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SOCIO-POLITICAL AND ENVIRONMENTAL ELEMENTS THAT VITIATE INDUSTRIAL OIL SPILLAGE AND POLLUTION MANAGEMENT SCHEME IN NIGERIA

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Abstract

Oil pollution, both in the air and land space, has over the years attracted serious problems on the use of the environment. This pollution manifested in water pollution through oil pipeline spillages with the attendant adverse effects on aquatic plants, animals and fishes in the water, contamination of crops and other forms of hazards on the ecosystem. By no stretch, stopping the oil industries from operation has been an impossible venture on the part of the Nigerian government, apparently due to the huge financial benefits accruing from transactions in crude oil which potentially supports the Nation's economy. Consequent on the above, the Nigerian government resorted to redress and remedy the situation through enacting laws for the purpose of controlling or managing oil spillages within the air and land spaces of the Nigerian environment. Some of the frameworks include the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011; Oil Spill and Oil Waste Management Regulations 2011, National Oil Spill Detection and Response Agency (Establishment) Act 2006, Oil Pipelines Act 1965 and lots more. Managing oil pollution through these laws has not been easy due to environmental elements such as illegal oil bunkering, pipelines vandalism and corrupt practices of enforcement agencies. The authors therefore argued that these elements have always vitiated industrial oil spillage, control or management scheme in Nigeria. The authors vide a doctrinal research methodology and evaluation examined the said environmental elements that vitiated industrial oil spillages. Consequent on this premise, this paper maintained the need for critical re-organization of environmental law enforcement officials in the face of mounting corruption in order to reinforce the safeguarding of the Nigeria environment from oil pollution.

Keywords: Environmental elements, Oil spillage, pollution, Management ineptitude, corruption.

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1. Introduction

The term environment has been defined to mean the natural world in which living things dwell and grow; it is the conditions affecting the development, growth or performance of a person or thing or the physical conditions of a particular place where a living person or thing exists.¹ The environment encompasses everything around us ranging from the air, water, land, plant and animal species; inclusive of the non-living things in the surroundings that affects human lives.² Needless to say that environment plays key role in the survival of its inhabitants. All over the globe, the importance of keeping the environment from pollution cannot be over emphasized. It is sacrosanct that the environment be maintained in a habitable state. The recognition of this is what has been demonstrated by the Nigerian Government in enacting various environmental legislations to control or manage pollutants from putting the environment in an uninhabitable state.

The Nigerian constitution³ provides in this regards to the effect that the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. On the contrary, it is regrettable that this express provision as contained in the constitution with respect to the Nigerian citizens' right to a protected environment is made an integral part of the fundamental objectives and directive principles of state policy with the ultimate result that the provision is not justiciable.⁴ The implication of this is that, a breach of this provision particularly from the government agency does not give room for anybody to institute legal action in court for legal remedies.

Furthermore, some of the provisions of Nigerian legislations appertaining to pollution management are not elaborate enough to cope with some complex and sophisticated subject matters; for instance, the traditional rules of civil liability with respect to oil pollution claim are obviously inadequate.⁵ Consequent on the above, the paper strives to critically analysis some of the legislations that deal on prevention or management of pollution from oil spills, emanating from the operations of oil

¹ A. Bryan., Garner, et al, Black's Law Dictionary, 11th ed.. (U.S.A: Thomson Reuters, 2019.) Pg. 675

² Emmanuel Edevbie & Joseph Madubuike-Ekwe, Establishing responsibility and liability to environmental degradation, KBLSJ Vol. 1 No. 5 (2024): Pp. 44-58 [ISSN 3027-2440] <<https://doi.org/10.60787/kblsp-v1i5-45>> accessed 30/06/2025

³ Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴ Lawrence Atsegbua et al, Environmental Law in Nigeria: Theory and Practice, 2nd Edn. (Benin City: Ambik Press, 2010) p.179

⁵ Ibid

industries or illegal activities of criminals in the environment. These legislations include Oil Pipelines Act 1965, the Minerals Oil (Safely) Regulations 1963, the Petroleum (Drilling and Production) Regulations 1969, the Petroleum Industry Act 2021 (as amended), the Oil in Navigable Water Act 1968, National Oil Spill Detection and Response Agency (Establishment) Act 2006 (as amended), Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011, Oil Spill and Oil Waste Management Regulation 2011. These above constitutes some of the major environmental legislations put in place to address issues of pollution from oil spillage, especially in oil producing environment owing to the fact that the effect of oil pollution on the host communities environment is often hazardous as its severity can last for decades with consequential adverse effect on the ecosystem. Thus, oil pollution has a deleterious effect on human beings and marine life.⁶ It constitute a hazard to organisms as the oil producing states are mostly riverine, oil spills contaminate their water which is their main source of survival and makes unfertile the land they have.⁷

Realizing the aim of this paper lies in critical examination of environmental elements that vitiate industrial oil spillage management in Nigeria, especially among the oil producing host communities such as Ozoro, Uzere, Irri, Oleh, Olomoro, among others in the Isoko speaking ethnic group of Delta State. However, there are other states that share similar experience and they include Bayelsa State, River State, Edo State, et cetera. To achieve this aim, this paper is divided into five sections including the introduction. Section two deals with issues relating to corruption and illegal oil bunkering; section three examines the challenge of oil pipeline vandalism; section four discusses the conceptual legal framework on oil spillage and pollution control while section five concludes the paper and makes recommendations.

2. The interrelatedness between corruption and Illegal oil Bunkering

Corruption is identified in this paper as one of the contributing leading environmental elements frustrating the operation of the legal framework put in place to effectively manage oil spillage emanating from industrial oil operation. Corruption has serious negative impact in prevention of the environmental oil pollution in Nigeria. Corrupt practice in the Nigerian environmental regime has been a recurrent phenomenon which could be likened to a cankerworm that has eaten deep into the

⁶ A. Uchegbu., Legal Framework for Oil Spill and Clean-up Liability and Compensation in Nigeria in the Petroleum Industry and the Nigerian Environmental Proceedings of 1983, International Seminar, NNPC, Lagos (1984) at p.33.

⁷ Ibid

fabrics of almost every average Nigerian. In the year 2012, Nigeria was estimated to have lost over \$400 billion to corruption since its independence.⁸ Corruption is an anti-social attitude awarding improper privileges contrary to legal and moral norms and impairs the authorities' capacity to secure the welfare of all citizens.⁹

Nigerian politicians always play themselves into the corridor of strong position of power and wealth due to their connections with the oil and gas industries in Nigeria.¹⁰ These gas industries are under the control of the State-owned company, NNPC Limited; oil and gas exports account for over 90% of all Nigeria export revenues.¹¹ Needful to mention that many of these politicians have shares in these industries, tax revenues from the energy sector are diminished and the benefit of Nigeria's energy wealth is not evenly distributed throughout the country, save and except, Lagos state benefitting disproportionately.¹²

Sequel to the above, corruption is widely spread all over Nigeria. It has crept deeply into all sections of the Nigeria Societies not only in the political arena but also in the oil sector. Contracts awarded for oil pipelines maintenance and clean-up of oil spillage are not properly executed due to corrupt practices of some of the officials. In some cases, money meant to run the oil spillage management scheme is often withheld or diverted to other projects due to conflicting personal interest which is seriously affecting the ecosystem in all nooks and crannies. The worrisome questions that are left unanswered till date are; why oil spills? Why oil pollution? Why oil polluted environment left unattended to? In the face of the numerous environmental legislations and oil spillage management officials, preventive response and clean-up response are very slow, sometimes none at all as a result of corrupt practices.

Illegal oil bunkering on the other hand, is another serious vitiating environmental element frustrating the effort of the Nigerian government to maintain a serene environment devoid of oil pollution. Oil spills from bunkering activities often pollute the environment. It causes serious damage to the

⁸ Rita Okoye, "Nigeria has lost \$400 bn Oil Revenue to Corruption since Independence – Ezekwesili" Daily Post Nigeria 2012 Retrieved 2 July 2016; Ijewereme Ogbewere Bankole, "Anatomy of Corruption in the Nigeria Public Sector: Theoretical Perspective and Some Empirical Explanations" SAGE Open 5 (2): 215824401558118. Doi:10.1177/2158244015581188 ISSN 2158-2440. 2015. <https://en.m.wikipedia.org/wiki/corruption_in_Nigeria> Accessed 1 May 2025.

⁹ Belda Mullor Guillermo, Citizens Attitude Towards Political Corruption and the Impact of Social Media (Thesis) Universitat Jaume I. Doi:10.6035/14102.2018. 525941. 2018. Accessed 1 May 2025.

¹⁰ <https://en.m.wikipedia.org/wiki/corruption_in_Nigeria> Accessed 1 May 2025.

¹¹ Varrella Simona, "Topic: Oil Industry in Nigeria" 2020. Statista. Retrieved 2021

¹² "Shameful Nigeria: A Country that does not care about Inequality." The Guardian 18 July 2017. Retrieved 16 May 2021 <https://en.m.wikipedia.org/wiki/corruption_in_Nigeria> Accessed 1 May 2025

ecosystem. By the provision of the constitution,¹³ all minerals, oil and gas in Nigeria belong to the Federal Government; oil extraction outside the framework of an agreement with the federal government is illegal, as it is the possession of crude oil by anyone not licensed to do so; specific crimes have also been created relating to damage to oil installation (including for the purpose of siphoning off crude oil or petroleum products).¹⁴

Theft of crude oil also known as illegal oil bunkering is a major vitiating elements causing environmental oil pollution. Its practices decry oil spillage management in the environment especially in the oil-rich host communities. The major oil companies operating in Nigeria have stated that, for the whole Niger Delta, illegal oil bunkering probably reaches a maximum of 150,000 or 200,000 bpd; but these figures also fluctuate significantly responding to periodic efforts to police the riverine areas more effectively.¹⁵ In the month of August 29, 2003, the Navy announced that it had arrested ten foreigners (among them were Senegalese, Burkinabe, Togolese, Ivoirians and Beninese and a number of Nigerians) for involvement in oil smuggling and seized four ships.¹⁶ Subsequently, several more ships were arrested with a reported combined cargo of oil worth several hundred million dollars.¹⁷ Notwithstanding, there are still few if any successful prosecutions for involvement in the theft of oil and it is not always clear what happens to the cargoes of oil that are seized.¹⁸ Moreover, the oil companies stated that they frequently report suspicious ship movements to the authorities with the water ways but close to normal boat traffic, any vessel that does not belong to oil is probably involved in oil bunkering but no action is taken.¹⁹

Those involved in such illegal oil bunkering causing oil pollution in the environment and loss of Nation's income are majorly those at the top who are considered as untouchable class. It is pertinent to recall that in May 2003, a new Economic and Financial Crime Commission (EFCC) began work at federal level to investigate various forms of fraud; its head freely admitted the existence of Government restitutions responsible for taking charge of the whole thing (crude oil theft), the sale of

¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁴ "The Niger Delta: No Democratic Dividend", Human Rights Watch Short Report, 2002. PP. 27-28. <www.hrw.org.> accessed 2 May 2025.

¹⁵ Kenneth Ehigiator, "Oil Smugglers Accused of Fueling Warri Crisis", Vanguard, 21 August 2003.

¹⁶ Hector Igbikiowubo, "Government Loses x 149b Oil Revenue to Warri War" Vanguard 26 August 2003; Kingsley Omonobi", Navy Arrests 7 Ships with Crude Worth \$250m" Vanguard 3 November 2003. <<https://hrw.org/report>.> Accessed 3 May 2025.

¹⁷ Ibid

¹⁸ Daniel Balint-Kurti, "Nigerian Anti-Fraud Tsar Targets Oil Thieves" Reuters, November 12 2003. <<https://hrw.org/report>> Accessed 3 May 2025.

¹⁹ Ibid

the product and the security of the area.²⁰ This is one major problem that is hard to tackle as institutions or officials who are supposed to protect the host environment against hoodlums who may be involved in crude oil theft also have their interest in the proceeds from crude oil theft. In the course of this, oil is being siphoned or diverted which will spill and pollute the environment with consequential damage on the ecosystem. This is a sabotage on environmental clean-up and oil spillage management scheme.

Flowing from the above premise is identified cases of corruption and illegal oil bunkering as elements that vitiate crude oil spillage management scheme.

3. The Challenges of Oil Pipeline vandalism

Oil pipelines vandalism in Nigeria is very rampant especially in the Niger Delta region. Whenever vandalism occurs, there is drastic reduction in the daily production level of crude oil, resulting to loss of revenue and crude oil spillage in the course of vandalizing would invariably pollute the environment. This will in turn pose serious hazard to the ecosystem.

As earlier noted, this paper focuses on oil spillage management scheme which is a scheme to clean up crude oil from the environment so as to avert pollution that could damage the ecosystem for its inhabitants. Oil pipeline vandalism is identified in this paper as a vitiating element that could frustrate this clean-up scheme due to its recurrent decimal. The facts remain that when these pipes that are carrying crude oil are vandalized, one of the consequences is the outpouring of oil on the environment which is no longer useful but a pollutant on the environment. Incessant vandalism therefore means incessant pollution which is a serious challenge as well as burdensome on the environmental officials, saddled with the responsibility of controlling or managing industrial oil spillage in the environment.

The pipeline infrastructure in Nigeria has been subjected to persistent attacks by militants and pipelines vandals across the Country.²¹ The frequency of such attacks has been very alarming, affecting all fabrics of life and the Country's economy as a whole.²² This has affected investment opportunities (domestically and internationally) to be losing interest in the Country's oil sector due to the security implication and effects on power generation as well as decline in profit and general

²⁰ Ibid

²¹ D. U. Mmeje., Dr Bello Ayuba and Dr U. D. Mohammed., Investigation of Pipeline Vandalism and its Implications on Business Activities in Nigeria, Journal of Resources Development and Management, ISSN2422-8397, Vol.38, 2017. <www.iiste.org> Accessed 3 May 2025.

²² Ibid

socio-economic development of the Nation which is making it difficult for business organizations to achieve their goals of being in business.²³ The major challenges of pipeline vandalism are poor policing and protection of pipelines infrastructure, political or militant agitation and endemic corruption of which the foundation issues are the attendant consequences of pipelines vandalism such as decline in crude oil revenue, scarcity of petroleum motor spirit, decline in electricity generation and pollution of the environment resulting from oil spillage.²⁴

In Nigeria, pipeline vandalism has resulted in untoward consequences which results to economic loss, environmental degradation, oil pollution on the environment, fire disaster and death of innocent citizens and public officials.²⁵ This menace in the crude oil exploration has caused a lot of hazards to the human society. Host communities in the oil producing regions appear to suffer most from the oil pollution on the environment, notwithstanding the avalanche of legal frameworks put in place to regulate and as well as mitigate such attendant hazards from oil pollution.

4. Legal framework on oil spillage and pollution control

This section examines the subsisting framework on oil spillage and pollution control remedies. The section will evaluate some relevant provisions of National Oil Spill Detection and Response Agency (Establishment) Act 2006, Oil Spill Recovery, Clean, Clean-up, Remediation and Damage Assessment Regulation, 2011 and Oil Spill and Oil Waste Management Regulations, 2011.

I. National Oil Spill Detection and Response Agency (Establishment, Etc.)²⁶

This Act came into operation on the 18th day of October 2006. It is an Act established by the Nigerian Government to provide for the establishment of the National Oil Spill Detection and Response Agency and for related matters. The Act provides a legal framework on matters of oil spillage which could turn pollutant on the environment. As part of its mandate, the Act established the said Agency (that is, National Oil Spill Detection and Response Agency) hereinafter referred to as NOSDRA. It has such preparatory responsibilities to detect and respond to all oil spillages in Nigerian environment.²⁷ NOSDRA has the status of a body corporate with perpetual succession and

²³ Ibid

²⁴ Ibid

²⁵ E. Ugwanyi., Steaming Vandalism Theft in Downstream Sector, 2013. <<http://thenationonline.net/news/business/energy/steaming-vandalism-Theft-in-downstream-Sector-2/>. 2013>

²⁶ (Amendment) Act 2008

²⁷ Section 1 (1) of NOSDRA (Establishment, Etc) (Amendment) Act 2008

a common seal, capable of suing and being sued in its corporate name.²⁸ The headquarters of NOSDRA is in Abuja. The body has power to establish Zonal offices in the States of the Federation.²⁹ Its objectives and functions are provided for in section 5 and section 6 of the NOSDRA Act.

A. Objectives of NOSDRA

Accordingly, section 5 provides for the objectives of NOSDRA to the effect that it has the mandate 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 the following ways:

- i. 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.³⁰
- ii. Identify high-risk areas as well as priority areas for protection and clean up.³¹
- iii. Establish the mechanism to monitor and assist 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.³²
- iv. 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.³³
- v. Ensures funding, 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.³⁴
- vi. Provide a programme of activation, training and drilling exercises to ensure readiness to oil pollution preparedness, response and the management and operational personnel.³⁵
- vii. Cooperate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West Africa sub-region upon request by any neighbouring Country, particularly where a part of the Nigeria territory may be threatened.³⁶
- viii. Provide support for research and development (R & D) in the local development of methods, materials and equipment for oil spill detection and response.³⁷

²⁸ Section 1 (2) (a & b) of NOSDRA Act, 2008

²⁹ Section 1 (3) of NOSDRA Act, 2008

³⁰ Section 5 (a) of NOSDRA Act, 2008

³¹ Section 5 (b) of NOSDRA Act, 2008

³² Section 5 (c) of NOSDRA Act, 2008

³³ Section 5 (d) of NOSDRA Act, 2008

³⁴ Section 5 (e) of NOSDRA Act, 2008

³⁵ Section 5 (f) of NOSDRA Act, 2008

³⁶ Section 5 (g) of NOSDRA Act, 2008

³⁷ Section 5 (h) of NOSDRA Act, 2008

- ix. Cooperate 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.³⁸ix. Establish agreement with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities.³⁹
- x. Determine and preposition vital combat equipment at most strategic areas for the rapid response.⁴⁰
- xi. Establishes procedures by which the Nigerian Custom Service and the Nigerian Immigration Service shall ensure rapid importation of extra support response equipment and personnel.⁴¹
- xii. Develop and implement an appropriate audit system for the entire plan.⁴²
- xiii. 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.⁴³

B. Functions of NOSDRA

Section 6 of NOSDRA makes provisions for its functions to the effect that it shall:

- i. 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;⁴⁴
- ii. 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;⁴⁵
- iii. Receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria;⁴⁶
- iv. Co-ordinate the implementation of the plan as may be formulated from time to time by the Federal Government;⁴⁷
- v. Co-ordinate the implementation of the plan for the removal of hazardous and noxious substances as may be issued by the Federal Government;⁴⁸
- vi. 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;⁴⁹

³⁸ Section 5 (i) of NOSDRA Act, 2008

³⁹ Section 5 (j) of NOSDRA Act, 2008

⁴⁰ Section 5 (k) of NOSDRA Act, 2008

⁴¹ Section 5 (l) of NOSDRA Act, 2008

⁴² Section 5 (l) of NOSDRA Act, 2008

⁴³ Section 5 (n) of NOSDRA Act, 2008

⁴⁴ Section 6 (a) of NOSDRA Act, 2008

⁴⁵ Section 6 (b) of NOSDRA Act, 2008

⁴⁶ Section 6 (c) of NOSDRA Act, 2008

⁴⁷ Section 6 (d) of NOSDRA Act, 2008

⁴⁸ Section 6 (e) of NOSDRA Act, 2008

⁴⁹ Section 6 (f) of NOSDRA Act, 2008

vii. Perform such other functions as may be required to achieve the aims and objectives of the Agency under NOSDRA Act or any plan as may be formulated by the Federal Government pursuant to this Act.⁵⁰

Flowing from the above provisions relating to the objectives and functions of NOSDRA, needful to state that the provisions are good in structural form but the enforcement of these regulations have yielded little or no desired result on the environment. The effect of this is the out play of recurrent oil pollution posing health hazards to humans and destruction of the ecosystem. NOSDRA is saddled with the responsibilities of surveillance and enforcement compliance on the environmental regulations for the purpose of protecting the environment from pollution, yet oil pollution is reoccurring every now and then.

More often than not, the removal of hazardous and noxious substances as provided for in section 6 para. (e) has not been done promptly. Most times they are left to decompose or fester until serious harm has occurred leading to death of living organisms in the environment before they are removed. As a matter of fact, there is need for pro-active measures towards ensuring full realization of the objectives and functions of NOSDRA in order not to make these provisions mere paper work.

It is pertinent to state that under the NOSDRA Act, an oil spiller is required 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 2 million naira for each day of failure to report the occurrence.⁵¹ The rhetoric questions that come to mind is how realistic is this? Is it those involved in illegal oil bunkering that will report themselves or the oil pipelines vandals? Whose illegal act may cause serious oil spillage in the environment resulting to environmental hazards on the eco-system.⁵² Even the licensed oil explorers should not be left alone to report as there may be no report of such. This paper recommends efficient and effective surveillance on any mishap and that the monetary penalty should be reviewed upward.

II. Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations, 2011

Section 26, of the National Oil Spill Detection and Response Agency,⁵³ provides that NOSDRA may, with the approval of the Governing Board make such regulations as in its opinion are

⁵⁰ Section 6 (g) of NOSDRA Act, 2008

⁵¹ Section 6 (2) of NOSDRA Act, 2008

⁵² A personal observation on this, was when I walked through a path way that crosses an oil pipeline in Ozoro in Delta State of Nigeria, where I saw oil spillage all over a particular area, economic crops and plants were dying as a result of the harmful effect on the ecosystem.

⁵³ (Establishment, Etc.) (Amendment) Act 2008

necessary or expedient for giving full effects to the provisions of the NOSDRA Act and for the due administration of its provisions.⁵⁴

c. The Objective and Scope of Application of the Regulations are provided for under part 1

i. Objective:

These Regulations establish procedures, methods and other requirements for detection, response, clean-up and remediation of oil spills from onshore and offshore petroleum facilities into or upon land and navigable waters of Nigeria or adjoining shorelines.⁵⁵

ii. Scope:

These Regulations shall apply to all onshore and offshore petroleum facilities engaged in exploration, production, storing, processing, refining and distribution of oil products that have the potential to spill into or upon land and navigable waters of Nigeria or adjoining shorelines.⁵⁶

Provided that these Regulations shall apply without prejudice to any other existing regulations for the prevention of oil spill into or upon land and navigable waters of Nigeria or adjoining shorelines.⁵⁷

The operational procedures for carrying out spill response for the prevention of oil spill into or upon land and navigable waters of Nigeria or adjoining shorelines are contained in Part II of the Regulations.

iii. Requirement for oil spill detection

The owner or operator of onshore or offshore facility from which oil is discharged into or upon land or navigable waters of Nigeria shall provide monitoring system or equipment for oil spill detection and shall carry out rapid assessment to evaluate the severity of the spill incident by aerial and visual surveillance in order to quantify the spilled oil.⁵⁸

Section 2 (2) provides that aerial observation which includes aerial reconnaissance or surveillance shall:

⁵⁴ Section 26 (1) of NOSDRA Act, 2008

⁵⁵ Section 1 of Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations, 2011 (hereinafter referred to as the Regulations 2011)

⁵⁶ Section 1 of the Regulations 2011

⁵⁷ Ibid

⁵⁸ Section 2 (1) of the Regulations 2011

(i) Be an essential element in effective response to marine oil spill, determining the location, extent of contamination or predicting the direction and fate of oil slick at sea;⁵⁹ guide the deployment of response equipment, control of operations at sea, timely protection of coastline sites and shoreline clean-up preparations;⁶⁰ be undertaken visually or by use of remote sensing systems;⁶¹ and be essential in determining the real extent of contamination in land areas, especially in difficult terrain.⁶² Visual observation of floating oil from the air shall be one of the simplest methods of determining the location and scale of an oil spill.⁶³

D. Methods for Observation and Recording

An owner or operator of a facility making a report shall make available maps, geo-referencing charts and other basic data such as the location of the spill source and of pertinent coastal features to assist in the accurate location of the spill site.⁶⁴

E. Oil Spill Reporting

Any person who observes a spill or an oil slick at sea shall report to the facility owner, the Agency or any other related regulatory or security organization.⁶⁵ The owner or operator of such facilities shall quickly take measures to verify and confirm the incident and if the incident is confirmed to have occurred, the operator shall respond in accordance with OSCP/SPCCP of the facility.⁶⁶ The owner of an onshore or offshore facility shall within 24 hours notify the Agency of any oil spill from such facility.⁶⁷ The format for reporting oil spills shall be as prescribed in the First, Second and Third Schedules respectively, to these Regulations.⁶⁸

F. Joint Investigation Visit

A joint investigation team comprising the owner or operator of a spiller facility, Community and State Government representatives and the Agency, shall be constituted immediately after an oil spill notification, to visit the spill site and investigate the cause and extent of the spillage and a

⁵⁹ Section 2 (2) (a) of the Regulations 2011

⁶⁰ Section 2 (2) (b) of the Regulations 2011

⁶¹ Section 2 (2) (c) of the Regulations 2011

⁶² Section 2 (2) (d) of the Regulations 2011

⁶³ Section 2 (3) (d) of the Regulations 2011

⁶⁴ Section 3 of the Regulations 2011

⁶⁵ Section 4 (1) of the Regulations 2011

⁶⁶ Section 4 (2) of the Regulations 2011

⁶⁷ Section 4 (3) of the Regulations 2011

⁶⁸ Section 4 (4) of the Regulations 2011

report of their findings prepared by the Agency in accordance with the Fourth Schedule to these Regulations.⁶⁹

G. Requirement for oil spill emergency response

Section 6 provides to the effect that in the event of a spill, the operator shall; contain the spill with suitable barrier and recover the free phase oil using appropriate equipment; use approved dispersants to break up the oil and speed its natural biodegradation; apply biological agents to the spill to hasten biodegradation; or adopt the best practice method to allow it disperse or break down by natural means if there is no threat to the environment.⁷⁰

H. Shoreline Clean-up

The operator shall promptly remove oil from contaminated shorelines to avoid the oil weathering with time and sticking more firmly to rocks and sea walls, or becoming mixed with or buried in sediments.⁷¹

I. Sand Beaches Clean-up

The operator shall remove bulk oil from sand beaches, using a combination of well-organized teams of manual labourers, assisted by front-end loaders and other mechanical equipment to transport recovered wastes.⁷²

J. Rocky Shores Clean-up

The operator shall recover bulk oil from rocky shores close to amenity beaches or sea walls and slipways manually or by using vacuum units or other skimmers on pooled oil.⁷³

K. Inland Clean-up Bio-stimulation

The operator shall apply fertilizers to adjust the balance in the C:N:P ratio and enhance the degradation rate by the indigenous microbial community.⁷⁴

⁶⁹ Section 5 of the Regulations 2011

⁷⁰ Section 6 (a, b, c & d) of the Regulations 2011

⁷¹ Section 9 of the Regulations 2011

⁷² Section 11 of the Regulations 2011

⁷³ Section 12 of the Regulations 2011

⁷⁴ Section 14 of the Regulations 2011

L. Inland Clean-Up by Bio-augmentation

The operator shall deploy bio-augmentation where natural microbes for oil degradation are not abundant.⁷⁵

L. Termination of Clean-up

The Agency shall constantly monitor and evaluate all clean-up activities, to ensure that they remain appropriate as circumstances change and shall immediately terminate any operation that has been shown to be ineffective or unacceptable.⁷⁶

M. Damage Assessment

On completion of clean-up, the Agency shall undertake damage assessment in collaboration with the relevant stakeholders.⁷⁷

N. Compensation.

An owner or operator of an oil spill facility shall pay compensation to an oil spill victim for damage caused to the victim's person, business or property.⁷⁸ Compensation shall not be paid for spills caused by third party interference or sabotage.⁷⁹ An owner or operator shall internalise the cost of compensation as part of polluter-pay-principle.⁸⁰

O. Basis for Compensation.

Compensation shall be paid for damage to buildings, economic trees or crops by any person who surveys, digs, lays pipes or such other activities for the supply and distribution of energy and fuel.⁸¹

⁷⁵ Section 15 of the Regulations 2011

⁷⁶ Section 17 of the Regulations 2011

⁷⁷ Section 25 (1) of the Regulations 2011

⁷⁸ Section 26 (1) of the Regulations 2011

⁷⁹ Section 26 (2) of the Regulations 2011

⁸⁰ Section 26 (3) of the Regulations 2011

⁸¹ Section 27 of the Regulations 2011

Part 4 of the Regulations makes provisions for oil and oily waste minimization and management in regards to storage, management of recovered oil, disposal of oily wastes, remediation of impacted sites, site identification and remediation of impacted sites. Accordingly, it provides to the effect that: Oil and oily wastes shall be collected and stored separately and barges, trucks, skip, drums, fast tanks and property lined retention pits shall be used in the storage of oil and oily waste for a period not exceeding sixty days.⁸²

Oil recovered from oil spill response activities shall be recycled in line with recognized industry practices approved by the Agency.⁸³

The disposal of oily wastes shall be strictly in accordance with the prescribed methods approved by the Agency which may include; incineration, stabilization and landfill.⁸⁴ Owners or operators of oil facilities shall obtain approval from the Agency.⁸⁵

P. Site Identification

Section 32 provides that:

(1) Of the Regulations provides that owners or operators shall identify the impacted site and report to the Agency;

(2) The Agency shall carry out a more in-depth and well-structured site assessment where there is;

a. Record or evidence of previous spills;

b. Inadequate storage system by the owner or operator;

c. Poor operational history;

d. Complaint against the owner or operator;

e. Detection of contaminants from monitoring systems;

f. Warning letters and physical evidence of oil stain, oil sheen, soil and stressed vegetation; and

g. Warning letters and clean-up orders from regulatory agencies.

(3) The polluted site identification shall include, where necessary, aerial reconnaissance with maps geo referencing and location, showing dimension of site, relationship to town and waterways, and

⁸² Section 28 of the Regulations 2011

⁸³ Section 29 of the Regulations 2011

⁸⁴ Section 30 of the Regulations 2011

⁸⁵ Section 31 of the Regulations 2011

photographs showing topography, nature and existing structures and information for each site shall be accompanied with relevant record keeping forms.

III. Oil Spill and Oily Waste Management Regulations, 2011

Section 26 of the National Oil Spill Detection and Response Agency,⁸⁶ empowers NOSDRA to make regulations as in its opinion are necessary or expedient for giving full effects to the provisions of the NOSDRA Act. In the exercise of this power, it makes Regulations relating to Oil Spill and Oily Waste Management in the following areas:

i. Regulatory Setting

Section 1 of the Oil Spill and Oily Waste Management Regulations, 2011 provides to the effect that, for ease of monitoring, compliance and enforcement of applicable laws and regulations, the petroleum sector is classified into the upstream, midstream and downstream sub-sectors as follows;

The upstream sub-sector covers crude oil, condensates and gas exploration and production activities including crude oil terminals.⁸⁷

The midstream sub-sector consists of crude oil pipeline transportation, storage, refining and petrochemicals production, liquefied natural gas, and gas conversion, including all processing facilities.⁸⁸

The downstream sub-sector entails petroleum products and natural gas distribution to final consumers involving (marketing operation, jetties, Above Ground Storage Tanks (ASTs), retail outlets, products pipelines and Underground Storage Tanks (USTs) operations.⁸⁹

ii. Scope of Application

These Regulations apply to on-shore and off-shore petroleum facilities in Nigeria and in particular, to facilities which due to their locations can reasonably be expected to discharge oil or oily waste in harmful quantities into or upon the land or navigable waters of Nigeria. These

⁸⁶ (Establishment, Etc.) (Amendment) Act 2008

⁸⁷ Section 1 (i) Oil Spill and Oily Waste Management Regulations, 2011

⁸⁸ Section 1 (ii) Oil Spill and Oily Waste Management Regulations, 2011

⁸⁹ Section 1 (iii) Oil Spill and Oily Waste Management Regulations, 2011

include facilities used for seismic survey, drilling, producing, gathering, storage, processing, refining, distribution and consuming activities.⁹⁰

iii. Spill Prevention Control, Measures, Plans, etc.

Owners or operators of Facilities which due to their locations, could reasonably be expected to discharge oil or generate oily wastes into or upon land or navigable waters of Nigeria, shall prepare in written form a Spill Prevention Control and Counter Measures Plan ('SPCCP') and an Oil Spill Contingency Plan ('OSCP') as prescribed in these Regulations and in accordance with specifications contained in Appendices II-1 and III-1 to these Regulations.⁹¹

It is pertinent to state that these Regulations contains explanations on the regulatory and legal framework on the petroleum sector emphasizing the concerns and problems of discharges of oil and oil wastes on land and navigable waters in Nigeria and noting the importance of constantly updating the laws and regulations pertaining to the sector to prevent the damaging effects of oil spills and discharge of oily waste upon land and navigable waters in Nigeria.⁹²

5. Conclusion and Recommendations

The pressing need to avert oil pollution in the environment cannot be overemphasized due to its adverse effect on the environment in relation to hazards to human health, aquatic plants, animals and fishes in the water, contamination of crops and other forms of hazards on the ecosystem. An oil polluted environment can be likened to a death trap. This is why, all over the globe, the issue of environmental pollution has been tackled with serious attention. By way of intervention, the Government of Nigeria has enacted numerous environmental laws for the purpose of controlling oil spillage and oil pollution on the environment. Some of such laws put in place as earlier mentioned, amongst others are the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011, Oil Spill and Oil Waste Management Regulations 2011, National Oil Spill Detection and Response Agency (Establishment) Act 2006, Oil Pipelines Act 1965.

The paper has demonstrated the provisional contents of the conceptual legal framework on National Oil Spill Detection and Response Agency (Establishment, Etc.) (Amendment) Act 2008, Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations, 2011, Oil Spill and Oily

⁹⁰ Section 2 (1) Oil Spill and Oily Waste Management Regulations, 2011

⁹¹ Section 4 (1) Oil Spill and Oily Waste Management Regulations, 2011

⁹² Section 2 (3) Oil Spill and Oily Waste Management Regulations, 2011

Waste Management Regulations, 2011 and concluded that the legal frameworks for preventing and managing oil pollution in the environment are well structured. The major challenge lies on the recurrent oil spill and oil pollution in the face of these numerous legal mechanisms to averting its occurrences. The paper therefore appraised the legal frameworks and found out that the problem does not lie on the legal framework but on some factors identified as vitiating elements such as corruption in enforcement and non-compliance to rules as well as illegal oil bunkering and oil pipeline vandalism. Flowing from the above, it is recommended the following:

- A. The need for critical re-organization of environmental law enforcement officials against corruption so as to safeguard the Nigeria environment from oil pollution. There should be a strict and efficient policing of oil pipelines carrying crude oil.

Section 26 (2) of the Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations which provides that compensation shall not be paid for oil spills caused by a third party interference or sabotage should be amended.

- B. An amendment to this section in order to weaken security measures on the part of the oil industry or explorer which should beef up security measures to ensure there is no sabotage or third party's interference. Furthermore, this section creates room for technicality to avoid payment of compensation.
- C. That section 25 and section 27 of the Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations providing for damage assessment as well as forming the basis for compensation should be enforced without recourse to Section 26 (2). It will be oppressive and of great injustice to humanity to refuse to compensate victims of oil pollution hazards whose economic trees or crops for instance, have been damaged on the basis that the pollution was caused by a third party's interference or sabotage.



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