

POLLUTION CONTROL REGULATION

IN

**THE NIGERIAN
OIL INDUSTRY**

OLUWOLE AKANLE



NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

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The Challenges of Pollution from Petroleum Operations to the Nigerian Environment.

Abstract: The word pollution can be variously defined. It may refer to the process of contamination or to the state of being contaminated. In this paper, the author discusses the various forms of pollution from petroleum operations in Nigeria.

1. For a general survey of the Nigerian Oil Industry, see Ahmad, "Oil in Nigeria" in *Oil in Nigeria* (ed. Law & Kanao) (Lagos: 1972) p. 124 ff. 13

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Oluwole Akande

Introduction

Petroleum exploration, prospecting and marketing have been with Nigerians for decades now.¹ The effect of these activities on man and his environment has been phenomenal. These activities have brought social, political and economic transformation to the nation. While much has been written and documented in these areas, there is one inextricable adjunct effect of these activities that has until very recently received no attention. This aspect is the adverse effects which petroleum exploration, prospecting and marketing can have on both man and his environment.

It is the purpose of this paper to briefly highlight the regulatory fabric available for the prevention and control of pollution from petroleum operations. In doing this, it is sought to examine the adequacy or otherwise of the legislative and administrative network for pollution prevention and control. An attempt will also be made to examine the question of regulations available in this area and see whether they adequately cater for the problems posed. Lastly the paper will in the light of the findings from the examinations make suggestions for a meaningful and articulated regulatory process for the prevention and control of pollution from petroleum operations in the country.

The Challenges of Pollution from Petroleum Operations to the Nigerian Environment.

Basically, the word pollution can be variously defined. But from a legal point of view it may mean the wrongful contamination of

1. For a succinct history of the Nigerian Oil Industry: see Ajomo, "Oil in Nigeria" in Elias (ed) *Law & Social Change in Nigeria* (1972) p.151 at 154.

the atmosphere, or of water, or of soil, to the material injury or damage to the rights or property of people.² Pollution occurs in relation to many uses and activities of man and among which are the winning and use of petroleum either in its crude form or when refined. Thus in the specific instance of pollution from oil, it may occur from an act of deliberate dumping,³ accidental spills,⁴ pipeline leakage,⁵ leakage at drilling rigs,⁶ or the disposal of used oil.⁷

Whenever any of these situations arise, there may result such consequences as destruction of marine life, wildlife habitat, birds; decrease in or even total destruction of the recreational value of beach areas. Such also may result in the contamination of drinking water and in some cases may cause fire outbreak extensively destroying property.⁸ Apart from these hazards and damages that may result from petroleum operations, there are also health hazards to man.⁹

Between 1976-80 above, over 56m. gallon of oil spilled into the Nigerian environment.¹⁰ This figure represents only reported cases of spillages arising out of oil prospecting and drilling. When cases of spillages arising out of oil prospecting and drilling. When account is taken of unreported cases, discharges

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2. See generally 61 *Am. Jur. 2d.*, *Pollution Control*, S.1.
 3. As in case when a ship was in jeopardy.
 4. As may occur in the process of transportation.
 5. As recently occurred on the Warri-Kaduna Pipeline at Abudu.
 6. Like the Funniwa 5 Oil blowout.
 7. As commonly occur in Automobile Service Stations.
 8. The recent fire at the Badagry Road terminus of the Lagos-Apapa ferry service in which a ferry was seriously damaged and the other requiring some weeks of repair work had been traced to spilled oil from bunkering vessels abandoned on the Lagoon.
 9. See Olusi: "Human Health Hazards Association with Petroleum Related Pollution", in *The Proceedings of the 1981 International Seminar on the Petroleum Industry and the Nigerian Environment* p. 195 (henceforth referred to as the Proceedings of the 1981 International Seminar).
 10. See Awobajo: "An Analysis of Oil Spill Incidents in Nigeria: 1976-80" in *The Proceedings of the 1981 International Seminar*.

from Vessels either at Sea or during bunkering operations, spillages accruing in the process of transportation and marketing of petroleum products¹¹ and the dumping of used oils like lubricants, grease etc., the figure is definitely bound to be astronomical.

Existing Regulatory Framework

Basically there are three important stages in the regulatory process. These are: the granting power to regulate; the exercise of the power to regulate; the enforcement of regulation. Constitutionally, the power to make laws for the purpose of regulating (controlling) human conduct or activity is vested in the legislature. In the discharge of this function or in the exercise of the power to control society, the legislature is expected to define with reasonable exactitude what is being controlled. But as human conducts and activities are so complex and in very many cases require technical or specialized knowledge, the legislature has been said not to be always well equipped to deal exhaustively with details of legislation. It has therefore been convenient to delegate such functions to the executive branch, either a department of government or an independent agency often referred to here in Nigeria as a parastatal. In situations as above, the job of enforcement is also traditionally vested in the law enforcement organs of government (the Police and the Judiciary). However, where as in the case here, the situation is the regulation of economic activity *vis-à-vis* the wellbeing of the society, the practice has been the vesting of enforcement powers in quasi-judicial bodies. It is in the light of the above tripartite arrangement that we will examine government response to these social-economic problems.

11. See also Oyibo & Agboola: "Pollution Control in Petroleum Products Marketing Operations in Nigeria", Paper presented at the 1983 International Seminar on the Petroleum Industry and the Nigerian Environment held at Port-Harcourt, November, 1983.

In the realm of legislation, two distinct approaches are noticeable. These are the enactment in a general statute of a provision granting power of making regulations for the carrying into effect of the general statute. In this case, prevention and control of pollution may or may not be specifically listed as one of those things that can be provided for in the regulations. This has been the approach in the *Petroleum Acts*¹² and the *Oil Pipeline Act*.¹³ Just as the statutes are very terse on the issue of pollution so also are the regulations made under them. The second approach is that employed in the *Oil in Navigable Waters Act 1968*¹⁴ which was an enactment specifically devoted to the prevention and control of pollution from some aspects of oil operations. An attempt will now be made to highlight all the salient statutory provisions dealing with or related to oil production.

Legislation

As stated earlier, pollution from oil in one form of operation or the other has been with Nigeria for decades, yet until comparatively recently, there was no single legislation specifically devoted to the prevention or control of pollution by oil. The only effort came in as recent as 1968 when the *oil in Navigable Water Acts* was promulgated. Even then this Act dealt with only an aspect, though not so insignificant an aspect from which oil may pollute. This legislative effort was perhaps taken not so much because of our concern for environmental degradation resulting from oil, but because of our desire to comply or conform with international effort in this area. Thus, because the *International Convention for the Prevention of*

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12. See The Petroleum Act, Cap. 150, Laws of the Federation of Nigeria, 1958 which was enacted in 1916 as Ordinance 28 of that year. This was repealed and replaced by the Petroleum Act 1969, No. 51 of 1969.
 13. Cap. 145 Laws of the Federation of Nigeria 1958 enacted as Ordinance 31 of 1956
 14. Act No. 34 of 1968.

Pollution of the Sea by Oil 1954 as amended in 1962 "has been duly adopted by diverse countries and Nigeria being desirous of adhering to that convention as so amended" decided to implement it by making "legislative provision for such prevention in the navigable waters of Nigeria."¹⁵

The very first legislation in relation to pollution from petroleum operations was enacted in 1956¹⁶ when the *Oil Pipelines Act* was enacted. The Act provides in section 31(c) that the Governor-General (now The Head of State) *may* by regulation prescribe "measures in respect of public safety, the avoidance of interference with works of public utility in, over and under any land and the prevention of pollution of any land or water." Mention must here be made of the Petroleum Act, which was promulgated in 1916¹⁷ "to make provision for regulating the importance, conveyance and storage of petroleum and other inflammable oils and liquids" The Act empowers the then Governor to make regulations for sundry matters of which

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15. See the Preamble to the Oil in Navigable Waters Act, NO. 34 of 1968.
 16. A writer has however traced the history of anti-pollution legislation in the country to 1914 when the Mineral Oils Act was promulgated. See Kola Adeniji, "Legal Control of Pollution Hazards from Petroleum Operations: Implications for the Nigerian Oil and Gas Industry" (1975) 12 U. of Ghana L.J. 106 at 108. A careful look at the Act as incorporated into Cap 120 of the 1958 Edition of the Law of the Federation did not reveal any direct or indirect reference to pollution. Also there were no guidelines as to the mode of laying oil pipelines, rather the legislation merely concerned itself with the regulation of the right to search for, win and work mineral oils. (See long title to the Act). Consequently, it merely granted the power to make regulations for the purpose of any matter connected with the carrying of the legislation into effect (see s.9). Also, it has not been possible to locate the *Mineral Oils Regulations* which the learned writer claimed were made pursuant to the Act. In view of above claims and findings one can only assume that if such regulations were ever made they were repealed before the 1958 compilation of the Laws of the Federation.
 17. As Ordinance 28 of 1916 contained in Cap. 150 of the 1958 edition of the Laws.