



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

Ministry of Petroleum Resources Nigeria

Simplified Summary

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EXECUTIVE SUMMARY

The Flare Gas (Prevention of Waste and Pollution) Regulation, approved in 2018, was developed to support Nigeria’s commitment towards the reduction of GHG emissions with a focus on flaring and venting of gas. This policy clearly states the ownership of flare gas and the process through which flare gas is obtained (a competitive bid process submitted to the Minister of Environment, Nigeria). In addition, the policy stipulates guidelines that curb the improper and illegal flaring of gas. Payments and fees have been documented within this policy document to be charged to defaulters of its guidelines.

CONTEXT

According to the Nigerian National Petroleum Corporation (NNPC)'s monthly oil and gas report, between 2016 and 2020, Nigeria flared 1,252.26 trillion cubic feet of natural gas into the atmosphere.¹ This puts Nigeria as one of the leading countries with regards to gas flaring. Nigeria has stated that it would cut its carbon emissions to net-zero by 2060. To adequately meet this target, the Nigeria Government needs to curtail the incessant flaring of gas and seek means through which flared gas can be utilized.

LEGAL FOUNDATION

In the exercise of the power conferred on the Federal Government of Nigeria by section 9 of the Petroleum Act 2012, section 5 of the Associated Gas Re-injection Act and the Nigerian Constitution, was the Gas Flaring Policy developed. It provides a legal framework for the protection of the environment against the effect of gas flaring, the prevention of waste of gas and the creation of social-economic benefits to Nigeria from gas flares.

OBJECTIVES

These regulations aim to protect the environment, prevent the waste of methane/natural gas and extract social and economic benefits from gas flares in Nigeria. The objectives include

- Reduction of the environmental and social impact caused by the flaring of natural gas.
- Protection of the environment.
- Prevention of waste of natural resources
- Creation of social and economic benefits from gas flare capture

¹ <https://issafrica.org/iss-today/are-nigerias-promises-to-end-gas-flaring-merely-hot-air#:~:text=Between%202016%20and%202020%2C%20Nigeria,monthly%20oil%20and%20gas%20reports.&text=%E2%80%AAGas%20flaring%20is%20the,Nige r%20Delta%20after%20oil%20spillage.>



KEY PROVISIONS

Ownership of Flare Gas

The Federal Government of Nigeria takes all the natural gas produced with crude oil free of cost at the flare site without payment of royalty (This aligns with the Petroleum Act, Section 9, Paragraph 35). This provision shall apply to all the petroleum leases and licenses including Marginal Fields.

Bid Process

- The Minister may issue a permit to Qualified Applicants (QA), selected through a competitive bid process organized by the Federal Government of Nigeria, which grants them the authority to take flare gas on behalf of the federal government of Nigeria at any flare site and to utilize the flare gas or otherwise dispose of it in any manner authorized by the government.
- Flare Gas sites accessible to a QA are only those specified in its permit. The permit can be revoked by the Minister where a Qualified Applicant is unable to fulfil the conditions stated therein, provides inaccurate or incomplete information, provides a bond that has been terminated, enters bankruptcy proceedings and may be deemed to have forfeited its status.
- After the flare gas has been allotted to a Permit Holder (PH), the Producer, through a midstream subsidiary corporate entity, may apply to the Minister to utilize the remainder of the flare gas for commercialization (its purposes). No Producer or Permit Holder shall be liable for the payment of royalties to a person or the federal government in respect to flare gas.

Flare Gas Data and Penalties for Inaccurate Data

- The Department of Petroleum Resources (DPR) may request a Producer to provide flare gas data. In such a case, the Producer shall provide such flare gas data, in the format required, within 30 calendar days of the date of the request.
- Any person, who acting on behalf of a Producer, supplies inaccurate or incomplete flare gas data to the DPR, commits an offence and is liable upon conviction to a fine of N50,000.00 or imprisonment of a term of not more than 6 months or both.

PERMITS

Data Access Permit

- A Data Access Permit, usually issued by the DPR, gives access to persons who require access to flare gas data for any particular flare site. Without the Data Access permit, a person cannot access flare gas data.
 - An application for a Data Access Permit can be made to the DPR in the manner prescribed in the tender documentation issued in respect of a bid process.
 - A Data Access Permit is valid only during any period in which a flare site is open for bidding or when a Permit Holder's permit is still valid (not expired) for a particular flare site.
- Before presenting its bid in respect of a flare site, a Qualified Applicant (QA) may be authorized by the DPR to enter the flare site to make an assessment of the flare site and related facilities of the Producer provided the Producer is given no less than 7 days prior and the assessment complies with applicable industry safety standards and regulations.
- Where a Permit Holder fails to comply with the terms and conditions of a Data Access Permit or provides inaccurate or incomplete in connection with the issuance of a Data Access Permit, the Data Access Permit may be revoked.



- The revocation of the Data Access Permit shall not release its holder from any obligation arising from these regulations, a flare gas bid process or any agreement in connection.

Assignment

- The Permit Holder shall not assign or transfer its interest or rights under the permit except the transferee satisfies the minimum technical and financial requirements necessary to become a Qualified Applicant under a Flare Gas bid process and assumes all the obligations of the Permit Holder, and the prior written approval of the Director, DPR is obtained by the Permit Holder.

Fees

- A Qualified Applicant appointed in accordance with these regulations shall pay fees to the federal government as may from time to time be specified by the DPR, for:
 - Data prying,
 - Data leasing and
 - Award fee for grant of the permit to access flare gas,
- The Permit Holder will also pay a handling fee (mandatory) and a guarantee fee to the Producer, where applicable.

Prohibition against Flaring and Venting of Natural Gas

- No Producer shall flare gas from any facility operated by such Producer except a certificate is issued by the Minister further to the provisions of the associated gas re-injection act.
- No Permit Holder or Producer shall engage in routine flaring or venting of natural gas from any facility or greenfield project.

PAYMENT FOR FLARING GAS

Payment for Gas Flaring

- Where 10,000 barrels of crude oil or more are produced per day in any Oil Mining Lease (OML) area or any Marginal Field (MF), the Producer shall be liable to pay US\$2 per 28.317 standard cubic meters of gas flared (whether routine or non-routine) within such OML area or MF.
- However, if crude oil production is less than 10,000 barrels of oil per day, the Producer and Permit Holder shall be liable to a flare payment of US\$0.50 per 28.317 standard cubic meters of gas flared in the OML area or MF.
- No flare payment shall be due if the flaring was caused by an act of war, flood, earthquake or other natural phenomena which is beyond the reasonable control of the Producer.

Flare Gas Logs

- A Producer and a Permit holder shall independently maintain a daily log of the flaring and venting of natural gas within its facilities and submit such logs with the DPR within 21 days following the end of the month.
 - All logs shall be based on data retrieved from metering equipment that shall be installed in the Producer's and Permit Holder facilities.
 - The format of all logs shall conform to the Metering and Data Collection Standards and shall include date, time, duration, rates, volumes and gas source or type for each flaring.



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

REPORTING OF GAS FLARE DATA

Producer Annual Reporting

- A Producer and a Permit Holder shall submit an annual report to the DPR which shall be submitted each year by March 31 for the previous year.
 - For the Producer, the annual report shall include All flare gas data for each site in the format required by the DPR, and a list identifying all the flare sites for which the Producer has not yet executed a connection agreement concerning such sites.
 - For the Permit Holder, the annual report shall include information regarding the volume of flare gas utilized at the flare site, the volume of all such flare gas flared by the Permit Holder, and the volume of all natural gas vented by the Permit Holder.
- The DPR shall prepare and release an annual report on its website each year by June 30 for the previous year.

Metering and Safety Standards

- The metering equipment used for measuring the flaring and venting of gas produced shall be manufactured and operated in conformity to the Metering and Data Collection Standards issued by the DPR.
- The DPR 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 guidelines on the location of flaring stacks, limits on smoke, heat, and noise generation, and health and safety standards concerning the occupational safety and health of persons working on a flare site.

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

- A Producer shall be liable to pay an additional sum of \$2.50 per 28.317 standard cubic meters of gas flared or vented within the OML or MF if the Producer fails to:
 - provide flare gas data,
 - supply accurate or complete flare gas data,
 - provide a Permit Holder with access to any flare site,
 - prepare, maintain or submit logs or records or report,
 - install metering equipment within the required timeframe, and
 - agree to enter into a connection agreement with a Permit Holder.
- In the event of the continued failure of the Producer to comply with any of the requirements of the Regulations, the Minister may direct the Producer to suspend its operations or revoke their OML/MF license.

Failure by the Permit Holder to prepare, maintain, or submit logs or records, or reports or install metering equipment

- The Minister may revoke any permit granted to a Permit Holder in the event of a default by a Permit Holder to:
 - Prepare, maintain or submit the logs or records or reports;
 - Install and maintain metering equipment in its facilities; and



- Supply accurate or complete flare gas data, logs or records.

MISCELLANEOUS PROVISIONS

Conflicts

- In the event of a conflict or inconsistency between any of the provisions of these regulations, and the provisions of previous regulations, the provisions of this regulation shall take precedence and supersede that of previous regulations.

KEY STAKEHOLDERS

Producer, Qualified Applicant, Permit Holder, Federal Government of Nigeria, The Department of Petroleum Resources (DPR).

RELATED REGULATORY AND POLICY DOCUMENT

- The Petroleum Act 1990
- Associated Gas Re-injection Act 1979
- Nigeria Gas Master Plan 2008
- The Petroleum Industry Administration Bill
- the Petroleum Industry Fiscal Bill
- National Gas Policy
- National Petroleum Policy
- Environmental Impact Assessment Act
- Mineral Oil Safety Regulation
- Electric Power Sector Reform Act.

IMPLEMENTATION STATUS

- Following an audit by Nigeria Extractive Industries Transparency Initiative (NEITI), it was discovered that the revenue from flare gas payment was significantly higher from \$15.4million in 2018 to \$307.496 million in 2019.² This is associated with the increase in the amount paid per standard cubic meters of gas flared. However, the implementation of this policy is still limited. Experts have highlighted that Nigeria is lacking the capacity to scale gas commercialization, emphasizing that companies would rather pay \$3.50 per standard cubic meter of gas flared than stop gas flaring altogether.³

² <https://www.thisdaylive.com/index.php/2021/10/26/oil-companies-gas-flare-payments-jump-from-15-4m-to-307-4m-in-one-year/>

³ <https://issafrica.org/iss-today/are-nigerias-promises-to-end-gas-flaring-merely-hot-air>