of the Federal Government and to utilise the Flare Gas or otherwise dispose it in any manner authorised by the Federal Government, provided that, any such authorisation shall be subject to such terms as may be specified in the Permit To Access Flare Gas, including the Flare Gas volume.

Permit to
Access Flare
Gas.

(2) Except as provided under regulation 3 of these Regulations, no person shall have access to or take Flare Gas at a Flare Site except pursuant to a Permit To Access Flare Gas.

(3) A Permit to Access Flare Gas may be issued only to a company incorporated in Nigeria, provided that such company shall not be a Producer.

(4) Subject to the provisions of regulation 9 of these Regulations, the term of the Permit To Access Flare Gas shall be for the duration specified in the Permit.

(5) Any route or right of way within a licence or lease area utilised by the holder of the Oil Mining Lease or Marginal Field and required for the purposes of the rights granted under the Permit To Access Flare Gas shall constitute part of the way-leaves, easements or other rights reserved for the Minister under Paragraph 22 of the First Schedule to the Petroleum Act and shall become available to the Permit Holder for the purposes of the rights granted under the Permit To Access Flare Gas.

9. —(1) The Minister shall revoke any Permit To Access Flare Gas where—

(a) the Permit Holder fails to comply with the terms and conditions of the Permit ;

Revocation
of Permit to
Access Flare
Gas.

(b) the Permit Holder intentionally provided inaccurate information in connection with the issuance of the Permit ;

(c) any bond issued by the Permit Holder to secure the Permit has terminated and has not been replaced within 30 days of its termination or otherwise becomes invalid ;

(d) the Permit Holder is dissolved or enters into bankruptcy proceedings ; or

(e) the Gas Supply Agreement to be signed between the Federal Government and the Permit Holder is terminated in accordance with its terms.

(2) The revocation of the Permit To Access Flare Gas, surrender of rights, or lapse of rights for other reasons shall not release the Permit Holder from any obligations arising from these Regulations.

Assignment.

10. The Permit Holder shall not assign or otherwise transfer its interest or rights under the Permit, provided that a transfer shall be permitted, where the—

(a) transferee satisfies the minimum technical and financial requirements necessary to become a Qualified Applicant under a Flare Gas bid process and assumes all obligations of the Permit Holder ; and

(b) prior written approval of the Director Department of Petroleum Resources is sought and obtained by the Permit Holder.

Fees.

11.—(1) A Qualified Applicant appointed in accordance with these Regulations shall pay such fees to the Federal Government, as may from time to time be specified by the Department of Petroleum Resources for—

(a) Data prying ;

(b) Data leasing ; and

(c) Award fee for grant of Permit to Access Flare Gas.

(2) Without prejudice to the provisions of sub-regulation (1) of this Regulation, the following fees may be applicable—

(a) Handling Fee to be mandatorily paid by the Permit Holder to the Producer as prescribed in the approved Connection Agreement ; and

(b) Guarantee Fee to be paid by the Permit Holder to the Producer under the approved Deliver or Pay Agreement, where applicable.

Prohibition
against
Flaring and
Venting of
Natural Gas.

12.—(1) No Producer shall flare gas from any facility operated by such Producer except pursuant to a certificate issued by the Minister further to the provisions of the Associated Gas Re-Injection Act.

(2) No Permit Holder shall engage in Routine Flaring or venting of natural gas from any facility operated by such Permit Holder.

(3) No Producer shall engage in Routine Flaring or vent natural gas from any Greenfield Project.

PART III—PAYMENT FOR FLARING GAS

13.—(1) Where 10,000 barrels or more of oil is produced per day in any Oil Mining Lease area or any field designated as a Marginal Field, the Producer shall be liable to the Federal Government for a flare payment of \$2.00 (two United States Dollars) per 28.317 standard cubic metres (one thousand standard cubic feet) of gas flared within such Oil Mining Lease area or Marginal Field, irrespective of whether the flaring is Routine or Non-Routine Flaring, provided that, there shall be no liability for the payment where the flaring was caused by an act of war, community disturbance, insurrection, storm, flood, earthquake or other natural phenomenon which is beyond the reasonable control of the Producer.

Payment for
Gas Flaring.

(2) Where less than 10,000 barrels of oil per day is produced per day in any Oil Mining Lease area or any field designated as a Marginal Field, the Producer shall be liable to the Federal Government for a flare payment of \$0.50 (fifty United States Cents) per 28.317 standard cubic metres (one thousand standard cubic feet) of gas flared within such Oil Mining Lease area or Marginal Field, irrespective of whether the flaring is Routine or Non-Routine Flaring, provided that, there shall be no liability for the payment where the flaring was caused by an act of war, community disturbance, insurrection, storm, flood, earthquake or other natural phenomenon which is beyond the reasonable control of the Producer.

(3) Notwithstanding the provisions of sub-regulation (1) and (2) of this regulation, no flare payment shall become due in respect of an agreed volume of Flare Gas that the Producer is committed to deliver to the Permit Holder under a Deliver or Pay Agreement entered into with the Permit Holder as from the commencement of commercial operations by the flare reduction project, except to the extent that the Producer does not comply with the requirements of these Regulations.

14. The Minister may refuse to issue or may revoke a certificate to a Producer as prescribed in Section 3 (2) of the Associated Gas Reinjection Act, where the Producer—

Certificate
for
Continued
Flaring.

(a) commercialises any Flare Gas, without regard to regulation 3 of these regulations, except in relation to a Producer's Approved Flare Out Project ; or

(b) does not comply with the requirements of these Regulations.

Flare Gas
Logs.

15.—(1) A Producer shall maintain a daily log of the flaring and venting of natural gas produced in association with crude oil and shall submit the logs to the Department of Petroleum Resources within 21 days following the end of each month.

(2) A Permit Holder shall maintain a daily log of each occurrence of the flaring of Flare Gas and venting of natural gas within its facilities, which shall be submitted to the Department of Petroleum Resources within 21 days following the end of each month.

(3) All logs shall be based on data retrieved from metering equipment that shall be installed respectively by the Permit Holder and by the Producer in their respective facilities and shall include the date, time, duration, rates, volumes, and gas source or type, such as sour inlet gas or acid gas, for each flaring.

(4) The format and manner of all logs shall be in conformity to the Metering and Data Collection Standards issued by Department of Petroleum Resources.

(5) Each Producer and each Permit Holder shall keep copies of logs in safe custody for no less than 36 months.

PART IV—REPORTING OF GAS FLARE DATA

Associated
Gas
Production
Logs.

16.—(1) A Producer shall maintain a daily record of all natural gas produced in association with crude oil from the Oil Mining Lease or the Marginal Field.

(2) A Producer shall submit the record gathered in respect of all natural gas produced in association with crude oil from the Oil Mining Lease or the Marginal Field within 21 days following the end of each month to the Department of Petroleum Resources.

(3) The format and manner of all logs shall be in conformity to the Metering and Data Collection Standards issued by Department of Petroleum Resources.

Producer
Annual
Reporting.

17.—(1) A Producer shall prepare and submit an annual report to the Department of Petroleum Resources, which shall be submitted each year by March 31 for the previous year.

(2) The annual report referred to in sub-regulation (1) of this regulation shall include—

(a) all Flare Gas Data with respect to each Flare Site in the format required by the Department of Petroleum Resources ; and

(b) a list identifying all Flare Sites for which the Producer has not yet executed a Connection Agreement in relation to such sites.

18.—(1) A Permit Holder shall prepare and submit an annual report to the Department of Petroleum Resources, which shall be submitted each year by March 31 for the previous year.

Permit
Holder
Annual
Reporting.

(2) The annual report referred to in sub-regulation (1) of this regulation shall include—

(a) information regarding the volume of Flare Gas utilized at the Flare Site ;

(b) the volume of all such Flare Gas flared by the Permit Holder ; and

(c) the volume of all natural gas vented by the Permit Holder.

19. The Department of Petroleum Resources shall prepare and release an annual report on its website each year by June 30 for the previous year, describing—

Release
of Annual
Report.

(a) flaring and venting by Producers, including the total volume of Flare Gas and the volume of Flare Gas as a percentage of all natural gas produced for each of the prior two years ;

(b) associated gas produced in association with crude oil in order to calculate the Gas Oil Ratio for each of the prior two years ;

(c) associated gas consumed by the Producer for own consumption for each of the prior two years ;

(d) a comparison of upstream petroleum industry flaring and venting performance by Producers against data from previous years, if available ;

(e) a ranking of Producers by the Associated Gas Utilisation Factor ;

(f) the volume of Flare Gas utilised and gas flared and vented by Permit Holders ;

(g) a comparison of volume of Flare Gas utilised and gas flared and vented by Permit Holders against data from previous years, if available ; and

(h) the payments received in relation to the flaring of natural gas produced in association with crude oil by each Producer.

20.—(1) The metering equipment used for measuring the flaring and venting of gas produced associated with crude oil production and Flare Gas shall be manufactured, operated, calibrated and inspected in conformity to the Metering and Data Collection Standards issued by Department of Petroleum Resources.

Metering
and Safety
Standards.

(2) The metering equipment used for measuring gas produced in association with crude oil and Flare Gas shall have accuracy in conformity to the Metering and Data Collection Standards issued by Department of Petroleum Resources.

(3) The Department of Petroleum Resources shall, within 12 months of the effective date of these Regulations develop operational safety standards to be complied with by all Producers and Permit Holders in connection with Flare Gas, which shall at least include—

- (a) required burn technologies and practices for flaring ;
- (b) guidelines on the location of flaring stacks ;
- (c) limits on smoke, heat, and noise generation ; and
- (d) health and safety standards in relation to the occupational safety and health of persons working on a Flare Site.

Failure by
Producer to
prepare,
maintain or
submit logs
or records or
reports or
install
metering
equipment.

21.—(1) Where a Producer fails to—

(a) provide Flare Gas Data further to a request made under regulation 4 of these Regulations ;

(b) supply accurate or complete Flare Gas Data further to a request made under regulation 4 of these Regulations ;

(c) provide a Qualified Applicant with access to any Flare Site for the purposes described in regulation 6 of these Regulations ;

(d) provide a Permit Holder with access to any Flare Site or to Flare Gas as provided in the Permit and in regulation 8 of these Regulations ;

(e) prepare, maintain or submit the logs or records or reports required in regulations 16, 17 or 18 of these Regulations within the time required to do so by the Department of Petroleum Resources ;

(f) install metering equipment within the time required to do so by the Department of Petroleum Resources ; or

(g) agree to enter into a Connection Agreement with a Permit Holder ;
the Producer shall, notwithstanding the provisions of regulation 13 of these Regulations, be required to pay an additional sum of \$2.50 (two United States Dollars and fifty cents) per 28.317 standard cubic metres (one thousand standard cubic feet) of gas flared or vented within the Oil Mining Lease or Marginal Field for each day that the Producer fails to meet these requirements.

(2) In the event of the continued failure of the Producer to comply with any of the requirements of sub-regulation (1) of this regulation, the Minister may direct the Producer to suspend the operations or revoke any Oil Mining Lease or Marginal Field awarded to the Producer.

22. The Minister may revoke any Permit granted to a Permit Holder in the event of a default by a Permit Holder to—

(a) prepare, maintain or submit the logs or records or reports required in regulations 15 and 18 of these Regulations, in the manner and within the time required ;

(b) install and maintain metering equipment in its facilities in accordance with the requirements of regulation 20 of these regulations ; or

(c) supply accurate or complete Flare Gas Data, logs or records.

Failure by Permit Holder to prepare, maintain or submit logs or records or reports or install metering equipment or provide accurate Flare Data.

PART V—MISCELLANEOUS

23. In the event of a conflict or inconsistency between any of the provisions of these regulations and the provisions of any preceding regulations issued by the Minister in relation to the flaring of natural gas, the provisions of these Regulations shall take precedence and supersede any such preceding regulations to the extent of such conflict or inconsistency.

Conflicts

24. In these Regulations—

Interpretation.

“Associated Gas Utilisation Factor” means the volume of Associated Gas utilised as a function of the total Associated Gas production volumes ;

“Connection Agreement” means an agreement conforming substantially to the template issued by the Department of Petroleum Resources which is required to be entered into by and between a Producer and a Permit Holder in respect of the connection of the respective facilities of the Producer and the Permit Holder ;

“Data Access Permit” means a permit granted by the Department of Petroleum Resources to a Qualified Applicant on a non-exclusive basis, which authorises the Qualified Applicant to access data from the Department of Petroleum Resources in respect of any Flare Site specified in the Data Access Permit ;

“Deliver or Pay Agreement” means an agreement conforming substantially to the template issued by the Department of Petroleum Resources that the Producer may sign with the Permit Holder under which it guarantees to supply an agreed volume of Flare Gas within a specified Flare Gas volume and composition range to the Permit Holder ;

“Department of Petroleum Resources” means the Department of Petroleum Resources of the Federal Ministry of Petroleum Resources, or any successor entity ;

“Flare Gas” means any natural gas produced in association with crude oil by a Producer and finally diverted toward a Flare Site by the Producer with the intent that the natural gas will be flared, including any such natural gas from a Greenfield Project ;

"Flare Gas Data" means the dynamic pressure, volume and temperature (PVT) data, and other logs and records generated in the course of day-to-day production activities, submitted to the Department of Petroleum Resources in accordance to regulations 4, 17 and 18 of these Regulations, which shall include—

- (a) gas volumes ;
- (b) oil volumes ;
- (c) flow rates ;
- (d) gas oil ratio ;
- (e) flow pressure and temperature ;
- (f) data in relation to a Flare Site, including field name ; Producer(s) ; field operator ; Flare Site location ; terrain ; coordinates ; Oil Mining Lease number or Marginal Field License details; available infrastructure ; and geophysical maps, models, interpretations, and reports relating to the above data ;
- (g) historical Flare Gas data per field or facility, separated into Routine Flaring and Non-Routine Flaring ;
- (h) historical Flare Gas data per flare stack, separated into Routine Flaring and Non-Routine Flaring ;
- (i) historical oil production data per field or facility ;
- (j) historical gas production data per field or facility ;
- (k) historical gas utilisation data per field or facility ;
- (l) historical water production per field or facility ;
- (m) forecast oil production scenarios per field or facility ;
- (n) forecast gas production scenarios per field or facility ;
- (o) forecast water production scenarios per field or facility ;
- (p) oil reserve data per field ;
- (q) oil reserve data aggregated for each flaring facility ;
- (r) gas reserve data per field ;
- (s) gas reserve data aggregated for each flaring facility ;
- (t) flared gas composition by stack ; and
- (u) any other data that may be required by the Department of Petroleum Resources ;

"Flare Site" means a location where natural gas produced in association with crude oil is flared, commencing at a flare header and going to the point of the flare within an Oil Mining Lease or Marginal Field area or within an oil terminal or refinery, provided that a Producer may consolidate operations for more than one production area into one or more Flare Sites ;

"Gas Supply Agreement" means an agreement conforming substantially to the template issued by the Department of Petroleum Resources whereby Flare Gas is sold by the Federal Government to the Permit Holder ;

"Gas Oil Ratio" (GOR) means the ratio of the volume of gas that comes out of solution to the volume of oil at standard conditions ;

"Greenfield Project" means any project to develop new oil or natural gas production from an Oil Mining Lease or Marginal Field as of the effective date of these Regulations ;

"Handling Fee" means a fee to be paid by a Permit Holder to a Producer for operating and maintaining the interconnection assets that are transferred to the Producer by the Permit Holder and in accordance with the Connection Agreement ;

"Marginal Field" means an oil field within an Oil Mining Lease area awarded to an applicant in relation to a field identified as a marginal field by the President ;

"Metering and Data Collection Standards" means the associated gas and Flare Gas metering and data collection standards and requirements issued by the Department of Petroleum Resources ;

"Minister" means the Minister of Petroleum Resources ;

"Non-Routine Flaring" means all flaring other than Routine Flaring, which is typically intermittent and of short duration and either planned or unplanned, including—

(a) subject to prudent operations and prompt action on the side of the Producer, temporary (partial) failure of equipment that handles the gas during normal operations until their repair or replacement, e.g. failure of compressors, pipeline, instrumentation, controls ;

(b) temporary failure of facilities that prevents receipt of Flare Gas;

(c) safety Flaring ;

(d) initial plant or field start-up before the process reaches steady operating conditions ;

(e) start-up following facility shutdowns ;

(f) scheduled preventive maintenance and inspections subject to it being carried out in a prompt manner and following prudent industry standards ;

(g) construction activities, such as tie-ins, abrupt change of operating conditions, plant design modifications ;

(h) process upsets when process parameters fall outside the allowable operating or design limits and flaring is required to stabilise the process again ;

(i) reservoir or well maintenance activities such as acidification, wire line interventions ; and

(j) exploration, appraisal, or production-well testing or clean-up following drilling or well work-over ;

"Oil Mining Lease" means a lease granted by the Minister to a company incorporated in Nigeria, which allows such company to search for, win, work, carry away, and dispose of petroleum ;

"Permit Holder" means a company that has been granted a Permit To Access Flare Gas by the Minister ;

“Permit to Access Flare Gas” or *“Permit”* means a permit granted to a Permit Holder by the Minister to take Flare Gas at a Flare Site on behalf of the Federal Government ;

“Producer” means a holder of Oil Mining Lease or an allottee of a Marginal Field ;

“Producer’s Approved Flare Out Project” means a Flare Gas commercialisation project intended to be developed by a Producer, which is not already operating commercially, that meets the following criteria as validated and approved by Department of Petroleum Resources—

(a) received all required permits / licenses necessary for its operation ;

(b) executed all material commercial agreements necessary for the implementation of the project ;

(c) achieved financial closing ;

(d) has demonstrated the viability of achieving commercial operations by no later than 1 January 2020 ; and

(e) the Producer has provided a financial guarantee to the Federal Government to underpin its commitment to milestones for the implementation of the project ;

“Qualified Applicant” means a bidder who is deemed qualified following submission of its response to a request for qualifications in accordance with the tender documentation and who intends to utilise Flare Gas for own use or for on-sale to third party offtakers ;

“Routine Flaring” means flaring of natural gas produced in association with crude oil during normal oil production operations in the absence of sufficient facilities or amenable geology to re-inject the produced gas, utilise it on site, or despatch it to a market and Routine Flaring does not include Safety Flaring, even when continuous ; and

“Safety Flaring” means flaring undertaken to ensure safe operations at a facility.

Citation.

25. These Regulations may be cited as the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018.

MADE at Abuja this 5th Day of July, 2018.

MUHAMMADU BUIARI

*President of the Federal Republic of Nigeria
and Minister of Petroleum Resources*

EXPLANATORY NOTE

*(This note does not form part of these Regulations
but intends to explain its purports)*

These Regulations provide a legal framework for the protection of the environment against the effect of gas flaring, prevent waste of gas and the creation of social and economic benefits to Nigeria from gas flares.