

**NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY
(ESTABLISHMENT) ACT, 2006 AS AMENDED**



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SCHEDULES

**NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY
(ESTABLISHMENT) ACT, 2006 AS AMENDED
2006 ACT No. 15**

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL OIL SPILL
DETECTION AND RESPONSE AGENCY; AND FOR RELATED MATTERS.

Commencement

[18th Day of October, 2006]

ENACTED by the National Assembly of the Federal Republic of Nigeria

**PART I – ESTABLISHMENT OF THE NATIONAL OIL SPILL
DETECTION AND RESPONSE AGENCY**

1. – (1) There is established an Agency to be known as the National Oil Spill Detection and Response Agency (in this Act referred to as “the Agency”) with responsibility for preparedness, detection and response to all oil spillages in Nigeria as set out in section 5 of this Act.

Establishment
of the
National Oil
Spill
Detection and
Response
Agency

(2) The Agency:

- (a) shall be a body corporate with perpetual succession and a common seal ; and
- (b) may sue and be sued in its corporate name.

(3) The Headquarters of the Agency shall be in the Federal Capital Territory, Abuja and it may establish zonal offices in the States of the Federation.

PART II – NATIONAL OIL SPILL RESPONSE GOVERNING BOARD, ETC.

2. - (1) There is established for the Agency a Governing Board to be known as the National Oil Spill Response Governing Board (in this Act referred to as “the Governing Board”) which shall be responsible for the formulation of policy for the Agency and act in Governing Board capacity to the Agency in the exercise of any of the functions conferred on the Agency and the Director-General by this Act.

(2) The Governing Board shall consist of:

(a) a Chairman;

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

- (i) Environment
- (ii) Energy,
- (iii) Defence,

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

(3) The Director-General of the Agency, shall be a Member/Secretary to the Governing Board.

(4) The Chairman and other members of the Governing Board shall be appointed by the President on the recommendation of the Minister.

(5) The supplementary provision specified in the First Schedule to this Act shall have effect with respect to the proceedings of the Governing Board and the other matters therein mentioned.

First
Schedule

Tenure
of Office

3. – (1) The Chairman and members of the Governing Board shall each hold office for a period of four years in the first instance and may be re-appointed for a further term of four years and no more.
- (2) A member of the Governing Board may resign his membership by notice in writing addressed to the President through the Minister and that member shall, on the date of the receipt of the notice by the President, cease to be a member.

Cessation of
Membership

4. – (1) A member of the Governing Board may at any time be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President satisfied that it is not in the interest of the Agency or the interest of the public that member should continue in office.
- (2) Where a vacancy occurs in the membership of the Governing Board, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however that the successor shall represent the same interest as his predecessor and be appointed by the President on the recommendation of the Minister.

PART III – OBJECTIVES, ETC, OF THE AGENCY

Objectives of
the Agency.

5. The objectives of the Agency shall be to monitor, regulate Tiers one and two 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:

- (a) establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to all oil pollution as well as hazardous and noxious substances in the petroleum sector;
- (b) identify high-risk areas as well as priority areas for protection and clean up;
- (c) establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted sites;
- (d) maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is Clean Nigeria Associates (CNA) in implementing appropriate spill response;
- (e) ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;

(f) provide a programme of activation, training and drill exercises to ensure readiness to oil pollution preparedness and response and the management and operational personnel;

(g) co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West African sub-region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened;

(h) provide support for research and development (R&D) in the local development of methods, materials and equipment for oil spill detection and response;

(i) co-operate with the International Maritime Organization and other national, regional and international organizations in the promotion and exchange of results of research and development programme relating to the enhancement of the state-of-the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal and clean up to the best practical extent;

(j) establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities;

(k) determine and preposition vital combat equipment at most strategic areas for rapid response;

(l) establish procedures by which the Nigeria Customs Service and the Nigerian Immigration Service shall ensure rapid importation of extra support response equipment and personnel;

(m) develop and implement an appropriate audit system for the entire plan;

(n) carry out such other activities as are necessary or expedient for the full discharge of its functions and the execution of the Plan under this Act.

6.-(1) The Agency shall –

(a) be responsible for surveillance and ensure 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 and co-ordinate oil spill response activities throughout Nigeria;

(d) co-ordinate the implementation of the Plan as may be formulated, from time to time, by the Federal Government;

(e) co-ordinate the implementation of the Plan for the removal of hazardous and noxious substances as may be issued by the Federal Government;

(f) ensure that all oil industry operators in Nigeria subscribe to and be bonafide members of Clean Nigeria Associates (CNA) or any other similar association by whatever name called; and

Functions of
the Agency.

(g) perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any plan as may be formulated by the Federal Government pursuant to this Act.

Penalties

(2) 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 N2,000,000 for each day of failure to report the occurrence.

(3) The failure to clean up the impacted site, to all practical extent including 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 exceeding ₦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.

Special Functions of Agency.

7. The Agency shall:

(a) ensure the co-ordination and implementation of the Plan within Nigeria including within 200 nautical miles from the baseline for which the breath of the territorial waters of Nigeria is measured;

(b) undertake surveillance, reporting, alerting and other response activities as they relate to oil spillages;

(c) encourage regional co-operation among member States of West African sub-region and in the Gulf of Guinea for combating oil spillage and pollution in our contiguous waters;

(d) strengthen the national capacity and regional action to prevent, control, combat and mitigate marine pollution;

(e) promote technical co-operation between Nigeria and member States of the West Africa sub-region;

(f) facilitate;

(i) the arrival and utilization in and departure from Nigeria of ships, aircrafts and other modes of transport engaged in responding to oil pollution incidents or transporting personnel, cargo, materials and equipment required to deal with such an incident; and

(ii) the expeditious movement into, through and out of Nigeria of personnel, cargoes, materials and equipment;

(g) (i) The National Control and Response Centre shall for the purposes of a Tier 3 oil spill response, undertake such functions as specified under section 20 of this Act.

(ii) The Director-General shall have the power to co-opt all the Government Ministries and Agencies mentioned under the Second Schedule to this Act, in the management of a Tier 3 or a major Tier 2 oil spill.

Second Schedule.

Appointment Of the Director-General Agency.

PART IV – DIRECTOR-GENERAL AND OTHER STAFF OF THE AGENCY, ETC.

8. – (1) There shall be for the Agency, a Director-General who shall be appointed by the President on the recommendation of the Minister.

(2) The Director-General shall be the Chief Executive and Accounting Officer of the Agency and be responsible for the execution of the policy and the day-to-day administration of the affairs of the Agency.

(3) The Director-General so appointed shall have a minimum of 10 years cognate experience on Environmental matters.

(4) The Director-General shall hold office:

(a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and

(b) on such terms and conditions as may be specified in his letter of appointment

Other employees of the Agency.

9. – (1) The Agency shall appoint, such officers and other employees as it may, from time to time, deem necessary for the purpose of the Agency.

(2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Agency shall be as determined by the Agency, subject to the approval of the National Income, Salaries and Wages Commission (NISWC).

Act No 2, 2004

10. – (1) It is hereby declared that service in the Agency shall be approved service for the purpose of the Pensions Reforms Act and accordingly, employees of the Agency shall be entitled to pension, gratuity or other retirement benefits as are prescribed under the Pensions Reform Act.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

(3) For the purpose of the application of the provisions of the Pensions Reform Act any power exercisable by the Minister or other authority of the Federal Government, other than the power to make regulations under the Pensions Reform Act, is hereby vested in and shall be exercisable by the Agency and not by any other person or authority.

PART V – FINANCIAL PROVISIONS

11. The Agency shall establish and maintain a fund into which shall be paid and credited:

Fund of the Agency.

- (a) the take-off grant from the Federal Government;
- (b) annual subvention from the Federal Government;
- (c) *5 per cent of the ecological fund to serve as superfund for the management of major oil spill disasters annually;*
- (d) *0.5 per cent operations funds of oil companies for the enforcement of environmental legislation in the petroleum sector;*
- (e) such counter-part funding as may be provided, from time to time by a State or Local Government;
- (f) loans and grants-in-aid from national, bilateral and multilateral agencies;
- (g) rents, fees and other internally generated revenues from services provided by the Agency; and
- (h) all other sums accruing to the Agency from time to time.

12. The Agency may, from time to time, apply the proceeds of the funds established in pursuance of Section 11 of this Act:

Expenditure of the Agency.

- (a) to the cost of administration of the Agency;

(b) to the paying of the emoluments, allowances and benefits of members of the Governing Board and for reimbursing members of the Governing Board or of any committee set up by the Governing Board;

(c) to the payment of the salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the officers and other employees, gratuities of the Agency, so, however that no payment of any kind under this paragraph (except such as may be expressly authorized by the Agency) shall be made to any person who is in receipt of emoluments from the Federal or a State Government;

(d) for the development and maintenance of any property vested in or owned by the Agency ; and

(e) for and in connection with all or any of its functions under this Act.

Annual Estimates Accounts.

13. - (1) The Agency shall, not later than 30th September in each year, submit through the Minister to the President an estimate of its expenditure and income (including and payments to the Agency) for the next succeeding year.

(2) The Agency shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Annual Reports.

and shall and the

14. The Agency shall prepare and submit through the Minister to the Federal Executive Council, not later than six months after the end of each year, a report in such form as he may direct on the activities of the Agency during the immediate preceding year, include in such report a copy of the audited accounts of the Agency for the year auditor's report on the accounts.

Investment.

Power to accept gift.

15. - (1) The Agency may accept any gift of land, money or other property on such terms and conditions, if any as may be specified by the person or organization making the gift.

(2) The Agency shall accept any gift if the conditions attached by the person or organization making the gift are **not** inconsistent with the functions of the Agency.

Establishment of National Control and Response Centre.

Power to borrow.

16. - (1) The Agency may, from time to time, borrow by way of overdraft or otherwise such sums as it may require for the performance of its functions under this Act.

(2) The Agency shall not, without the approval of Governing Board, borrow money which exceeds at any time the amount set by the Minister.

(3) Notwithstanding subsection (1) of this section, where the sum to be borrowed is in foreign currency, the Agency shall not borrow the sum without the prior approval of the Minister.

17. The Agency may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds in any security prescribed by the Trustee Investment Act or in such other securities as may, from time to time, be approved by the Minister.

PART VI _____ ESTABLISHMENT OF NATIONAL CONTROL AND RESPONSE CENTRE

18. (1) There is established for the purpose of this Act, a National Control and Response Centre (in this Act Referred to as "the Centre") which shall:

(a) act as a report processing and response co-ordinating centre for all oil spillage incidents in Nigeria;

(b) receive all reports of oil spillages from the zonal offices and control units of the Agency;

Federal Government Intervention, Etc. Second Schedule.

(c) serve as the command and control centre for compliance monitoring of all existing legislation on environmental control, surveillance for oil spill detection and monitoring and co-ordinating responses required in plan activations.

(2) The centre shall be headed by such officer of the Agency as may be designated from time to time.

(3) The officer so designated under subsection (2) of this section shall report to the Director-General of the Agency on all activities of the Centre.

PART VII ___ FEDERAL GOVERNMENT INTERVENTION, ETC.

19. ___(1) The Agency shall:

- (a) in the event of a major or disastrous oil spill, in collaboration with other Agencies co-opt, undertake and supervise, all those provisions as set out in the Second Schedule to this Act;
- (b) inspect oil and gas facilities with a view to ensuring full compliance with existing environmental legislation on oil pollution;
- (c) assess the extent of damage to the ecology by matching conditions following the spill against what existed before (reference baseline data and ESI maps);
- (d) undertake a post-spill impact assessment to determine the extent and intensity of damage and long term effects;
- (e) advise the Federal and State Governments on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment;
- (f) assist in mediating between affected communities and the oil spiller;
- (g) monitor the response effort during an emergency, with a view to ensuring full compliance with existing legislation on such matters;
- (h) assess any damage caused by an oil spillage;
- (i) expeditiously process and grant approval for any request made to it by an oil spiller for the use of approved dispersant or the application of any other technology considered vital in ameliorating the effect of an oil spill;
- (j) advise and guide the response efforts as to ensure the protection of highly sensitive areas, habitats and the salvation of endangered or threatened wild life; and
- (k) monitor the clean-up operations to ensure full rehabilitation of the affected areas.

(2) The Agency shall act as the Lead Agency for all matters relating to oil spills response management and liaise with the other Agencies for the implementation of the plan, as contained in the Second Schedule.

(3) The Agency shall:

- (a) co-operate with an oil spiller in the determination of appropriate measures to prevent excessive damage to the environment and the communities;
- (b) expeditiously consider any proposal made for response effort by the oil spiller;
- (c) mobilize internal resources and also assist to obtain any outside human and financial resources that may be required to combat any oil spill; and
- (d) conduct the assessment of damage caused by an oil spillage.

(4) Notwithstanding the functions of the Agency set out under this Act the specified Federal Ministries, Extra-Ministerial Departments, Parastatals and other bodies mentioned herein shall be charged with the following responsibilities set out under this Section as provided in the second schedule to this Act.

PART VIII ___ LEGAL PROCEEDINGS

Second
Schedule

20. ____ (1) subject to the provisions of this Act, the provisions of the Public Officers protection Act shall apply in relation to any suit instituted against an officer or employee of the Agency.

(2) Notwithstanding anything contained in any other enactment, no suit against a member of the Governing Board or the Director-General, or any other officer or employee of the Agency or the Centre for any act done in pursuance or execution of this Act or any other enactment or law, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other enactment or law, duty or authority, shall lie or be instituted in any court unless it is commenced:

- (a) within three months next after the Act, neglect or default complained of; or
- (b) in the case of a continuation of damage or injury , within six months next after the ceasing thereof.

(3) The notice referred to in Section 21 of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

21. A notice, summons or other document required or authorized to be served on the Agency under the provisions of this Act or any other enactment or law may be served by delivering it to the Director-General or by sending it by registered post addressed to the Director-General at the principal office of the Agency.

Service of documents.

22. ____ (1) In any action or suit against the Agency, no execution or attachment process in the nature thereof shall be issued against the Agency unless not less than three months notice of the intention to execute or attach has been given to the Agency.

Restriction on execution against property of the Agency.

(2) Any sum of money which by the judgment of any court has been awarded against the Agency shall, subject to any direction given by the court, where notice of appeal against the judgment has been given, be paid from the fund of the Agency.

23. A member of the Governing Board or the Director-General or any officer or employee of the Agency or the Centre shall be indemnified out of the assets of the Agency against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Agency or the Centre.

Indemnity of officers.

24. ____ (1) A member of the Governing Board or the Director-General or any other officer or employee of the Agency or the Centre shall:

Secrecy.

- (a) not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Governing Board or as the Director-General, officer or employee of the Agency or the Centre;
- (b) treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act;
- (c) not disclose any information referred to under paragraph (b) of this subsection, except when required to do so by the court or in such other circumstances as may be prescribed by the Governing Board, from time to time.

(2) Any person who contravenes the provision of subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than N50,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

25. The Minister may give to the Governing Board or the Director-General such directives of a general nature or relating generally to matters of policy with regard to the exercise of its or his functions as he may consider necessary and it shall be the duty of the Governing Board or the Director-General to comply with the directives or cause them to be complied with.

Directives by the Minister, etc.

26. (1) The Agency may, with the approval of the Governing Board make such regulations as in its opinion are necessary or expedient for giving full effects to the provisions of this Act and for the due administration of its provisions.

Regulations.

(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 violates the regulations made pursuant to subsection (2) of this section commits an offence and shall on conviction, be liable to a fine not exceeding ₦500,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and additional fine of ₦50,000.00 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 exceeding ₦2, 000,000.00 and additional fine of ₦500, 000.00 for every day the offence subsist.

Power to enter
premise

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 or without 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 Act 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 Act 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 Act 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 Act 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 Act, any articles by means of or in relation to which he reasonably believes any provision of this Act 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 Act 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 Act or regulations made under it.

(4) An article seized by an officer of the Agency in pursuance of this Act 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 Act or regulations there under.

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

(a) liquid, soil, vegetable;

(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 Act commits an offence and is liable on conviction to a fine not less than ₦300,000.00 for an individual or to imprisonment for a term not exceeding 2 years or to both fine and imprisonment, and an additional fine of ₦50,000.00 for each day the offence subsists and in the case of a body corporate, it shall be liable on conviction for a fine of ₦5,000,000.00 and an additional fine of ₦50,000.00 for each day the offence subsists.

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

Conduct of
proceedings.

29.-(1) 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 Act or regulations made under this Act.

(2) In a judicial proceeding for an offence under this Act 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 Act relating to oil and oily wastes pollution management in the petroleum sector shall have effect subject to modifications as may be necessary to bring into conformity with the provisions of this Act and where the provision of any such law is inconsistent with any provision of this Act, the provision of this Act 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 Act conferring oil and oily wastes pollution management 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 Act, 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 Act; 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 exceeding ₦500,000.00 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 Act.

Interpretation.

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

“Agency” means the National Oil Spill Detection and Response Agency established under section 1 of this Act;

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

“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;

“Governing Board” means the National Oil Spill Detection and Response Governing Board of the Agency established under section 2 of this Act;

“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”.

“superfund” means a fund created to take care of costs incurred in a spill combat by the Agency which shall be recovered from the spiller in accordance with the polluter pays principle”.

“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.”

Short Title

33. This Act may be cited as the National Oil Spill Detection and Response Agency (Establishment, Etc.) (Amendment) Act, 2008.

SCHEDULE

FIRST SCHEDULE

Section 2(5)

SUPPLEMENTARY PROVISIONS RELATING TO THE GOVERNING BOARD, ETC CAP. 192 LFN

Proceedings of the Governing Board

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the person presiding at any meeting, when a vote is ordered, to have a second or casting vote), the Governing Board may make standing orders regulating its proceedings or that of any of its committees.
2. At every meeting of the Governing Board, the Chairman shall preside and in his absence the members present at the meeting shall appoint one of their members to preside at the meeting.
3. The quorum at the meeting of the Governing Board shall consist of the Chairman or, in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this schedule and **three** other members.
4. The Governing Board shall for the purpose of this Act, meet not less than three times in each year and subject thereto the Governing Board shall meet whenever it is summoned by the Chairman, and if required to do so, by notice given to him by not less than six other members, he shall summon a meeting of the Governing Board to be held within 14 days from the date on which the notice is given.
5. Where the Governing Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Governing Board for such period as it thinks fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Governing Board and shall not count towards a quorum.

Committees

6.- (1) Subject to its standing orders, the Governing Board may appoint such number of standing and ad hoc committees as it thinks fit to consider and report on any matter with which the Agency is concerned.

(2) A committee appointed under this paragraph shall:

(a) consist of such number of persons (not necessarily members of the Governing Board as may be determined by the Governing Board), and a person, other than a member of the Governing Board, shall hold office on the committee in accordance with the terms of his appointment; and

(b) be presided over by a member of the Governing Board.

(3) The quorum of any committee set up by the Governing Board shall be as may be determined by the Governing Board.

(4) A decision of a Committee on the Governing Board shall be of no effect until it is confirmed by the Governing Board.

Miscellaneous

7. The fixing of the seal of the Agency shall be authenticated by the signature of the Chairman, the Director – General or any other person generally or specifically authorized by the Governing Board to act for that purpose.

8. Any contract or instrument which, if made by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Agency by the Director – General or by any other person specially authorized by the Governing Board to act for that purpose.

9. Any document purporting to be a contract instrument or other document duly signed or sealed on behalf of the Agency shall be received in evidence and shall, unless contrary is proved, be presumed without further proof to have been so signed or sealed.

10. The validity of any proceedings of the Governing Board or any of its committees shall not be affected by:

(a) any vacancy in the membership of the Governing Board or committee; or

(b) any defect in the appointment of a member of the Governing Board or committee; or

(c) reason that any person not entitled to do so took part in the proceedings of the Governing Board or committee.

11. A member of the Governing Board who has a personal interest in any contract or arrangement entered into or proposed to be considered by the committee shall forthwith disclose his interest to the committee and shall not vote on any question relating to the contract or arrangement.

12. No member of the Governing Board shall be personally liable for any act or omission done or made in good faith while engaged in the business of the Agency.

SECOND SCHEDULE Section 19 (1), (2) and 7 (g) (ii)

The Agency shall in the event of a major Tier 2 or Tier 3 oil spill co-opt and collaborate with the various Ministries/Agencies in respect of their various functions, as set out hereunder-

1. The Nigerian Institute of Oceanography and Marine Research shall:

(a) assist with data on oil spill trajectory for spillages in brackish and ocean waters;

(b) monitor the extent of impact in the coastal and marine environment;

- (c) monitor the effectiveness of clean up exercises and advise on least-damaging techniques for quick recovery of impacted;
- (d) monitor the recovery rates of impacted areas and document for future use and most acceptable methods for clean-up in each ecotype;
- (e) recommend rehabilitation and restoration methods for the recovery of impacted areas; and
- (f) provide technical and scientific support services for the Agency.

2. The Federal Ministry of works shall:

- (a) mobilize human and equipment resources to evacuate affected human communities to safer grounds;
- (b) construct temporary or semi – permanent structures and shelters for the resettlement of victims;
- (c) provide access roads to the scene of an oil spill; and
- (d) mobilize the Fire Service to combat fires that may result after an oil spill and for general rescue operations.

3. The Federal Ministry of Health shall:

- (a) set up medical outposts around the scene of an oil spillage to provide medical treatment to affected communities;
- (b) mobilize medical personnel, drugs and other relief materials to check epidemic;
- (c) monitor the effect of an oil spill on the general health of a community;
- (d) observe for possible outbreak of new health conditions that might be attributable to the incidence of an oil spill especially health impacts on potable water supplies; and
- (e) mobilize requirements in hospitals to respond to the emergency.

4. The Federal Ministry of Transport shall:

- (a) mobilize all nearby port facilities to assist in any response effort;
- (b) provide barges and storage for recovered oil;
- (c) facilitate berthing for vessels involved in an oil spill combat; and
- (d) provide advice on the navigability of shipping lanes, creeks and other inland waterways.

5. The Federal Ministry of Information shall:

- (a) provide up-to-date information about an oil spill and give an unbiased view of the response effort to avail the affected communities an the general public with a clear and true picture of Federal Government's efforts; and
- (b) monitor the response activities work in co-operation with outside media organizations to provide accurate reporting of any oil spillage.

6. The Federal Ministry of Water Resources and the Federal Ministry of Agriculture and Rural Development shall:

- (a) provide bore holes for water supply;
- (b) provide food and relief materials, and
- (c) provide agricultural implements and other inputs to resettle fishermen who may have been put out of business by the pollution of fishing areas by oil.

7. The Ministry of Communications shall:

- (a) assist in the setting up of communications centres around the scene of any oil spillage;
- (b) assist with international contacts with foreign based resource centres for assistance; and
- (c) allocate special frequencies for use by the Agency and the Centre.

8. The Federal Ministry of Aviation (NIMET) shall:

- (a) provide regularly, data on the prevailing weather conditions; and
- (b) make weather predictions on weather changes

9. The National Emergency Management Agency shall:

- (a) in the event of a major Tier 2 or Tier 3 oil spill, perform its obligatory function of supply of relief materials to needy persons and liaise with relevant States Agencies to evacuate and re-settle persons should the need arise;
- (b) work alongside the Agency in coordinating oil spill emergencies.

10. The Agency shall:

- (a) assign an office or agency to represent the State or Local Government on the zonal response team;
- (b) cooperate fully in all the activities during a response exercise;
- (c) assist in raising and training an adhoc intervention team from within its area of jurisdiction;
- (d) include contingency planning for response, consistent with its plan and zonal plans, in all related emergency and disaster planning;
- (e) initiate public safety and community relations actions necessary to protect public health and welfare during an emergency; and
- (f) assist in directing evacuation in accordance with existing State and Local Government Contingency Procedures.

11. The Oil Producers Trade Section/Lagos Chamber of Commerce (OPTS) shall:

- (a) provide the operational and ESI maps of the area or areas affected or likely to be affected by an oil spill;
- (b) provide all necessary logistic support services including equipment and specialist personnel for response efforts; and
- (c) assist in securing the services of international organizations in response efforts

12. In conjunction with the Agency, Non-Governmental Organizations, Industrial Groups, Academic Organizations and others may offer services in:

- (a) assisting in their respective ways to ensure effective response actions;
- (b) conducting scientific researches alongside government to evolve and devise sustainable clean up strategies and rehabilitation techniques; and
- (c) organizing, coordinating and ensuring safe use of volunteers in a response action and actually identifying where these, can best render service effectively

13. The Ministry of Science and Technology shall:

- (a) initiate and sustain research and development, into the development of local methods, materials and equipment for oil spill detection and response;
- (b) disseminate the results of such R&D for adoption at the levels of the oils communities, companies and relevant government agencies; and
- (c) enter into collaborative R&D with international organizations that are involved in oil spill detection and response.

14. The Ministry of Defence shall assist:

- (a) to evacuate victims of the spill to designated areas for settlement;
- (b) to provide additional security back-up;
- (c) to patrol the sea and coastline;
- (d) in providing vessels for oil recovery;
- (e) to render assistance to vessels in distress;
- (f) with communication support; in the recovery operation in the sea;
- (g) to make surveillance flights over the scene of the spill
- (h) to monitor oil slick movement; and
- (i) to provide transportation to and from the scene

15. The Nigerian Police Force shall assist on full alert:

- (a) to keep order in the vicinity of the incident;
- (b) to protect property and equipment at the scene;
- (c) to protect workers from angry mobs; and
- (d) to assist with communication support.

EXPLANATORY MEMORANDUM

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

This Act 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.