

A BILL

FOR

AN ACT TO AMEND THE NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (ESTABLISHMENT, ETC) ACT, 2006 AND FOR OTHER MATTERS CONNECTED THEREWITH, BILL 2012.

Sponsor: Senator Bukola Abubakar Saraki

Commencement.

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

Amendment of
2006 No. 15.

1. The National Oil Spill Detection and Response Agency (Establishment, Etc.) Act 2006 (in this Bill referred to as “the principal Act”) is hereby amended as set out in this Bill.

2 (1) The long title of the National Oil Spill Detection and Response Agency (Establishment, etc) Act 2006 is hereby re-designated as the “National Oil Pollution Management Agency (Establishment, Etc) Bill 2006”.

Re-designation of
National Oil Spill
Detection &
Response Agency

(2) Accordingly, any reference in the Act to “National Oil Spill Detection and Response Agency” shall be construed as the “National Oil Pollution Management Agency”

(3) The re-designation of the enactment specified in sub-section (1) of this section shall not affect anything done or purported to be done under the designated enactment.

3. Section 1 of the principal Act is amended in subsection (1) by subsisting for the existing subsection (1) a new subsection as follows--

“(1) There is established an Agency to be known as the National Oil Pollution Management Agency (in this Bill referred to as “the Agency”) with responsibility for preparedness, detection and response to all oil spillages, oily wastes and gas flare in Nigeria as set out in section 5 of this Bill”.

Amendment of
Section 1

4. Section 2 of the principal Act is amended in subsection (2)(b) by substituting for the existing paragraph (b) a new paragraph as follows -

Amendment
of section 2.

“(b) one representative each of the following Federal Ministries not below the rank of Director –

- (i) Environment;
- (ii) Petroleum Resources

- (iii) Defence;
- (iv) Transportation;
- (v) National Emergency Management Agency; and
- (vi) Oil Producers' Trade Section of Lagos Chambers of Commerce (OPTS)."

5. Section 5 of the principal Act is amended by –

Amendment
of section 5.

(a) substituting for the existing preamble, a new preamble as follows-

“Objectives of the Agency. 5. The objectives of the Agency shall be to monitor and regulate Tiers 1 and 2 oil spills as well as coordinate, implement and review the National Oil Spill Contingency Plan for Nigeria (in this Act referred to as “the Plan”) as follows:”;

(b) substituting for the existing paragraph (a), a new paragraph as follows

“(a) establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to all oil and gas pollution as well as other hazardous and noxious substances in the petroleum sector;”.

6. Section 6 of the principal Act is amended by substituting for the existing one a new section as follows -

Amendment
of section 6.

“Functions of the Agency. 6.-(1) The Agency shall –

- (a) be responsible for surveillance and enforce compliance with all existing environmental legislation in the petroleum sector including those relating to prevention, detection and general management of oil spills, oily wastes and gas flare;
- (b) enforce compliance with the provisions of international agreements, protocols, conventions and treaties relating to oil and gas and oil spill response management and such other related agreements as may from time to time come into force;
- (c) receive reports of oil spillages, leakages from gas pipelines, storage facilities and co-ordinate oil spill and gas leakages response activities throughout Nigeria;

- (d) ensure the remediation of oil impacted sites irrespective of the cause of the spillage;
- (e) co-ordinate the implementation of the Plan as may be formulated, from time to time, by the Federal Government;
- (f) co-ordinate the implementation of the Plan for the removal of hazardous and noxious substances as may be issued by the Federal Government;
- (g) ensure that all oil industry operators in Nigeria subscribe to and be bona fide members of Clean Nigeria Associates (CNA) or any other similar association by whatever name called; and
- (h) perform such other functions as may be required to achieve the aims and objectives of the Agency under this Bill or any plan as may be formulated by the Federal Government pursuant to this Bill.

Penalties.

(2) (a) An oil spiller is by this Act to report an oil spill to the Agency in writing, by fax or electronic mail not later than 24 hours after the occurrence of an oil spill in default of which the failure to report shall attract penalty in the sum of ₦2,000,000 for each day of failure to report the occurrence.

(b) A gas pipeline or storage facility owner is by this Bill to report a gas leakage to the Agency in writing, by fax or electronic mail not later than 24 hours after the occurrence of the gas leakage in default of which the failure to report shall attract penalty in the sum of ₦2,000,000 for each day of failure to report the occurrence.

(3) The failure to clean up the impacted site, to all practical extent including the submission of action plan for remediation within two weeks of the occurrence of the spill in accordance with the polluter pays principle shall constitute an offence and on conviction the oil spiller shall be liable to a fine not less than ₦5,000,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(4) The notice required under subsection (2) of this section shall be deemed to have been made, if delivered at the nearest zonal or field office of the Agency closer to the impacted site

or the National Control and Response Centre within the time stipulated in subsection (2) of this section.”.

7(1) There shall be inserted immediately after Section 7 of the principal Act, the following new sections-

“Abandonment/Decommissioning of drill sites and oil facilities

8 (1) The Agency shall monitor the process of decommissioning or abandonment of drill sites and oil facilities as well as oil and gas industry operational areas in accordance with the procedure and guidelines issued by the Agency

(2) The decommissioned/abandoned drill sites shall be cleaned-up, remediated and restored to its natural or near natural states by the oil facility owner.

(3) The Agency shall be notified in writing to commence the decommissioning and abandonment of any oil facilities or installations within its area of operation.

(4) Failure to request or notify the Agency on the commencement of such activities will attract penalties prescribed in the Agency’s regulation, guidelines or standards.

Pipelines and other oil Facilities Integrity Monitoring and Testing”

9 (1) The Agency shall assess the integrity of oil facilities which include but not limited to pipelines, well heads, manifolds, storage facilities, barges and vessels to ensure that oil facility owners conform to design specifications as well as the provision in the Agency’s regulations, guidelines and standards for the oil and gas sector.

(2) The Agency shall provide a programme for the assessment and monitoring of the oil and gas facilities to enhance its performance for distribution, storage and transportation of the upstream, midstream and downstream products”.

(2) The existing sections 8 and 9 of the principal Act shall be renumbered as section 10 and 11 respectively.

8. Section 11 of the principal Act is amended by -

Amendment of section 11.

(a) inserting immediately after paragraph (b), a new paragraphs (c) and (d) as follows -

- "(c) 2.5 *per cent* of the ecological fund annually for the management of oil spill disasters and remediation of oil impacted sites arising from third party interference;
- (d) 0.5 *per cent* operations funds of oil companies for the enforcement of environmental legislation in the petroleum sector.”;
- (b) renumbering the existing paragraphs (c), (d), (e) and (f) as paragraphs (e), (f), (g) and (h) respectively.

9. Section 19 of the principal Act is amended by –

Amendment
of section 19.

- (a) inserting the following new paragraph (b) immediately after subsection (1)(a), that is –
 - "(b) inspect oil and gas facilities with a view to ensuring full compliance with existing environmental legislation on oil and gas pollution;”;
- (b) renumbering the existing subsections (1)(b), (c), (d), (e), (f), (g), (h), (i) and (j) as subsections (1) (c), (d), (e), (f), (g), (h), (i), (j) and (k) respectively;
- (c) by deleting the existing subsection (3)(d).

10. Section 26 of the principal Act is amended by –

Amendment
of section 26.

- (a) renumbering the existing section as subsection (1);
- (b) adding the following new subsections (2), (3) and (4) immediately after subsection (1) to read:
 - "(2) The Agency may in pursuance of the provision of subsection (1) of this section make regulations setting specifications and standard relating to the –
 - (a) use of dispersant;
 - (b) engagement or invitation of any oil spill responder by oil companies;
 - (c) establishment of a benchmark for oil spill contingency planning;

- (d) development of framework to guide operators in Oil Spill Contingency Planning; and
 - (e) most appropriate means of preventing and combating various oil spills and its attendant oil and gas pollution.
- (3) Any person who contravenes the regulations made pursuant to subsection (2) of this section commits an offence and shall on conviction, be liable to a fine not less than ₦500,000 or to imprisonment for a term not less than two years or to both such fine and imprisonment and additional fine of ₦50,000 for every day the offence subsists.
- (4) Where an offence under subsection (2) of the section is committed by a body corporate, it shall on conviction be liable to a fine not less than ₦2,000,000 and additional fine of ₦500,000 for every day the offence subsists.”.

11. (1) There shall be inserted immediately after section 26 of the principal Act, the following new sections –

Insertion of new sections 27, 28, 29, 30 and 31.

“Power to enter premises.

27.-(1) An officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required –

- (a) enter and search with a warrant issued by a court, any premises including land, vehicle, tent, vessel, floating craft including Maritime Tankers, Barges of Floating Production, Storage, Offload (FPSO) and oil and gas facilities or any inland waters and other structure, at all times, for the purposes of conducting inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation relating to oil and oily wastes management;
- (b) examine any article found pursuant to paragraph (a) of this subsection, which appears to him to be an article to which this Bill or the regulations made under apply or anything which he reasonably believes is capable of being used to the detriment of the environment in the petroleum sector;
- (c) take a sample or specimen of any article to which this Bill or the regulations apply or which he has power to examine under paragraph (b) of this subsection;

- (d) open and examine, pursuant to paragraph (a) of this subsection, any container or package which he reasonably believes may contain anything to which this Bill or its regulations apply or which may help in his investigations;
- (e) examine any book, document or other record found pursuant to paragraph (a) of this subsection, which he reasonably believes may contain any information relevant to the enforcement of this Bill or the regulations and make copies thereof or extracts there from;
- (f) seize and detain for such time as may be necessary for the purpose of this Bill, any articles by means of or in relation to which he reasonably believes any provision of this Bill or the regulations has been contravened; and
- (g) obtain an order of a court to suspend activities, seal and close down premises including land, vehicle, tent well head, vessel, floating craft and oil gas facilities or any inland waters and other structure whatsoever.

(2) A written receipt shall be given for any article or thing seized under subsection (1) of this section and the reasons for such seizure shall be stated on such receipt.

(3) An article seized under this Bill shall be kept or stored in such a place as the officer of the Agency may direct and shall be returned to the owner or the person from where it was seized if the article upon analysis or examination is found to conform with the requirements of this Bill or regulations made under it.

(4) An article seized by an officer of the Agency in pursuance of this Bill or the regulations made under it, may be submitted to an analyst for analysis or examination and the analyst upon making such analysis or examination shall, issue a certificate or report in the prescribed form, setting forth the result of such analysis or examination and the officer of the Agency shall, on demand, deliver a copy of such certificate or report to the owner of the article if the article is to be subject of a proceeding under this Bill or regulations there under.

(5) In this section, the expression “article” to which this Bill or regulations made under it apply are:

- (a) liquid, soil, vegetation;
- (b) biological and chemical samples; and
- (c) such other articles or samples as may be determined by the Agency.

Offences
and
penalties.

28.-(1) A person who obstructs an officer of the Agency in the performance of his duties under sections 5, 6 and 7 of this Bill commits an offence and is liable on conviction to a fine not less than ₦300,000 for an individual or to imprisonment for a term not less than 2 years or to both fine and imprisonment, and an additional fine of ₦50,000 for each day the offence subsists and in the case of a body corporate, it shall be liable on conviction for a fine of ₦5,000,000 and an additional fine of ₦500,000 for each day the offence subsists.

(2) Any person who contravenes the provision of any regulations made under this Bill is guilty of an offence and is liable on conviction to the penalties specified in the regulations.

Conduct of
proceedings.

29.-(1) A suit shall not be commenced against the Agency before the expiration of a period of one month, after written notice of intention to commence the suit shall have been served on the Agency by the intending plaintiff or his agent.

(2) Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in a court of law), any officer of the Agency may, with the consent of the Attorney-General of the Federation, conduct criminal proceedings in respect of offences under this Bill or regulations made under this Bill.

(3) In a judicial proceeding for an offence under this Bill or any regulation made under it, the provisions of the Criminal Procedure Act or depending on the venue, the Criminal Procedure Code shall, with such modification as the circumstance may require, apply in respect of such matter to the same extent as they apply to the trial of offences generally.

Existing laws.

30.-(1) Any written law in force immediately before the coming into force of this Bill relating to oil, oily wastes pollution management and gas leakages in the petroleum sector shall have effect subject to modifications as may be necessary to bring into conformity with the provisions of this Bill and where the provision of any such law is inconsistent with any provision of this Bill, the provision of this Bill shall prevail, and that other law shall be void to the extent of its inconsistency.

(2) Any written law in force immediately before the coming into force of this Bill conferring oil, oily wastes pollution management and gas leakages functions on any other establishment or agency in the petroleum sector is hereby repealed to the extent of its duplication.

Requisition, etc.

31.-(1) In the exercise of its functions under this Bill, the Agency may demand by requisition from any person or organization, any available equipment, facilities or personnel which may assist in a speedy and effective cleaning and rescue operation during an oil spill disaster.

(2) Any person or organization that –

(a) willfully obstructs or impedes the Agency or any person acting under the authority of the Agency in the exercise of any powers or duties under this Bill; or

(b) without reasonable excuse fails to -

(i) render assistance or release any available equipment, facility or personnel required for cleaning and rescue operation or other oil spill disaster curtailment activities, or

(ii) comply with a directive of the Agency,

is guilty of an offence and liable on conviction to a fine not less than ₦500,000 or imprisonment for a term of 2 years or to both such fine and imprisonment.

(3) The Agency shall ensure that the Polluter provides reasonable compensation for loss or damage arising from the

use of any equipment, facility or personnel required under this section of this Bill.”.

(2) The existing sections 27 and 28 of the principal Act shall be renumbered as sections 34 and 35 respectively.

12. The First Schedule to the principal Act is amended by substituting for the word “six” the word “three” in the third line of paragraph 3 therein. Amendment of the First Schedule.

13. There shall be substituted for the existing section 27 of the principal Act, the following new section, that is - Amendment of section 27.

“Interpretation.

32. In this Bill, unless the context otherwise requires –

“**Agency**” means the National Oil Pollution Management Agency established under section 1 of this Bill;

“**Centre**” means the National Control and Response Centre established under section 18 of this Bill;

“**Chairman**” means the Chairman of the Governing Board of the Agency;

“**Constitution**” means the Constitution of the Federal Republic of Nigeria;

“**Court**” means Federal or State High Court;

“**gas**” or “**natural gas**” means wet gas, dry gas, lean gas, all other gaseous hydrocarbons, and all substances contained therein, which are produced along with crude oil or gas, excluding those condensed or extracted liquid hydrocarbons that are liquid at normal temperatures and pressure conditions such as stabilized or field condensate, including the residue gas remaining after the condensation or extraction of the liquid hydrocarbon from gas;

“**Governing Board**” means the National Oil Pollution Management Governing Board of the Agency established under section 2 of this Bill;

“**member**” means a member of the Governing Board of the Agency and includes the Chairman;

“**Minister**” means the Minister charged with responsibilities for matters relating to environment;

“Ministry” shall be construed accordingly;

“officer” means any employee of the Agency;

“oil” means mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shale or other stratified deposits from which oil can be extracted by destructive distillation but including premium motor spirit, automotive gas oil, low/high pour, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant oil in its natural state before it has been refined or treated;

“oil spill responder” includes Clean Nigeria Associates (Oil Companies Cooperative), Oil Spill Response Limited (OSRL) or any other oil spill response contractors; and

“release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, discarding or disposing into the environment.”.

“remediation” means the process of remedying or restoring an area or situation to its natural (or as close to natural as possible) state”.

“Tier 1” means operational type spills, less than or equal to 7 tonnes (50 bbls), that may occur at or near a company’s own facilities, as a consequence of its own activities.” and

“Tier 2” means a larger spill, greater than 7 tonnes (50 bbls) but less than 700 tonnes (5000 bbls), in the vicinity of a company’s facilities where resources from another company, industry and possible government response agencies in the area can be called in on a mutual aid basis.”

“Tier3” means a larger spill, greater than 700 tonnes (5000 bbls) where substantial further resources will be required and support from a Nation (Tier 3) or international cooperative stockpile, like the Oil spill Response Ltd (OSRL) may be necessary. It is likely that such operation would be subject to Government control or even direction.

14. This Bill may be cited as the National Oil Pollution Management Agency (Establishment, Etc.) (Amendment) Bill 2012.

Short title.

EXPLANATORY MEMORANDUM

(This note does not form part of the above Bill but is intended to explain its purport)

This Bill amends the National Oil Spill Detection and Response Agency (Establishment, Etc.) Act 2006 to provide, among other things, statutory power for the Agency to charge adequate fines, introduce criminal offences and penalties in order to ensure strict compliance with all existing environmental legislation in the petroleum sector.