

A BILL

FOR

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

Sponsored by Senator Oluremi Tinubu

[] Commencement

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

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

Amendment of
2006 No. 15

4 2.- (1) The long title of the National Oil Spill Detection and
5 Response Agency (Establishment, etc) Act 2006 is hereby re-designated as
6 the "National Oil Pollution Management Agency (Establishment, Etc) Bill
7 2006".

Re-designation
of National Oil
Spill Detection &
Response Agency

8 (2) Accordingly, any reference in the Act to "National Oil Spill
9 Detection and Response Agency" shall be construed as the "National Oil
10 Pollution Management Agency".

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

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

Amendment of
Section 1

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

Amendment of Section 2 1 4. Section 2 of the principal Act is amended in subsection (2)(b) by
2 substituting for the existing paragraph (b) a new paragraph as follows-
3 “(b) one representative each of the following Federal Ministries not
4 below the rank of Director-
5 (i) Environment;
6 (ii) Petroleum Resources
7 (iii) Defence;
8 (iv) Transportation;
9 (v) National Emergency Management Agency; and
10 (vi) Oil Producers' Trade Section of Lagos Chambers of Commerce
11 (OPTS).”

Amendment of section 5 12 5. Section 5 of the principal Act is amended by-
13 (a) substituting for the existing preamble, a new preamble as follows-
Objective of the Agency 14 “5. The objectives of the Agency shall be to monitor and regulate
15 Tiers 1 and 2 oil spills as well as coordinate, implement and review the National
16 Oil Spill Contingency Plan for Nigeria (in this Act referred to as "the Plan") as
17 follows:”;

18 (b) substituting for the existing paragraph (a), a new paragraph as
19 follows-
20 “(a) establish a viable national operational organization that ensures a
21 safe, timely, effective and appropriate response to all oil and gas pollution as
22 well as other hazardous and noxious substances in the petroleum sector;”.

Amendment of Section 6 23 6. Section 6 of the principal Act is amended by substituting for the
24 existing one a new section as follows -

Functions of the Agency 25 6.-(1) The Agency shall-
26 (a) be responsible for surveillance and enforce compliance with all
27 existing environmental legislation in the petroleum sector including those
28 relating to prevention, detection and general management of oil spills, oily
29 wastes and gas flare;
30 (b) enforce compliance with the provisions of international

1 agreements, protocols, conventions and treaties relating to oil and gas and
2 oil spill response management and such other related agreements as may
3 from time to time come into force;

4 (c) receive reports of oil spillages, leakages from gas pipelines,
5 storage facilities and co-ordinate oil spill and gas leakages response
6 activities throughout Nigeria;

7 (d) ensure the remediation of oil impacted sites irrespective of the
8 cause of the spillage;

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

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

14 (g) ensure that all oil industry operators in Nigeria subscribe to and
15 be bona fide members of Clean Nigeria Associates (CNA) or any other
16 similar association by whatever name called; and

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

20 (2) (a) An oil spiller is by this Act to report an oil spill to the Penalties
21 Agency in writing, by fax or electronic mail not later than 24 hours after the
22 occurrence of an oil spill in default of which the failure to report shall attract
23 penalty in the sum of N2,000,000 for each day of failure to report the
24 occurrence;

25 (b) A gas pipeline or storage facility owner is by this Bill to report a
26 gas leakage to the Agency in writing, by fax or electronic mail not later than
27 24 hours after the occurrence of the gas leakage in default of which the
28 failure to report shall attract penalty in the sum of N2,000,000 for each day
29 of failure to report the occurrence.

30 (3) The failure to clean up the impacted site, to all practical extent

1 including the submission of action plan for remediation within two weeks of
2 the occurrence of the spill in accordance with the polluter pays principle shall
3 constitute an offence and on conviction the oil spiller shall be liable to a fine not
4 less than N5,000,000 or to imprisonment for a term not exceeding 2 years or to
5 both such fine and imprisonment.

6 (4) The notice required under subsection (2) of this section shall be
7 deemed to have been made, if delivered at the nearest zonal or field office of the
8 Agency closer to the impacted site or the National Control and Response
9 Centre within the time stipulated in subsection (2) of this section."

10 7.-(1) There shall be inserted immediately after Section 7 of the
11 principal Act, the following new sections-

Abandonment/
Decommissioning
of drill sites and
oil facilities

12 8 (1) The Agency shall monitor the process of decommissioning or
13 abandonment of drill sites and oil facilities as well as oil and gas industry
14 operational areas in accordance with the procedure and guidelines issued by
15 the Agency.

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

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

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

Pipeline and
other oil Facilities
Integrity
Monitoring and
Testing

25 9 (1) The Agency shall assess the integrity of oil facilities which
26 include but not limited to pipelines, well heads, manifolds, storage facilities,
27 barges and vessels to ensure that oil facility owners conform to design
28 specifications as well as the provision in the Agency's regulations, guidelines
29 and standards for the oil and gas sector.

30 (2) The Agency shall provide a programme for the assessment and

1 monitoring of the oil and gas facilities to enhance its performance for
2 distribution, storage and transportation of the upstream, midstream and
3 downstream products”.

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

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

Amendment of
Section 11

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

9 “(c) 2.5 per cent of the ecological fund annually for the
10 management of oil spill disasters and remediation of oil impacted sites
11 arising from third party interference;

12 (d) 0.5 percent operations funds of oil companies for the
13 enforcement of environmental legislation in the petroleum sector.”;

14 (b) Renumbering the existing paragraphs (c), (d), (e) and (f) as
15 paragraphs (e), (f), (g) and (h) respectively.

16 9. Section 19 of the principal Act is amended by-

Amendment of
Section 19

17 (a) inserting the following new paragraph (b) immediately after
18 subsection (1)(a), that is-

19 “(b) inspect oil and gas facilities with a view to ensuring full
20 compliance with existing environmental legislation on oil and gas
21 pollution;”;

22 (b) renumbering the existing subsections (1)(b), (c), (d), (e), (f),
23 (g), (h), (i) and (j) as subsections (1)(c), (d), (e), (f), (g), (h), (i), (j) and (k)
24 respectively;

25 (c) by deleting the existing subsection (3)(d).

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

Amendment of
Section 26

27 (a) renumbering the existing section as subsection (1);

28 (b) adding the following new subsections (2), (3) and (4)
29 immediately after subsection (1) to read:

30 “(2) The Agency may in pursuance of the provision of subsection

1 (1) of this section make regulations setting specifications and standard relating
2 to the-

3 (a) use of dispersant;

4 (b) engagement or invitation of any oil spill responder by oil
5 companies;

6 (c) establishment of a benchmark for oil spill contingency planning;

7 (d) development of framework to guide operators in Oil Spill
8 Contingency Planning; and

9 (e) most appropriate means of preventing and combating various oil
10 spills and its attendant oil and gas pollution.

11 (3) Any person who contravenes the regulations made pursuant to
12 subsection (2) of this section commits an offence and shall on conviction, be
13 liable to a fine not less than N500,000 or to imprisonment for a term not less
14 than two years or to both such fine and imprisonment and additional fine of
15 N50,000 for every day the offence subsists.

16 (4) Where an offence under subsection (2) of the section is committed
17 by a body corporate, it shall on conviction be liable to a fine not less than
18 N2,000,000 and additional fine of N500,000 for every day the offence
19 subsists.”

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

20 11.-(1) There shall be inserted immediately after section 26 of the
21 Principal Act, the following new sections-

Power to enter
premises

22 27.-(1) An officer of the Agency may, in the course of his duty, at any
23 reasonable time and on production of his certificate of designation if so
24 required-

25 (a) enter and search with a warrant issued by a court, any premises
26 including land, vehicle, tent, vessel, floating craft including Maritime Tankers,
27 Barges of Floating Production, Storage, Offload (FPSO) and oil and gas
28 facilities or any inland waters and other structure, at all times, for the purposes
29 of conducting inspection, searching and taking samples for analysis which he
30 reasonably believes, carries out activities or stores goods which contravene

1 environmental standards or legislation relating to oil and oily wastes
2 management;

3 (b) examine any article found pursuant to paragraph (a) of this
4 subsection, which appears to him to be an article to which this Bill or the
5 regulations made under apply or anything which he reasonably believes is
6 capable of being used to the detriment of the environment in the petroleum
7 sector;

8 (c) take a sample or specimen of any article to which this Bill or the
9 regulations apply or which he has power to examine under paragraph (b) of
10 this subsection;

11 (d) open and examine, pursuant to paragraph (a) of this subsection,
12 any container or package which he reasonably believes may contain
13 anything to which this Bill or its regulations apply or which may help in his
14 investigations;

15 (e) examine any book, document or other record found pursuant to
16 paragraph (a) of this subsection, which he reasonably believes may contain
17 any information relevant to the enforcement of this Bill or the regulations
18 and make copies thereof or extracts there from;

19 (f) seize and detain for such time as may be necessary for the
20 purpose of this Bill, any articles by means of or in relation to which he
21 reasonably believes any provision of this Bill or the regulations has been
22 contravened; and

23 (g) obtain an order of a court to suspend activities, seal and close
24 down premises including land, vehicle, tent well head, vessel, floating craft
25 and oil gas facilities or any inland waters and other structure whatsoever.

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

29 (3) An article seized under this Bill shall be kept or stored in such a
30 place as the officer of the Agency may direct and shall be returned to the

1 owner or the person from where it was seized if the article upon analysis or
2 examination is found to conform with the requirements of this Bill or
3 regulations made under it.

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

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

14 (a) liquid, soil, vegetation;

15 (b) biological and chemical samples; and

16 (c) such other articles or samples as may be determined by the
17 Agency.

Offences and
penalties t

18 28.-(1) A person who obstructs an officer of the Agency in the
19 performance of his duties under sections 5, 6 and 7 of this Bill commits an
20 offence and is liable on conviction to a fine not less than N300,000 for an
21 individual or to imprisonment for a term not less than 2 years or to both fine and
22 imprisonment, and an additional fine of N50,000 for each day the offence
23 subsists and in the case of a body corporate, it shall be liable on conviction for a
24 fine of N5,000,000 and an additional fine of N500,000 for each day the offence
25 subsists.

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

Conduct of
proceedings

29 29.-(1) A suit shall not be commenced against the Agency before the
30 expiration of a period of one month, after written notice of intent.

1 commence the suit shall have been served on the Agency by the intending
2 plaintiff or his agent.

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

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

15 30.-(1) Any written law in force immediately before the coming Existing laws
16 into force of this Bill relating to oil, oily wastes pollution management and
17 gas leakages in the petroleum sector shall have effect subject to
18 modifications as may be necessary to bring into conformity with the
19 provisions of this Bill and where the provision of any such law is
20 inconsistent with any provision of this Bill, the provision of this Bill shall
21 prevail, and that other law shall be void to the extent of its inconsistency.

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

26 31.-(1) In the exercise of its functions under this Bill, the Agency Requisition, etc.
27 may demand by requisition from any person or organization, any available
28 equipment, facilities or personnel which may assist in a speedy and effective
29 cleaning and rescue operation during an oil spill disaster.

30 (2) Any person or organization that-

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

4 (b) without reasonable excuse fails to -

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

8 (ii) comply with a directive of the Agency,

9 is guilty of an offence and liable on conviction to a fine not less than N500,000
10 or imprisonment for a term of 2 years or to both such fine and imprisonment.

11 (3) The Agency shall ensure that the Polluter provides reasonable
12 compensation for loss or damage arising from the use of any equipment,
13 facility or personnel required under this section of this Bill."

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

Amendment of
the First Schedule

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

Amendment of
Section 27

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

Interpretation

20 32. In this Bill, unless the context otherwise requires-

21 "Agency" means the National Oil Pollution Management Agency established
22 under section 1 of this Bill;

23 "Centre" means the National Control and Response Centre established under
24 section 18 of this Bill;

25 "Chairman" means the Chairman of the Governing Board of the Agency;

26 "Constitution" means the Constitution of the Federal Republic of Nigeria;

27 "Court" means Federal or State High Court;

28 "gas" or "natural gas" means wet gas, dry gas, lean gas, all other gaseous
29 hydrocarbons, and all substances contained therein, which are produced along

30 with crude oil or gas, excluding those condensed or extracted

1 hydrocarbons that are liquid at normal temperatures and pressure conditions
2 such as stabilized or field condensate, including the residue gas remaining
3 after the condensation or extraction of the liquid hydrocarbon from gas;

4 "Governing Board" means the National Oil Pollution Management
5 Governing Board of the Agency established under section 2 of this Bill;

6 "member" means a member of the Governing Board of the Agency and
7 includes the Chairman;

8 "Minister" means the Minister charged with responsibilities for matters
9 relating to environment;

10 "Ministry" shall be construed accordingly;

11 "officer" means any employee of the Agency;

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

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

22 "release" means any spilling, leaking, pumping, pouring, emitting,
23 emptying, discharging, injecting, escaping, leaching, dumping, discarding
24 or disposing into the environment;

25 "remediation" means the process of remedying or restoring an area or
26 situation to its natural (or as close to natural as possible) state;

27 "Tier 1" means operational type spills, less than or equal to 7 tonnes (50 bbls),
28 that may occur at or near a company's own facilities, as a consequence of its
29 own activities; and

30 "Tier 2" means a larger spill, greater than 7 tonnes (50 bbls) but less than 700

1 tonnes (5000 bbls), in the vicinity of a company's facilities where resources
2 from another company, industry and possible government response agencies in
3 the area can be called in on a mutual aid basis;
4 "Tier 3" means a larger spill, greater than 700 tonnes (500bbb) where
5 substantial further resources will be required and support from a Nation (Tier
6 3) or international cooperative stockpile, like the Oil spill Response Ltd
7 (OSRL) may be necessary. It is likely that such operation would be subject to
8 Government control or even direction.

Short title

9 **14.** This Bill may be cited as the National Oil Pollution Management
10 Agency (Establishment, Etc.) (Amendment) Bill, 2018.

EXPLANATORY MEMORANDUM

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

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