

# **GAS FLARING (PROBIHITION AND PUNISHMENT) BILL 2013**

## **EXPLANATORY MEMORANDUM**

This Bill seeks to make provisions for the prohibition of gas flaring in any oil and gas production operation, blocks, field, onshore or offshore and gas facility treatment plant in Nigeria.

# **GAS FLARING (PROBIHITION AND PUNISHMENT) BILL 2013**

## **ARRANGEMENT OF CLAUSES**

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3. Application for authorization
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5. Operators to submit gas utilization plan within 90 days
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## **Schedule**



Ministers authorization will restrict the duration of any flaring and venting to one and three months and specify the maximum gas to be flared and vented on an auditable program prepared by the operator.

c. The production phase:

Every operator must apply for authorization to the minister to flare or vent gas in the 3<sup>rd</sup> quarter of the preceding year. Such application for consent must include a forecast of volumes for the following flare and vent categories;

- i. Base load flare,
- ii. Flaring from operational or mode changes,
- iii. Emergency shutdown/process trip flares,
- iv. Un-ignited vents including an estimated annual average composition of vented streams.

**Cessation of gas flaring. 4.**

(2.) No company engaged in the production of oil and gas shall after 31<sup>st</sup> December, 2013 flare gas produced whether in association with oil or not, unless the flaring or venting is technically and economically justified.

**Operators to submit gas utilization plan within 90 days of the commencement of this Act. 5.**

(1) The oil and gas operators with flared gas resources shall within 90 days of the passage of this Act categorize all of their flared gas resources (daily flare quantity, reserve, location, composition) and submit this data along with gas utilization plans to the Minister of the gas they intend to utilize before the flare out deadline.

(2)(a) The minister shall approve same within 60 days of receipt of the said plan and shall post all approved plans, and all data of unplanned natural gas resources for public consumption.

(b) Bids shall be accepted from third party companies with commercial uses for the unplanned flared gas within a period of not less than 120 days after the posting of this information.

(c) These bids shall be reviewed by the ministry and contracts with eligible bidders shall be signed for long term access to these gas resources within 60 days.

(d) All gas which remains unplanned for must be shut in or reinjected within one year to the finalization of third party contracts.

**Prohibition of directive or authorization to flare gas. 6.**

(1) (a) No person shall direct, permit or otherwise aid, empower or authorize howsoever, any company engaged in oil and gas operations to flare or vent gas.

(b) However, the Minister may grant a permit of not more than 30 days to flare or vent gas in cases of start-up, equipment failure, shut down or safety flaring.

(2) Any person who flares or vents gas without the permission of the Minister in the circumstances mentioned in subsection (1) (b) of this section shall be liable to pay a fine which shall not be less than the cost of the gas at the international market.

**Failure to meet annual gas flare reduction target. 7.**

(1) Any licensee or lessee, who fails to meet the annual gas flare reduction target set by the Minister in respect of any year, shall be liable to pay a fine as specified in section 4(2).

(2) The fine shall be payable in respect of the volumes of gas by which such licensee or lessee failed to meet the annual gas flare reduction target.

**Gathering utilization of reinjection of natural gas. 8.**

(1) (a) No license or lease for the production of oil and gas whether onshore, offshore or deepwater shall be granted to any applicant unless the application for such a license or lease is accompanied by a comprehensive programme acceptable by the Minister, for the utilization of natural gas both for general, domestic (e.g. Integrated power plants, industries, etc.) and export purposes.

(b) No license or lease for the production of oil and gas in Nigeria shall be granted to any applicant unless the Minister is satisfied with the applicant's gas utilization program.

(c) The utilization program referred to in subsection 1(a) above, must be in consonance with the National Gas Master Plan, domestic gas supply obligation, and national policies as may be made in respect of the gas sector from time to time by the Federal Government.

(2)(a) Licensees and lessees operating oil and gas fields in Nigeria before the commencement of this Act, shall within three months of the commencement of this Act submit to the Minister feasibility study, programme or proposals that they have for the gathering, utilization and reinjection of any natural gas, whether associated with oil or not, which has been discovered in the relevant area.

(b) Any Licensee or lessee who fails to comply with subsection (2)(a) of this section shall be liable to pay a fine as stated in section 9 of this Act.

(c) The Minister shall make appropriate arrangement for the exercise of the right vested in the Federal Government by paragraph 35 (b) (i) of the first schedule to the petroleum Act 1969

**Provided always that:**

- i. lack of due exercise of the right of the Federal Government to take natural gas produced with crude oil shall not be a ground for flaring such gas;
- ii. the licensee and lessee operating the field, group of fields or facility from which gas is produced shall re-inject such gas that he is not able to harness for valuable utilization as prescribed by the Associated Gas Re-injection Act, rather than dispose through the flare or vent; or
- iii. the licensee and lessee operating the field from which gas is produced shall shut a field where he is of the view that the gas produced there-from cannot be re-injected or utilized as provided in subsection 2(a) of this section.

**Continued flaring. 9.**

(1) Subject to the exceptions specified in section 6, where a licensee or lessee fails to meet the annual gas flare reduction target set by the Minister in respect of any year, the licensee or lessee shall, in respect of the volumes of gas by which the licensee or lessee failed to meet the annual gas flare reduction target, pay a fine in accordance with the penalties laid out in section 9 of this Act.

(2) The volumes of gas flared from any facility that is a part of oil and gas operations shall be measured using the metering equipment specified from time to time by the Minister.

(3) Within three months from the commencement of this Act, each licensee or lessee shall install the metering equipment specified in

this Act on every facility in its operation from which gas is flared or vented.

**Gas Flare Reports after  
1<sup>st</sup> December, 2013. 10.**

(1) After the flares-out target date of 31<sup>st</sup> December, 2013, any person, group of persons or community may lodge a documented report of gas flaring or venting with the nearest office of the Department Of Petroleum Resources.

(2) The Minister shall appoint an officer to receive and record report of gas flaring or venting.

(3) An officer appointed pursuant to subsection (2) of this section who receives a report of gas flaring or venting shall within forty-eight hours of receipt of such report, inspect the facility where gas is allegedly being flared, verify the authenticity of the report to determine the cause of the gas flaring, the date when the gas flaring commenced and the volumes of gas flared or vented from the facility each day.

(4) The officer shall submit a report of the verification exercise to the Minister within seven days of his visit to the facility from which gas is being flared or vented.

(5) If the Minister determines that the report of gas flaring is authentic and that the flared gas does not fall within any of the exceptions specified in section 6(ii), he may at his discretion, impose the fine specified in section 6(iii) in respect of the volumes of gas flared or vented from that facility or issue a shut down order mandating the shut down of the facility in question or both.

(6) On receipt of a shut down order, the operator of the facility shall comply with the order within forty-eight hours from the date of receipt of the shut down order.

**Offences and penalties. 11.** (1) (a) (i) Any person who flares gas after 31 December, 2013 contrary to section 4 of this Act, commits an offence under this Act, and shall be liable on conviction to pay a fine which shall not be less than the cost of gas at the international market.

**Provided that;**

any payment due under this paragraph shall be made in the same manner and be subject to the same procedure as for the payment of royalties.

(ii) The current \$3.50 per 1000scf penalty for gas flared shall continue until 1<sup>st</sup> January, 2015 when the new penalty regime shall commence.

(iii) In the case of third party utilization, penalties will only be imposed at the end of the approved project schedule or 31<sup>st</sup> December, 2013 whichever is later.

(iv) For flares accessed through third party contractors, penalties will be imposed on third party accessing companies having signed contracts for this gas, not on the operator of the field from which the gas is being accessed.

(b) The operator of the field or group of fields from which gas is flared or vented in contravention of section 1 (2) of this Act, shall also be liable to pay an amount equivalent to fifty percent of the penalty prescribed in paragraph (a) of this sub-section, as compensation through the office of the Minister to the Local Government Council for community development activities in the adjoining communities where the gas flare or vent activity is perpetrated.

(c) The penalty payable on the volume of gas flared by any person from the commencement of this Act, and for each day the flare or vent continues shall also be made public by the Minister and the operator separately and independently within a maximum of 60 days of the offence.

(d) A Demand Order for payment of penalty shall also be made public.

(e) Failure to comply with a Demand Order issued under paragraph (d) shall attract a penalty for each day the non-compliance continues with a 20 per cent surcharge.

(2)(a) Without prejudice to subsection 1 of this section, the concessions granted in the particular field or group of fields from which gas is being flared or vented in contravention of section 2 of this Act shall be forfeited.

(b) The Minister shall revoke the licence or lease under which the field or group of fields from which the offence under section 1(2) of this Act was committed.

(c) A Certificate of Forfeiture and the Revocation Order shall be issued and made public.



(3)(a) It shall be an offence to fail, refuse and or neglect to forward a gas flare report lodged or falsify any report under section 10 of this Act to the Director for appropriate action.

(b) Any person guilty of an offence committed under paragraph (a) of this subsection shall be liable to three months imprisonment or an option of fine not less than the value of 50 per cent of the volume of gas flared or vented.

**Act to apply in Exclusive Zone. 12.**

The provision of this Act shall apply to the Exclusive Zone and free trade zones as they apply to land as defined in section 1 of the Petroleum Act.

**Miscellaneous Provisions. 13.**

The Minister shall be answerable to the National Assembly for failure, refusal, and or neglect to shut down or implement the penalties or any field, group of fields, or facility which contravenes the provision of this Act.

**Power to make Regulations. 14.**

The Minister shall immediately after the coming into effect of this Act make Regulations to prescribe:

(a) The manner in which any order, directive, or application in accordance with the provisions of this Act shall be made and the form to be used.

(b) The procedure for making a Gas Flare Report, recording and filing of report, publication of Shut Down Order.

(c) The terms and condition of reviewing where he deems fit in the national interest, without jeopardizing the health, safety and the environment of any affected community, a shut down order for the purpose of reopening of field, group of fields or facility shut down pursuant to the provisions of this Act.

(d) Generally for carrying into effect the purposes and provisions of this Act.

(e) The Minister would ensure that gas flared or vented is catalogued with information on site (longitude, latitude, local Government Area and ward), daily volume and gas reserves within 90 days of the commencement of this Act.

(f) (i) The field operators responsible for each of these flares/vents should put together project designs for gas utilization. Project plans are to be submitted to the Minister within 90 days of this Act coming into effect.

(ii) The plans shall be deemed to have been acceptable and approved if the Minister does not respond in the negative to any plan formally submitted by the operators within 60 days of submitting the plans to the Ministers office.

(g) The Ministry shall maintain a Gas Source Database where all unplanned flares/vents are to be posted and made public. Any unplanned gas shall be considered free for third party bids.

(h) (i) The Minister shall be responsible for developing and publishing guidelines for evaluating project process and where the Facility Milestone target is not met, the project sponsor maybe liable to delay penalties or forfeit its gas concession.

(ii) The delay penalty shall be the equivalent of the prevailing fine as contained in section 4(3) of this Act with a 20 per cent surcharge.

**Special Considerations. 15.**

(1) All infrastructural projects undertaken to support gas flare out will be entitled to 5 years corporate tax exemption and other concessions as may be granted by the Federal Government.

(2) All projects aimed at producing for the Nigerian market shall enjoy the following waivers:

- (a) 5 year corporate tax exemption;
- (b) land or equivalent of the cost of the land in tax deductions from VAT; and
- (c) all projects employing above 200 Nigerians or at least 40 per cent Nigerian equity ownership shall enjoy tax write off for insurance policy premium for 5 years after commissioning.

**Delegations of the powers of the Minister 16.**

The powers conferred on the Minister by this Act may be exercised by any one duly authorized by the Minister to do so.

**Power of Review 17.**

The Minister's powers granted under this Act shall be reviewed and re-appraised after every two years.

**Interpretations. 18.**

In this Act

“Continuous production flaring” means the long term flaring of natural gas that is associated with the process of crude oil production and that is not utilized for on-site or off-site energy needs, recovered for local or international gas marketers, or re-injected;

“Department of Gas” means the Department of Gas in the Ministry of Petroleum, or such other Department, Agency or Parastatal as may be established from time to time by the Federal Government

and charged with responsibility for management of natural gas resources.

“Director” means the Director, Department of Petroleum Resources;

“Gas flaring” means any flaring of natural gas associated with the process of oil production, and includes continuous production flaring but excludes safety flaring and non-continuous production flaring. Analogous expressions, such as “gas flare”, “flaring of gas”, “flare gas” shall have the same meaning as “gas flaring”;

“Flare reduction targets” means the annual gas flaring percentage reduction target set by the Federal Government;

“Licensee” means the holder of an Oil Prospecting License;

“Lessee” means the holder of an Oil Mining Lease;

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

“mmscf” means one million standard cubic feet;

“Non-continuous production flaring” means the flaring of gas streams that may result from short-term releases, including but not limited to short-term well testing, commissioning of facilities, emergencies, equipment or compressor start-ups and shutdowns, equipment failure, etc;

“Operator” on all issues relating to penalties refers to the actual operating partner and not to the entire joint venture – for the avoidance of doubt, when government, as represented by any of its agencies, is not the operating partner, it shall not be required to pay any penalty imposed for the breach of any law;

“Reasonable and prudent operator” means a person or entity seeking in good faith to perform its covenants or obligations in accordance with its Oil Mining Lease, Oil Prospecting License and/or applicable governance agreements and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with all applicable laws engaged in the same type of undertaking under the same or similar circumstances and conditions; and the expression “standard of a reasonable and prudent operator” shall be constructed accordingly;

“Safety flaring” means the flaring of natural gas that occurs because of a temporary or permanent lack of adequate gas processing facilities to prevent gas venting and injuries to people, equipment and the environment during process upsets, testing and/or commissioning.

**Short Title 19.** This Act may be cited as the Gas Flaring (Prohibition and Punishment) Act 2013.

## **SCHEDULE**

### ***Consequential Amendments***

- (1) Notwithstanding anything to the contrary in any enactment, the power of the Minister to issue Certificate for continued flaring of gas existing immediately before the commencement of this Act, under section 3(2) of the Associated Gas Re-Injection Act, CAP A 25 LFN 2004 shall, upon the commencement of this Act, be revoked, and the Minister’s power shall be limited to the scope of the power and obligations of the Minister as specified in this Act.