

THE FLARE GAS (PREVENTION OF WASTE AND POLLUTION) REGULATIONS 2018: A SMALL STEP IN THE RIGHT DIRECTION

* **Introduction**

The Federal Government of Nigeria, in September 2018, gazetted the new Flare Gas Prevention of Waste and Pollution Regulations 2018 (“the Regulations”). The Regulations, which was approved by President Muhammadu Buhari, commenced on the 5th of July 2018 provides a legal framework for the utilization and commercialization of Flare Gas in Nigeria in order to support the government’s plan to reduce Green House Gas (“GHG”) emissions through flaring and venting of natural gas. It further introduced a new payment regime for gas flaring and imposes strict obligations on companies that carry out oil and gas operations. These new regulations also introduced additional compliance burdens for relevant stakeholders and apply to persons who make use of flared Gas.

* **Highlights of the Regulations**

The Regulations were issued pursuant to Section 9 of the Petroleum Act and Section 5 of the Associated Gas Reinjection Act (“AGRA”). The Regulations provide a legal framework for the implementation of the Nigerian Gas Flare Commercialization Programme (“NGFCP”). The NGFCP was launched by the Federal Government in 2016 with the core objectives to reduce the environmental and social impact gas flaring has on the environment; protect the environment; prevent waste of natural resources and creation of social and economic benefits from flare capture. Some of the key provisions in the Regulations are as follows:

1. **Right of Federal Government:** The Federal Government shall have the right to take all Flare Gas free of cost and without payment of royalty. This is made pursuant to Paragraph 35 (b)(i) of the First Schedule to the Petroleum Act which empowers the Minister of Petroleum Resources (“the Minister”) to impose special terms and conditions on any lease or license with respect to the right of the Federal Government to take Flare Gas.
2. **Minister’s Authority**: The Minister can authorize a qualified applicant to take the Flare Gas on behalf of the Federal Government at any specified Flare Site. This will be done via the issuance of a “permit to access flare gas” to a qualified applicant (i.e. Permit Holder), following a competitive bid process conducted by the Federal Government.
3. **Commercialization Of Flared Gas**: A holder of an Oil Mining Lease (OML) or an allottee of a Marginal Field (Producer) seeking to utilize its Flare Gas for commercial purpose is required to apply to the Minister for approval.
4. **Flare Gas Data Log**: Permit Holders and Producers are required to maintain a daily log of the flaring and venting of natural gas, and shall submit such logs to the Department of Petroleum Resources (DPR) within 21 days after the end of each month. Any person who supplies false data to the DPR, fails to supply such logs or keep such logs will be guilty of an offence and fined an additional $2.50(US Dollars) per 28.317 standard cubic meters of gas flared or vented within the OML or marginal field for each day the producer fails to meet such requirements. In the event of continued failure, the Minister may direct the producer to suspend operations, revoke the OML or marginal field awarded.
5. **Data Access Permit**: No person shall have access to flare gas data except such person has been issued a permit by the DPR.
6. **Permit to Access Flared Gas:** The Minister may grant a permit to access flared gas. This permit gives the holder exclusive basis to take flare gas from one or more flare sites, on behalf of the Federal Government and to utilize or dispose of such gas in any manner as authorized by the Federal Government.
7. **Prohibition against Flaring Gas:** No Producer is permitted to flare gas without a Certificate issued by the Minister, in line with Section 3 of the Associated Gas Reinjection Act;
8. **Payment for Gas Flaring**: The Regulations also revised the gas flaring fees previously being paid by producers or operators. The newly prescribed payments for Gas Flaring are as follows:
9. In the case of production of 10,000 barrels of oil and above (per day): $2 per thousand standard cubic feet (Mscf) of gas flared
10. In the case of production of less than 10,000 barrels of oil per day: $0.50 per Mscf of gas flared
11. Notwithstanding the prescribed payments for gas flaring, a Producer will be required to pay an additional sum of $2.50 per 28.317 Mscf of gas flared, within the OML or Marginal Field for each day that the Producer fails to meet the requirements.
12. An increase in the rates for gas flaring payments from the previous N10 per Mscf to $2.00 per Mscf and $0.50 per Mscf, as applicable.

It is pertinent to note that the definition of Flare Gas in the Regulations means -gas that is diverted toward a ‘Flare Site’ for the purpose of flaring, hence associated natural gas that is designated for flaring by operators may be taken by the government in line with the Regulations.

Another essential feature worthy of note is that the Regulation reiterates the provisions of the AGRA on the requirement to obtain a Certificate from the Minister before engaging in gas flaring.

* **Benefits of the Flare Gas Prevention of Waste and Pollution Regulations 2018**

Some of the benefits that the Regulations seek to provide are as follows;

1. Reduction in gas flaring, thus saving the environment (especially that of the Niger Delta region which has been the most impacted).
2. Prevent waste of natural resources.
3. Creation of social and economic benefits from flare gas capture.
* **Conclusion**

The passage of thee Flare Gas Regulations shows the disposition and enthusiasm for reforms in the Nigerian Petroleum Industry. However, the passage of the Regulations is a very minute step in a journey of a thousand. A total renaissance of the Petroleum Sector is reliant on the need for an overhaul of all legislations governing the Nigerian Petroleum Sector. However, we believe that the passage of these Regulations is an indication that the Federal Government is in tune with the clamour by the populace for reforms in the industry.

**For more information, please contact:**

Gbenga Biobaku

Senior Partner

gbengabiobaku@gbc-law.com

Sandra Gini

Associate

sandragini@gbc-law.com

Eruvwun Juweto

Associate

eruvwunjuweto@gbc-law.com

GBENGA BIOBAKU & CO.

Barristers and Solicitors

11 Babafemi Osoba Crescent

Lekki Phase1, Lagos

+234 1 2717769

+234 1 2707320 (Fax)

info@gbc-law.com

<http://www.gbc-law.com>

***Disclaimer***

***Nothing in this article should be construed as legal advice from any of our lawyers or the firm. The article published is a general summary of developments and principles of interest and may not apply directly to any specific circumstances. Professional advice should therefore be sought before action based on any article is taken.***