

REGULATORY COMPLIANCE IN OIL SPILLS: EXAMINING NOSDRA'S ROLE UNDER NIGERIAN LAW

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1. Introduction

Every Nigerian, regardless of social class, ethnicity, or location, has the right to a safe and healthy environment. The Constitution of the Federal Republic of Nigeria 1999 (amended) places a duty on the State to protect and improve the environment, and to safeguard the water, air, land, forests and wildlife of Nigeria.¹ In addition, the Constitution directs the government to pursue economic objectives that involve harnessing the nation's resources to promote national prosperity and to build an economy that is efficient, dynamic, and self-reliant.² In effect, the protection of the environment is not just a moral imperative; it is a constitutional responsibility that must guide both policy formulation and implementation at all levels of the government.

The maximisation of Nigeria's oil and gas resources in furtherance of the nation's economic objectives cannot be separated from the inherent risk of environmental degradation, particularly through oil spills and other oil and gas-related environmental hazards. It is therefore imperative to strike a balance between the economic necessity of oil production on the one hand, and the critical need to protect the environment from the adverse effects of oil spills on the other hand. In response to this competing interest, the Nigerian government established a standardized legal framework for the control and management of oil spill incidence.

In this regard, the general regulatory powers over petroleum operations are vested in the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) pursuant to the Petroleum Industry Act (PIA)³, whereas the primary responsibility for regulating oil spill incidents lies with the National Oil Spill Detection and Response Agency (NOSDRA).⁴

This article examines the legal and institutional framework established by

¹ Section 20, of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

² Ibid, section 16.

³ Petroleum Industry Act, 2021

⁴ Established under Section 1(1) of the National Oil Spill Detection and Response Agency (Establishment) Act 2006.

a Regulation by NOSDRA on oil spill management in Nigeria. The said Regulation outlines the rights, duties and responsibilities of key stakeholders involved in oil spill recovery, clean-up, remediation and damage assessment in Nigeria.

2. Regulatory Framework for Oil Spill Prevention, Control and Management in Nigeria

The National Oil Spill Detection and Response Agency (NOSDRA or the Agency) was established as a parastatal under the Federal Ministry of Environment with the primary mandate of ensuring preparedness, detection, and coordinated response to all oil spill incidents in Nigeria.⁵ In broad terms, the Agency is responsible for coordinating and implementing Nigeria's National Oil Spill Contingency Plan.⁶

Nigeria's National Oil Spill Contingency Plan (NOSCP) 2010 (as revised), is a comprehensive policy framework issued by the Federal Ministry of Environment. It is designed to guide the prevention, mitigation, and management of oil spill incidents across Nigeria. NOSCP outlines a cost-effective and coordinated response mechanism based on a tiered system of contingency planning, categorised into three levels.⁷

- Tier One (Company Plan): Activated for small-scale spills that can be effectively managed by the operating company using in-house resources.⁸
- Tier Two (Cooperative Plan): Designed for medium-scale spills that require a joint response from multiple operators or support from industry cooperatives.⁹
- Tier Three (Government Plan): Reserved for large-scale or catastrophic spills that exceed the capacity of individual companies and require a national-level response coordinated by government agencies.¹⁰

⁵ Section 1 of the National Oil Spill Detection and Response Agency (Establishment) Act 2006 (NOSDRA Act).

⁶ Ibid, section 5.

⁷ Section 9.0 of the National Oil Spill Contingency Plan, (NOSCP) 2011 and Regulation 8.3 of the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations, 2011.

⁸ Oil spills of a volume between 0 – 25 barrels to inland waters or 0 – 250 barrels to land or coastal/ offshore waters.

⁹ Oil spills of a volume between 25 - 250 barrels to inland waters or 250 – 2500 barrels to land or coastal/ offshore waters.

¹⁰ Oil spills of a volume greater than 250 barrels to inland waters or above 2500 barrels to land or coastal/ offshore waters

The classification of the appropriate contingency plan is determined by the volume and severity of the spill.¹¹

a. Oil Spill Clean Up under the Regulation

In furtherance of its mandate to implement and administer NOSCP, the Agency issued the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations, 2011 (the Regulation). This Regulation establishes detailed procedures, methods, and standards for the detection, containment, response, clean-up, and remediation of oil spills originating from both onshore and offshore petroleum facilities, including incidents affecting land, navigable waters, and adjoining shorelines within Nigeria.¹²

By the provision of the Regulation, any person who discovers an oil spill has a legal duty to promptly report the incident to the facility owner (i.e., most often an oil company), the Agency, or any other relevant regulatory authority or law enforcement agency.¹³ Upon receiving such a report, the owner or operator of the facility is required to take immediate steps to verify and confirm the occurrence of the spill. Where a spill is confirmed, the facility owner or operator must initiate a response in accordance with the applicable Oil Spill Contingency Plan (OSCP) or Spill Prevention, Control, and Countermeasure Plan (SPCCP) for the facility.¹⁴

It is important to note that under the Regulation, the owner or operator of a facility is required to notify the Agency within twenty-four (24) hours of becoming aware of an oil spill from its facility.¹⁵ This notification must be made by completing and submitting the Oil Spill/Leak Notification Report (Form A), prescribed under the Regulation.¹⁶ The form must include key details such as the name of the operator, the date and time of the spill, the date and time the spill was observed, the estimated volume of oil spilled, the extent of the impacted area,¹⁷ and any other relevant information necessary for assessing and responding to the incident.¹⁸

11 Section 2.3 of the National Oil Spill Contingency Plan, (NOSCP) 2011.

12 Regulation 1 of the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations, 2011.

13 Ibid, regulation 4(1).

14 Ibid, regulation 4(2).

15 Ibid, regulation 4(3).

16 Regulation 4 (4) and 1st Schedule of the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations, 2011.

17 Level of impact is classified as either no impact, slight impact, or heavy impact.

18 Regulation 4(3) of the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations, 2011.

Upon receipt of Form A, the Agency is mandated to constitute a Joint Investigation Team (JIT) comprising of the facility owner or operator responsible for the spill, representatives of the host community where the spill occurred, the relevant State Government and the Agency. The JIT is required to conduct a joint visit to the spill site to investigate the cause, extent, and impact of the oil spill. Following their investigation, the Agency is responsible for preparing a Joint Investigation Visit Report (JIV Report) documenting their findings.¹⁹

The JIV Report prepared by NOSDRA must be signed by all parties who participated in the joint investigation. The JIV report is required to contain key details of the spill, including the date of occurrence, the estimated volume of oil spilled, the date the JIV was conducted, the environmental impact of the spill, and the team's recommendations for remediation among other relevant information.²⁰

Where the JIV Report recommends an oil spill response strategy, the owner or operator of the facility is obligated to comply with the recommendations and must ensure that the spilled oil is cleaned up in the manner and to the extent prescribed by the JIV Team.²¹ Where cleanup is recommended in the JIV Report, the Agency is responsible for monitoring and evaluating the cleanup activities to ensure they remain appropriate and effective as circumstances evolve.²²

b. Oil Spill Remediation under the Regulation

The Regulation provides that remediation shall commence as soon as the need arises at any affected site.²³ The Regulation sets out detailed modalities for conducting remediation activities, including procedures, standards, and timelines to be observed by the responsible party. Upon completion of the remediation, the facility owner or operator is required to submit a Final Remediation Report to the Agency. This report must include, among other things:

¹⁹ Ibid, sections 5, 33(1), (2) and (3).

²⁰ Ibid, regulation 33(3) and schedule 4.

²¹ Ibid, regulation 49.

²² Ibid, regulation 17.

²³ Ibid, regulation 36(1).

- i. Variations from the initial remediation workplan;
- ii. Details of excavated materials;
- iii. Post-Remediation Monitoring Plan outlining follow-up assessments to ensure environmental recovery; and
- iv. Findings and conclusions drawn from the remediation process.²⁴

c. Damage Assessment and Compensation Payment under the Regulation

By virtue of the provisions of the Regulation, the primary responsibility for assessing damages resulting from an oil spill rests with the Agency. Following the completion of the clean-up exercise, the Agency, working in collaboration with relevant stakeholders, is mandated to conduct a comprehensive damage assessment to determine the extent of environmental impact and to recommend appropriate remediation or compensation measures.²⁵

The scope of this assessment includes evaluating damage to biodiversity, water resources, fisheries and other aquatic resources, properties, and socio-economic losses.²⁶ The Regulation expressly provides that this responsibility lies with the Agency working in conjunction with relevant stakeholders. Although the Regulation does not expressly define the term “*relevant stakeholders*,” guidance can be drawn from the composition of the JIT and the signatories required on the JIV Report. These parties play a crucial role in ensuring that the assessment of environmental damage is transparent, objective, and consistent with regulatory expectations. Based on this, it is reasonable to interpret “*relevant stakeholders*” in the context of an oil spill to include:²⁷

- The owner or operator of the facility where the spill occurred.
- Representatives of the affected community.
- The State Government, typically through the State Ministry of Environment.

²⁴ Ibid, regulation 52.

²⁵ Ibid, regulation 25 (1).

²⁶ Regulation 25 (2) of the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations.

²⁷ Ibid, regulation 33(2).

- The National Oil Spill Detection and Response Agency.
- The Department of Petroleum Resources (now the NUPRC and NMDPRA); and
- The Local Government Council, within whose jurisdiction the spill occurred.

Under the applicable regulatory framework, the owner or operator of a facility from which an oil spill occurs is responsible for paying compensation to affected persons for damage resulting from the spill. This includes compensation for harm caused to individuals, their businesses, and property.²⁸ However, compensation is not payable in instances where the spill is proven to have resulted from third-party interference, sabotage, or other unlawful acts beyond the control of the facility owner or operator. In such cases, liability does not arise, and the responsibility to pay compensation is excluded.²⁹

In practice, the issue of compensation for oil spill damage is rarely resolved amicably. Liability for damages is often contested between impacted communities and oil companies, leading to prolonged disputes and frequent litigation.

3. Can the Responsibility of Assessing Oil Spill Damages be carried out by a Body other than the Agency?

The findings of the damage assessment conducted by the Agency in collaboration with relevant stakeholders form the basis for determining the compensation payable for losses incurred as a result of the spill.³⁰ Accordingly, no other body is authorised under the Regulation to unilaterally undertake a damage assessment for the purpose of determining liability or compensation outside the Agency's collaboration with relevant stakeholders.³¹

²⁸ Ibid, regulation 26(1). Section 8.3.1 of Part VIII (B) of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) provides that settlement of damages and compensation arising from oil spill shall be determined by direct negotiation between an operator(s) and landlord(s) i.e., the persons that have suffered damages owing to the oil spill. It further provides that where negotiation fails, other methods of dispute resolution such as arbitration or litigation can be explored.

²⁹ Ibid, regulation 26(2).

³⁰ Ibid, regulation 25(3).

³¹ Ibid, regulation 25(2).

4. Concerns Regarding Unilateral Valuation Reports and Non-Compliance with Regulatory Framework

As previously noted, the Regulation provides that the assessment of damages shall be carried out by the Agency in collaboration with relevant stakeholders. However, this requirement is hardly adhered to in practice. Numerous oil spill cases have emerged in which alleged victims, rather than relying on the joint assessment as prescribed by the Regulation, have instituted legal action against oil companies based on valuation reports prepared solely by professionals engaged by them without the participation or endorsement of the Agency.

Moreover, the practice of some claimants, circumventing the clear provisions on a collaborative damage assessment between the Agency and relevant stakeholders undermines the spirit and intent of the Regulation. This is therefore the reason why valuation reports produced by alleged victims of oil spills are often viewed with suspicion. This lack of transparency on the part of the alleged victims often gives rise to litigation, as oil companies typically challenge the credibility and objectivity of such reports.

The Regulation expressly envisages a cooperative approach involving the Agency and other stakeholders to ensure fairness, objectivity, and accountability in determining the extent of damage and any compensation due.³² Departing from this process not only contravenes the law but also contributes to the growing adversarial nature of oil spill compensation claims.

³² Ibid, regulation 33(3).

5. Conclusion

The right to economic security and the right to a healthy environment are both constitutionally guaranteed. It is therefore incumbent upon relevant stakeholders to ensure that the pursuit of one does not arbitrarily impede the enjoyment of the other. In recognition of this necessary balance, the regulatory framework for oil spill control and management examined in this article was established to clearly define the rights and obligations of stakeholders, thereby promoting accountability and facilitating enforcement.

As impressive as the provisions of the Regulations are, it remains important to reiterate that the beauty of every law is in the enforcement. This highlights that the effectiveness and value of the Regulation is not solely determined by its written form, but also by its consistent and fair application by the Agency.

To fulfil its mandate effectively, the Agency must remain above reproach. It is expected to play a central and impartial role in ensuring that all operators and stakeholders in the petroleum sector adhere to uniform standards and are guided by clear regulations for oil spill recovery, clean-up, remediation, and damage assessment.

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