

## **The Effect of Multiple Regulatory Regimes on the Nigerian Petroleum Industry**

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Attention is usually focused on the legal and institutional frameworks for environmental management in Nigeria's oil industry. This area of environmental management is one in which the oil industry is confronted by the reality of multiple regulators. It has been observed that there is an absence of effective collaboration among the three tiers of government in the first instance and between government (at the three levels of the federal arrangement) and the oil industry, in another instance.

This paper focuses on how and why the required collaboration should be nurtured and expanded in the context of existing legal, institutional and structural frameworks for environmental management. It offers a critique of these frameworks, weaknesses to be addressed and the gaps to be filled in the interest of the oil and gas industry, the government, stakeholders and the economy of the country.

### **1. Introduction**

The Nigerian oil and gas industry has always been an important part of the resource base of the Nigerian economy. It is the life wire of the country's economy; a vital and strategic resource without which the economy may literally collapse. It is also, a vital political resource around which much of the geography of Nigeria's politics has been constructed and reconstructed in the last forty years or so. The effective control and management of such resource base is therefore important and of the highest priority.

The Oil and Gas industry in Nigeria include the following operations–

- Exploration and development activities which involve seismic surveys and drilling
- Production, which is the active recovery of hydrocarbons from producing formations
- Hydrocarbon processing activities, which involve the complex combination of interdependent operations concerned with the separation of crude, molecular cracking/rebuilding and solvent finishing. Downstream of these activities are also the LPG/NG/LNG/Gas Conversion and processing activities
- Transportation and terminal operations, which involve the movement (pipes/road tankers/marine vessels, etc.) and the storage of hydrocarbons.

It should be noted that the authority to control and manage these operations, resides with the federal government, since the National Assembly is mandated by the constitution (1999) to legislate exclusively on 'mines & minerals, including oil fields, oil mining ... and natural gas'. The Federal Ministry of Petroleum Resources

is currently in direct control and management of these operations, from design, licensing, construction, operations to decommissioning and the waste minimization involved in all these activities.

Recently, a number of other federal and state governments' agencies and parastatals, have become involved in the management of some aspects of these activities/operations. The involvement is mostly in environmental degradation control and management. These agencies and parastatals are also mandated by relevant statutes either enacted by the Federal and/or State government(s). These, to mention a few, are –

- Federal Ministry of Environment
- National Maritime Authority
- National Emergency Management Agency
- Federal Ministry of Labor & Productivity
- Niger-Delta Development Commission
- Standard Organization of Nigeria
- State Environmental Protection Agencies/Boards
- Local Government Sanitation /Environmental Control Boards
- Etc.

More often than not, duplication, 'commandism', illegal detention/arrests, threats and financial exploitation, precede requests or directives for the implementation of the relevant regulations, standards and bye-laws.

We believe that there should be a way forward with a view to highlighting the flaws in the existing multiple regulator scenario, in order to identify sign posts to a future that takes the industry away from regulatory confrontation to co-operation and from crises to partnership.

This paper will highlight the available management framework of government in the control of oil and gas industry; discuss the relation between some of their functions; identify areas of conflict and; will propose ways of minimizing some of these perceived conflicts.

## **2. Framework for the Inter-Governmental Regulations in the Oil and Gas Industry**

### ***Federal Ministry of Petroleum Resource***

The enabling statute on the control/management of the Oil and Gas industry in Nigeria is said to be the Petroleum Act of 1969. It provided for the exploration/exploitation of petroleum resources, refining, distribution (import/export), transportation of petroleum resources and the federal government ownership of all petroleum resources. Appropriate regulations, supervisory management directives, guidelines and standards, have been issued in conformance with sections 8(1) and 9(1) of this Act. The technical arm of the ministry that is charged with the general supervision of all these operations in the oil and gas industry is the Department Of Petroleum Resources.

### ***Federal Ministry of Environment***

The Federal Ministry of Environment was created by Executive Order in 2000. The FMOE exercises all the legal responsibilities initially vested in the Federal Environ-

mental Protection Agency, established by the FEPA Decree 51 of 1988. The ministry is to formulate policies and is charged with the responsibilities to control and oversee the state of the Nigerian environment. FMoE, by its mandate, is the environmental watchdog responsible for the protection and the development of the Nigerian environment in general.

#### ***National Emergency Management Agency***

This Agency was created by the National Emergency Management Agency (Establishment, etc.) Decree No. 12 of 1999. The major functions of the Agency, are to formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for the efficient and effective response to disasters at the national level – disaster, according to the Decree, also includes oil spillage and; monitor the state of preparedness of all organizations or agencies which may contribute to disaster management in Nigeria.

#### ***National Maritime Authority***

NMA has been vested with the power to maintain, improve and regulate the use of the Nigerian waterways, including shipping activities. The mandate also includes safe operations of marine vessels to minimize and control oil spillages in these waterways.

#### ***Niger-Delta Development Commission***

The Commission was established by the NDDC (Establishment, Etc.) Act of 2000. Amongst the mandates, are –  
tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal government and the member states on the prevention and control of oil spillages, gas flaring and environmental pollution  
liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control.

#### ***State Environmental Protection Boards***

Several states have established States' Environmental Ministries and/or Environmental Protection Agencies. The FEPA Decree mandates the States and Local governments to set up their own protection Agencies for the 'purpose of maintaining good environmental quality in the areas of related pollutants under their control ...'

### **3. Perceived Conflicts**

It is obvious from the above framework and functions, that the perceived conflicts are mainly concentrated with the Environmental Management function, arising from activities of the oil and gas industry.

I will discuss some of these perceived conflicts with specific activities as identified below.

### ***3.1 Licenses and Permits to Operators***

By the available framework, the Oil Minister, through the Director Petroleum Resources, issues appropriate licenses/approvals such as:

- Oil Exploration/Prospecting/Mining Licenses/Leases
- Rig Licenses
- Permits to survey pipeline routes
- Permits to operate petroleum industry services companies
- Permits to construct/maintain production facilities
- Approval to construct processing or marketing facilities
- Permit to operate kerosene peddling trucks Permits to flare gas
- Etc.

Technically, an agency that has the sectoral legal mandate to issue such licenses/approvals should also have the authority to control all the activities relating to such licenses and/or approval. There may be overlaps with the functions of other agencies, but the lead agency should be the agency that has issued the license, to minimize conflicts. In the recent past, such conflicts had included:

- State Task Forces on Petroleum Product suspending or withdrawing licenses issued by the DPR to filling stations
- State government Environmental Protection Agencies threatening to suspend and /or actually suspending drilling operations, even when all the required documentation had been issued by the DPR
- Community youths forcefully closing down production/drilling activities, with little or no help from other government agencies
- Dispensing pumps being put out-of-use by the Standard Organization of Nigeria (SON) at product filling stations.

### ***3.2 Oil Spillage***

All the regulators/agencies, identified above, have overlapping functions when it comes to oil spillages. The DPR, FMoE, NMA, NEMA and States EPAs, all have appropriate provisions for the reporting, clean-up and remediation activities. Sometimes, directives are received directly from State Chief Executives and legislators.

A critical review of the available statutes seems to indicate that the major regulators on matters of oil spillage control are the DPR, NMA and NEMA. Oil Company operations are controlled by the DPR, while the enforcement authority of the Oil in Navigable Waters Act, 1968, which gave effect to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 as amended in 1962, resides with NMA. NEMA is to manage disasters. The FMoE and other States EPA are however, to ensure that the environment if and when polluted, is promptly cleaned up. Also, by the provisions of section 23 of the FEPA Act (not yet repealed), “The Agency (FEPA) shall co-operate with the Petroleum Resources Department for the removal of oil related pollutants discharged into the Nigerian environment and play such supportive role as the Petroleum Resources Department may from time to time request from the Agency.”

### ***3.3 Technology (System/Equipment)***

The Petroleum Act requires that licensees should provide up-to-date equipment in their operations, including pollution abatement. The DPR, uses the parlance ‘Best Practicable Technology currently Available – BPTA’. The FMoE’s responsibilities also extends into environmental technology requiring “Best Control Technology currently Available – BCTA”. The definitions of both BPTA and BCTA should be similar, to minimize any confusion in the interpretation.

### ***3.4 Effluent Limitations, Monitoring and Enforcement***

It is the FMoE’s responsibility to make policies and establish national limitations and standards for pollution qualities (water, air, etc.). State EPAs may also issue their own limitations and standards. It would appear that for now, the sectoral limitations set by the DPR are similar with the national limitations. However, all the identified agencies have different management approaches to ensure monitoring and compliance.

### ***3.5 Environmental Impact Assessment (EIA)***

The EIA processes as indicated by the EIA decree (FMoE) and the DPR’s sectoral guidelines, initially look divergent. But a critical look indicates that the processes are basically similar. Both processes require:

- Notice of intent in writing
- Screening Report (FMoE) or Preliminary Impact Assessment Report (DPR)
- Mandatory Study Report (FMoE) or Draft Environmental Impact Assessment Report (DPR)
- Design/Implementation of Follow-up Programme and Final EIA Report (FMoE and DPR)

However, the procedures to achieve these processes are more elaborate for the FMoE. For example, while FMoE requires elaborate public forum, panel review, etc., the DPR recommends public involvement in the interpretation of impact significant.

The important issue here is that operators are subjected to preparing two reports with different titles but containing the same information, being made available to the same federal government.

### ***3.6 Enforcement Authority***

It is obvious that all the statutes, regulations, standards and limitations that are administered by the different regulators, have associated sanctions. These sanctions range from the payment of fines if found guilty, to prison terms, payment of compensation and the revocation of licenses or permits.

The issue to note is how the multiple regulators will slam any notice of default on any one operator, for the same offence that is general to all the regulators.

## **4 Role of Memorandum of Understanding (Mou)– Observations in the American (U.S.) Regulatory System**

It might be useful to briefly consider the U.S experience in regulating offshore oil and gas activities.

The Minerals Management Service (MMS) in the Department of Interior, the U.S. Environmental Protection Agency, the Coast Guard, the Office of Pipeline Safety in the Department of Transportation and the Occupational Health and Safety Administration (OSHA) in the Department of Labor, are just a few agencies, which have some form of legal authority under relevant statutes, to regulate or control activities on offshore Continental Shelf (OCS). In some cases, as with the MMS, the Agency's authority is specifically directed to oil and gas activities.

Over the course of years, the regulatory structure became steadily more complex, as the U.S. Congress, passed more laws to address more activities on the OCS. The result is a system in which agency authorities and responsibilities are sometimes unclear, overlap, duplicative or inconsistent. The system made it extremely difficult for the operators to implement the requirements. Agencies and the federal government were faced with high costs, administrative inefficiency, and lack of credibility with each other, the industry and the broader society.

In an effort to clearly define their relative roles and responsibilities, various 'Memoranda of Understanding' were negotiated among key agencies.

For example, in 1989, MMS entered into an MOU with the Coast Guard to "promote the safety of personnel, activities and facilities" on the OCS associated with oil and gas activities. The objective of the MOU was "to promote conservation of mineral resources and protection of the environment, to minimize duplication of effort, and to promote consistent, co-coordinated and less burdensome regulation of these facilities". The MOU summarizes the statutory authorities of the MMS and of the Coast Guard, and identifies where authorities of the two agencies are similar. It then sets out what responsibilities each agency will exercise under their authorities, and for which specific activities.

Among other MOUs in place in the U.S is one which involves EPA, the Department of Transportation (including the Coast Guard) and the MMS which designates responsibilities for oil-spill prevention and control, response planning and response equipment inspection for offshore facilities among the three agencies, depending on the type and location of the facility. Another MOU clarifies legal responsibilities between EPA and the Department of Interior regarding issuance of discharge permits for activities on the Outer Continental Shelf.

The government agencies in the U.S have found these MOUs to be very valuable. The inter-agency agreements help ensure that each agency knows what it needs to do, what it can expect other agencies to do, and how any questions or problems between agencies will be resolved. This helps streamline processes for both the agencies and the regulated industry, save time and money for all involved, and makes the whole regulatory system more credible, effective and efficient in accomplishing the objectives set out in the authorizing statutes.

## **5. Minimizing These Conflicts**

### ***5.1 Principles of Exclusive Responsibility***

Why is the Oil and Gas sector very attractive to the other tiers of government? The reason is of course very obvious: the country's economy depends on this sector.

States and Local governments are expected to draw their instruments of power from the federal regulators, which we believe have been vested with the exclusive responsibility on Oil and Gas related activities. This recommendation is borne out of

the fact that the Federal government may not allow a State government to strangle the sector with very stringent standards.

### ***5.2 Re-Alignment of Like Forces***

The suggestion has been made that the different environmental control divisions or units of all the federal ministries or agencies on environmental management for oil and gas related pollution, be merged. It is however noted, that these agencies are creation of statutes with specific mandates and responsibilities in their areas of specialization. Overlaps are also welcomed so as to minimize loopholes in the implementation strategy of relevant issues of importance that would have otherwise been ignored.

### ***5.3 Workshops***

An early step in minimizing conflicts, in our opinion, is to conduct a workshop, involving all regulators. OPTS and other bodies whose operations are being affected by such conflicts, could organize the workshop, after appropriate consultations. Alternatively, the DPR, FMoE and NMA should organize the workshop.

Issues to be discussed should include:

- Information and data availability/exchange
- Review of existing regulations, standards and guidelines
- Exchange of technical expertise
- Rule making activities
- Establishment of inter-regulator notification for incidents
- Identification of Lead agency/regulator
- Memorandum of Understanding (MOU)

### ***5.4 Memorandum Of Understanding***

There is an urgent need to establish or put in place an MOU with the following objectives:

- i Define the boundaries of authority of each regulator, using the available statutes as baseline;
- ii Eliminate confusion among the oil industry operators with regards to the specific authorities and overlaps of authorities;
- iii Minimize as practicable as possible, duplication of efforts by these regulators;
- iv Promote consistent, co-coordinated and less cumbersome enforcement of related guidelines and standards, and;
- v Promote the effective implementation of environmental management in the Oil and Gas industry

#### ***5.4.1 Elements For Discussion***

The following elements could form the basis for further discussions:

##### ***a. Facility Design/Construction Approvals and Pollution Control Technology***

The DPR will continue to exercise general control on technical review and approval for design, fabrication and the installation of all relevant oil and gas facilities.

Issues relating to Waste Minimization and Pollution control technology should be discussed by a technical committee involving FMOE, NMA and the DPR, set up for that purpose. Relevant State EPAs may be invited. This is to ensure that the appropriate interpretation of BPTA and BCTA is satisfactory to all the regulators.

*b. Oil Spill And Contingency Plans*

Currently, there are three tiers of responses – 1, 2 and Tier – 3. The DPR should control the Tier-1 response; FMOE, DPR and NMA should institute a technical committee to review and control Tier-2 response, while the NEMA controls the Tier-3 (disaster) response. Representative of the Federal Ministries of Environment and Petroleum Resources should be members of an enlarged governing council. Presently, these two federal ministries are not members of the governing council of the NEMA.

*c. Environmental Impact Assessment*

The lead regulator for EIA is the FMOE. Final approvals and/or permits for EIA shall not be made by FMOE unless a provisional approval and/or permit has been issued by the DPR.

*d. Research and Environmental Studies*

The oil operator, FMOE, DPR, NDDC and State EPAs, should co-ordinate activities on the tackling of ecological and socio-economic problems. Related studies/research should not be duplicated. A data bank should be established.

*e. Effluent Limitations*

A national discharge permit system should be established by FMOE. The DPR will monitor compliance in the Oil and Gas sector.

*f. Sanctions*

The multiple regulators shall agree that it is in the public interest for a single regulator to take the Lead in making and in consolidating referrals to the Ministry of Justice for the initiation of criminal cases, for violations in pollution management cases, which are similar. Other regulators shall provide appropriate information for the successful prosecution of the case.

## **6. Conclusion**

The multiplicity of government regulators with various standards, regulations and guidelines, has not been very conducive for the operators in the oil and gas sector. Presently, these operators have continued to comply, although the future looks more confused with the increased awareness on environmental management.

It has been identified that relevant statutes, regulations, standards and guidelines on environmental management for the sector, do exist. However, their enforcement lack the effective co-ordination of related efforts of all the related regulatory agencies.

We believe that the only way forward is for the major regulators – DPR, NEMA, NMA, FMOE, State EPAs, and NDDC – to sit down and discuss, so as to harmonize their various operations.

For the operators, the proper implementation and enforcement of these statutes, regulations, standards and guidelines, will promote conservation of oil and gas



resources, protect the environment, minimize duplication of efforts, conserve funds and provide a more consistent, co-coordinated and less cumbersome regulatory control of the facilities for the investors, government and other stakeholders.

**Prince Amid Adekunle** is one of the most seasoned Petroleum Geologist and Environmental Management Specialist in Nigeria, having spent over 26 years in Chevron Texaco.

After graduating in 1975 at the North East Illinois University, Chicago, USA with a B.Sc. degree in Earth Science (Geology) Cum Lauda, he proceeded to the University of Texas for an advance drilling technology course in 1976 and from there to University of Akron, Ohio from 1978 – 1979 where he obtained the Masters of Arts/Science (Energy Management and Public Administration/Planning). Thereafter, he was employed by Heidelberg & Clarry Associates Inc, USA as Site Environmental Geologist in 1979.

With this background he returned to Nigeria in 1980 to work for Gulf Oil Company Nigeria Limited as Reservoir Engineer. By 1983 he had been promoted to Senior Safety and Environmental Engineer, a post that entailed constant updating the Business Unit and Operations, focusing on Safety & Environmental issues that could impact exploration/operations.

Prince Amid Adekunle is a pioneering staff of the prestigious Health and Safety Division of Chevron Texaco. As a highly responsible officer of the company, he had represented the company in various important committees, including:

- Operation Sub-Committee
- Drilling Sub-Committee
- Environmental Sensitivity Index Mapping Committee,
- Clean Nigeria Association (CNA) an Oil Spill Response Cooperative Committee
- Safety and Environment Sub-Committee
- Liaising with/coordinating with community within Chevron Texaco areas of operation, OMPADEC, NDDC.
- Current chairman Nigerian Environmental Society (NES), Lagos Chapter

He became the authority on Environment and Safety issues as they relate to Up-stream and Down-stream Oil and Gas Production and Utilization and so he was always representing Chevron-Texaco in all aspects of work in these areas. Indeed, he had on a number of occasions offered his expertise to other public interest outside the Chevron-Texaco. For example, he facilitated a number of Bills in the Senate of the Federal Republic of Nigeria. Such Bills include:

- The National Oil Spill Detection and Response Agency Bill
- The National Environmental Standards Enforcement and Regulatory Agency Bill
- The Ecological Agency Bill, etc.

Prince Amid Adekunle is a member of many professional bodies, namely:

- Associate Member of the Society of Petroleum Engineers (SPE) 1983
- Fellow of the Nigerian Environmental Society (FNES) 2000
- Member of the American Management Association, 1992
- Associate Member, American Institute of Mechanical Engineers (A.I.M.E.)
- Member of the America Association of Petroleum (AAP)
- WHO'S WHO Environmental Registry, California USA

He has published a number of important papers in his areas of specialization (12 papers) which have earned him recognition both nationally and international. Actually, in recognition of his accomplishment, Prince Adekunle bagged the Nomination of the Executive Governor of Lagos State as a member of the Lekki Free Trade Zone Implementation Committee in 2005 and several positions and awards, which include:

- Lagos State Government Award for contributions as a member of the Environmental Physical Planning Committee of the Lagos State Transition work Group in 1999.
- Best Employee of the Year in 1999, in Ventura, California.
- Man of the Year Award (2002) by the American Biographical Institute and Board of International Research
- Chairman, Lagos State Chapter, Nigeria Environmental Society (NES), 2005 to date.

Prince Adekunle serves his community at various capacities and he is a member of the prestigious Ikoyi Club, Oriwu Club, the Chairman of ‘THE GROUP’ Shamsel-Deen Society of Nigeria Ikorodu, A member of the Planning and Strategy Committee of the Independent Campaign Group (ICG) for 2003 elections in Lagos State, Founder and Leader of ‘Mandate Group’, a caucus in the Alliance for Democracy; etc.

In 2007 Amid contested for Senate of the Federal Republic of Nigeria for the Lagos East Senatorial District under the platform of Democratic Peoples Alliance, (DPA) and came third. This inspite of his busy schedule, combining work with active campaign.

**Chevron** is one of the largest integrated energy companies in the world. Headquartered in San Ramon, California, we conduct business in approximately 180 countries, and are engaged in every aspect of the oil and natural gas industry, including exploration and production, refining, marketing and transportation, chemicals manufacturing and sales, geothermal and power generation.

**Company Roots** The company traces its earliest roots to an 1879 oil discovery at Pico Canyon, north of Los Angeles, a find that led to the formation of the Pacific Coast Oil Co., which later evolved into the Standard Oil Co. of California and, later, Chevron Corp. Another major root in the genealogical chart is the 1901 formation of The Texas Fuel Co. in Beaumont, Texas. It later became known as The Texas Co. and, eventually, Texaco Inc. In 2001, these entities merged to form ChevronTexaco. The name was changed to Chevron in 2005 to convey a clearer, stronger and more unified presence in the global marketplace. The acquisition of Unocal Corporation in 2005 strengthened Chevron’s position as a global energy leader, enhancing assets in key basins around the world.

**Global Scope** Our diverse and highly skilled global work force stands at approximately 56,000 employees (excluding about 6,600 service station employees). As a company and as individuals, we continue to take great pride in a commitment to community partnerships, social responsibility and environmental excellence.

In 2006, Chevron produced 2.67 million barrels of oil-equivalent per day, with approximately 70 percent of the volume occurring outside the United States and in

more than 20 different countries. Total reserves added during the year equated to 101 percent of production for the period.

With a global refining capacity of more than 2 million barrels of oil per day at year-end 2006, Chevron also has a marketing network that supports approximately 25,800 retail outlets – including those of affiliate companies – in nearly 75 countries. We have interests in 15 power-generating facilities in the United States and Asia.