

GAS FLARING (PROHIBITION AND PUNISHMENT) BILL, 2020

ARRANGEMENT OF CLAUSES

1. Gas flaring prohibition
 2. Authorization
 3. Application for authorization
 4. Cessation of gas flaring activities
 5. Operators to submit gas utilization plan within 90 days
 6. Prohibition of directives or authorization to flare gas
 7. Failure to meet annual gas flare reduction target
 8. Gathering utilization or re-injection of natural gas
 9. Continued flaring
 10. Gas flaring report after 1st December, 2019
 11. Offences and penalties
 12. Act to apply to exclusive zone
 13. Miscellaneous
 14. Power to make regulations
 15. Special considerations
 16. Delegation of powers
 17. Power of Review
 18. Interpretations
 19. Short title
- Schedule



A BILL

FOR

AN ACT TO PROHIBIT FLARING OF NATURAL GAS IN NIGERIA AND FOR MATTERS CONNECTED THEREWITH

Sponsored by Senator Bassey Albert Akpan

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria-

1 1.-(1) Natural gas shall not be flared or vented in any oil and gas
 2 production operation, block or field, onshore or offshore, or gas facility
 3 (processing treatment plant, etc.) which shall commence operations after the
 4 commencement of this Act. Any gas flaring or venting occurring during
 5 appraisal, commissioning and production phases of a development, should
 6 be kept to the minimum that is technically and economically justified.

Prohibition of Gas flaring

7 2.-(1) No operator shall establish a gas facility in Nigeria without
 8 obtaining authorization from the Minister under this Act for the design
 9 phase, the commissioning and the production phases.

Authorization

10 3.-(a) The design stage:
 11 Every operator who wants to establish a gas facility must submit to the
 12 Minister for authorization, a field development program covering the issues
 13 of gas flaring and venting and the environmental statement for development.
 14 The minister may refuse authorization where the project has a significant
 15 negative environmental impact or he may impose conditions to mitigate the
 16 adverse effect imposed in the field development authorization;

Application for authorization

17 (b) The commissioning phase:
 18 The operator wishing to establish a gas facility must apply for the
 19 authorization of the Minister two months before the start of production. Such
 20 application must include aspects of the project, flaring and venting
 21 assumptions and the method of calculations of the flaring and venting

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

4 (c) The production phase:

5 Every operator must apply for authorization to the minister to flare or vent gas
6 in the 3rd quarter of the preceding year. Such application for consent must
7 include a forecast of volumes for the following flare and vent categories:

8 (i) Base load flare,

9 (ii) Flaring from operational or mode changes,

10 (iii) Emergency shutdown/process trip flares,

11 (iv) Un-ignited vents including an estimated annual average
12 composition of vented streams.

Cessation of
gas flaring

13 4. No company engaged in the production of oil and gas shall after
14 31st December, 2019 flare gas produced whether in association with oil or not,
15 unless the flaring or venting is technically and economically justified.

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

16 5.-(1) The oil and gas operators with flared gas resources shall within
17 90 days of the passage of this Act categorize all of their flared gas resources
18 (daily flare quantity, reserve, location, composition) and submit this data along
19 with gas utilization plans to the Minister of the gas they intend to utilize before
20 the flare out deadline.

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

24 (b) Bids shall be accepted from third party companies with
25 commercial uses for the unplanned flared gas within a period of not less than
26 120 days after the posting of this information;

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

30 (d) All gas which remains unplanned for must be shut in or reinjected

1 within one year to the finalization of third party contracts.

2 6.-(1)(a) No person shall direct, permit or otherwise aid, empower
3 or authorize howsoever, any company engaged in oil and gas operations to
4 flare or vent gas;

Prohibition of
directive or
authorization to
flare gas

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

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

12 7.-(1) Any licensee or lessee, who fails to meet the annual gas flare
13 reduction target set by the Minister in respect of any year, shall be liable to
14 pay a fine as specified in section 4(2).

Failure to meet
annual gas flare
reduction target

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

18 8.-(1)(a) No license or lease for the production of oil and gas
19 whether onshore, offshore or deepwater shall be granted to any applicant
20 unless the application for such a license or lease is accompanied by a
21 comprehensive programme acceptable by the Minister, for the utilization of
22 natural gas both for general, domestic (e.g. Integrated power plants,
23 industries, etc.) and export purposes;

Gathering
utilization of
reinjection of
natural gas

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

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

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

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

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

12 Provided always that:

13 (i) lack of due exercise of the right of the Federal Government to take
14 natural gas produced with crude oil shall not be a ground for flaring such gas;

15 (ii) the licensee and lessee operating the field, group of fields or
16 facility from which gas is produced shall re-inject such gas that he is not able to
17 harness for valuable utilization as prescribed by the Associated Gas Re-
18 injection Act, rather than dispose through the flare or vent; or

19 (iii) the licensee and lessee operating the field from which gas is
20 produced shall shut a field where he is of the view that the gas produced there-
21 from cannot be re-injected or utilized as provided in subsection 2(a) of this
22 section.

Continued flaring

23 9.-(1) Subject to the exceptions specified in section 6, where a
24 licensee or lessee fails to meet the annual gas flare reduction target set by the
25 Minister in respect of any year, the licensee or lessee shall, in respect of the
26 volumes of gas by which the licensee or lessee failed to meet the annual gas
27 flare reduction target, pay a fine in accordance with the penalties laid out in
28 section 9 of this Act.

29 (2) The volumes of gas flared from any facility that is a part of oil and
30 gas operations shall be measured using the metering equipment specified from

1 time to time by the Minister.

2 (3) Within three months from the commencement of this Act, each
3 licensee or lessee shall install the metering equipment specified in this Act on
4 every facility in its operation from which gas is flared or vented.

5 10.-(1) After the flares-out target date of 31st December, 2019, any
6 person, group of persons or community may lodge a documented report of
7 gas flaring or venting with the nearest office of the Department of Petroleum
8 Resources.

Gas Flare reports
after 1st December,
2019

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

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

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

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

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

29 11.-(1)(a) (i) Any person who flares gas after 31 December, 2019
30 contrary to section 4 of this Act, commits an offence under this Act, and shall

Offences and
penalties

1 be liable on conviction to pay a fine which shall not be less than the cost of gas
2 at the international market.

3 Provided that:

4 (i) any payment due under this paragraph shall be made in the same
5 manner and be subject to the same procedure as for the payment of royalties;

6 (ii) The current \$3.50 per 1000scf penalty for gas flared shall continue
7 until 1st January, 2020 when the new penalty regime shall commence;

8 (iii) In the case of third party utilization, penalties will only be
9 imposed at the end of the approved project schedule or 31st December, 2019
10 whichever is later;

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

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

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

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

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

28 (2)(a) Without prejudice to subsection 1 of this section, the
29 concessions granted in the particular field or group of fields from which gas is

1 being flared or vented in contravention of section 2 of this Act shall be
2 forfeited;

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

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

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

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

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

Act to apply in
Exclusive Zone

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

Miscellaneous
Provisions

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

Power to make
Regulations

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

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

29 (c) The terms and condition of reviewing where he deems fit in the
30 national interest, without jeopardizing the health, safety and the

1 environment of any affected community, a shut down order for the purpose of
2 reopening of field, group of fields or facility shut down pursuant to the
3 provisions of this Act;

4 (d) Generally for carrying into effect the purposes and provisions of
5 this Act;

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

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

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

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

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

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

Special
Considerations

25 15.-(1) All infrastructural projects undertaken to support gas flare out
26 will be entitled to 5 years corporate tax exemption and other concessions as
27 may be granted by the Federal Government.

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

30 (a) 5 year corporate tax exemption:

1 (b) land or equivalent of the cost of the land in tax deductions from
 2 VAT; and

3 © all projects employing above 200 Nigerians or at least 40 per
 4 cent Nigerian equity ownership shall enjoy tax write off for insurance policy
 5 premium for 5 years after commissioning.

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

Delegations of the
 powers of the
 Minister

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

Power of Review

10 18. In this Act:

Interpretation

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

15 "Department of Gas" means the Department of Gas in the Ministry of
 16 Petroleum, or such other Department, Agency or Parastatal as may be
 17 established from time to time by the Federal Government and charged with
 18 responsibility for management of natural gas resources;

19 "Director" means the Director, Department of Petroleum Resources;

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

25 "Flare reduction targets" means the annual gas flaring percentage reduction
 26 target set by the Federal Government;

27 "Licensee" means the holder of an Oil Prospecting License;

28 "Lessee" means the holder of an Oil Mining Lease;

29 "Minister" means the Minister charged with the responsibilities for matters
 30 relating to Gas;

- 1 "mmscf" means one million standard cubic feet;
- 2 "Non-continuous production flaring" means the flaring of gas streams that may
3 result from short-term releases, including but not limited to short-term well
4 testing, commissioning of facilities, emergencies, equipment or compressor
5 start-ups and shutdowns, equipment failure, etc;
- 6 "Operator" on all issues relating to penalties refers to the actual operating
7 partner and not to the entire joint venture for the avoidance of doubt. when
8 government, as represented by any of its agencies, is not the operating partner,
9 it shall not be required to pay any penalty imposed for the breach of any law;
- 10 "Reasonable and prudent operator" means a person or entity seeking in good
11 faith to perform its covenants or obligations in accordance with its Oil Mining
12 Lease, Oil Prospecting License and/or applicable governance agreements and
13 in so doing and in the general conduct of its undertaking, exercising that degree
14 of skill, diligence, prudence and foresight which would reasonably and
15 ordinarily be expected from a skilled and experienced operator complying with
16 all applicable laws engaged in the same type of undertaking under the same or
17 similar circumstances and conditions; and the expression "standard of a
18 reasonable and prudent operator" shall be constructed accordingly;
- 19 "Safety flaring" means the flaring of natural gas that occurs because of a
20 temporary or permanent lack of adequate gas processing facilities to prevent
21 gas venting and injuries to people, equipment and the environment during
22 process upsets, testing and/or commissioning.

Short title

23 19. This Bill may be cited as the Gas Flaring (Prohibition and
24 Punishment) Bill, 2020.

25 SCHEDULE

26 *Consequential Amendments*

- 27 1. Notwithstanding anything to the contrary in any enactment, the
28 power of the Minister to issue Certificate for continued flaring of gas existing
29 immediately before the commencement of this Act, under section 3(2) of the
30 Associated Gas Re-Injection Act, CAP. A25 LFN 2004 shall, upon the

1 commencement of this Act, be revoked, and the Minister's power shall be
2 limited to the scope of the power and obligations of the Minister as specified
3 in this Act.

EXPLANATORY MEMORANDUM

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

