

STATUTORY INSTRUMENTS

20... No.

(2nd Draft) The National Environment (Audit) Regulations, 20...

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1. Title.
2. Interpretation.
3. Application of Regulations.

PART II – TIMING OF ENVIRONMENTAL AUDITS

4. Environmental enforcement audit.
5. Environmental compliance audit.
6. Initiating voluntary environmental audit.

PART III – ENVIRONMENTAL ENFORCEMENT AUDITS

7. Petition for environmental enforcement audit.
8. Determination of environmental enforcement audit.
9. Audits by environmental inspectors.
10. Powers of environmental inspector upon entry of project.
11. Public involvement in environmental enforcement audits.
12. Environmental enforcement audit report.
13. Recommendations of environmental inspector.

PART III – SELECTION OF AUDIT TEAM FOR COMPLIANCE AND VOLUNTARY AUDITS

14. Registered environmental auditors to conduct audits.
15. Lead auditor and composition of audit team.
16. Restriction of audit period for environmental auditor.
17. Outsourcing of environmental auditor.

PART V – TERMS AND SCOPE OF COMPLIANCE AND VOLUNTARY AUDITS

18. Terms of reference for environmental compliance audit.
19. Environmental compliance audit plan and audit checklist.
20. Factors to consider in the conduct of an audit.

PART VI – PREPARATION AND CONTENT OF AUDIT REPORTS

21. Preparation of environmental audit report.
22. Content of environmental audit report.
23. Compliance with content of environmental audit report.

PART VII— SUBMISSION OF COMPLIANCE AND VOLUNTARY AUDIT REPORTS

24. Submission of environmental compliance audit report.
25. Submission of additional information.
26. Submission and effect of voluntary environmental audit report.
27. Disclosure of proprietary information.
28. Fees on submission of environmental audit report.

PART VIII – REVIEW OF COMPLIANCE AND VOLUNTARY AUDIT REPORTS

29. Review of environmental audit report by Executive Director.
30. Review of environmental audit report by lead agency or other stakeholder.
31. Evaluation of environmental audit report by the Authority.

PART IX– ENVIRONMENTAL COMPLIANCE AGREEMENTS AND AUDIT ACTION PLANS

32. Final correction action plan and environmental compliance agreement.
33. Effect of an environmental compliance agreement.
34. Repeat violations within two years.

PART X— PRIVILEGES OF VOLUNTARY AUDIT REPORTS

35. Privilege of voluntary environmental audit report.

PART XI—ENVIRONMENTAL MANAGEMENT SYSTEMS

36. Establishment of environmental management systems.
37. Projects to have environmental management systems.
38. Guidelines for development of environmental management systems.
39. Powers of environmental inspectors in relation to environmental management systems.

PART XII— ENVIRONMENTAL MONITORING

40. Monitoring by operator.
41. Monitoring by Authority.
42. Information provided by environmental auditor.

PART XIII—VOLUNTARY DISCLOSURE

43. Disclosure of information by operator.

PART XIV— OFFENCES AND PENALTIES

44. Offences
45. Order of forfeiture.
46. Administrative measures.
47. Appeals from an administrative decision.

PART XV– GENERAL MATTERS

- 48. Repeals
- 49. Transitional Provisions

SCHEDULES

| | |
|-----------------|---|
| First Schedule | Timing and projects to carry out audits |
| Second Schedule | Audit administration fees |
| Third Schedule | Administrative penalties for violations |

STATUTORY INSTRUMENTS

20... No.

(2nd Draft) The National Environment (Audit) Regulations, 20... *(Under section 107 of the National Environment Act, Cap 153)*

IN EXERCISE of the powers conferred upon the Minister responsible for the National Environment Act by section 107 of the National Environment Act and on the recommendation of the Policy Committee on the Environment and the Board of Directors of the National Environment Management Authority, these Regulations are made this day of 20....

PART I—PRELIMINARY

1. Title.

These Regulations may be cited as the National Environment (Audit) Regulations, 20...

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the National Environment Act, Cap 153;

“Acceptance” means a notice or other communication issued by the Authority to an operator in respect of an environmental audit report or other report or document submitted by that operator confirming that the report or document in question appears to conform to the requirements of these Regulations and any relevant guidelines issued by the Authority.

“Analysis” means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or subsonic vibrations to determine the level or other characteristics of the noise or sub-sonic vibration or its effect on any segment of the environment;

“Audit checklist” means a checklist that assists auditors in conducting a thorough, systematic and consistent environmental audit. Checklists are used to guide on-site observations and help the auditor to assess whether evidence meets audit criteria.

“Audit Conclusion” means an outcome of the audit provided by the auditor after consideration of the audit objectives and all audit findings.

“Audit Criteria” means the set of policies, procedures, or requirements used as a reference during an audit.

“Audit Evidence” means records, statements of fact, or other information that are relevant to the audit criteria and verifiable.

“Audit Findings” means results of the evaluation of the collected audit evidence against audit criteria. Audit findings can indicate either conformity or nonconformity with audit criteria.

“Authority” means the National Environment Management Authority established by section 4 of the Act;

"Certified" means a person whose qualifications, competence, capability, experience and other abilities have been approved by the Authority to carry out environmental audits;

“Checklists” means lists of all the activities, processes and discharges to be addressed during the audit including a list of elements to be audited and the type of observations to be made to assess compliance.

“Corrective action” means an action to eliminate the cause of a detected non-compliance or violation;

“Corrective Action Plan” means a specific, measurable, achievable, realistic, and timely action plan developed by the operator that describes how the operator intends to resolve the non-conformance or violation.

“Environment” means the physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

“Environmental compliance audit” means an environmental audit performed to determine the compliance status of a project with environmental and health regulatory requirements and all relevant permits, licenses and approval conditions;

“Environmental audit” means a systematic, documented, periodic and objective evaluation carried out to determine how well a project, its management systems, equipment and processes are performing, with the aim of safeguarding the environment by facilitating management control of environmental practices and assessing compliance with company policies, including compliance with applicable environmental laws and regulations.

“Environmental auditor” means a person or a firm of experts certified and registered to conduct environmental audits in accordance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003;

“Environmental audit plan” means a plan that outlines the audit’s objectives, scope and timetable, and the products that the audit will generate.

“Environmental audit report” means a report prepared after an environmental audit that describes the attributes of the audit and the audit findings and conclusions and includes an environmental enforcement audit report and a voluntary environmental audit report. An environmental audit report may include, but is not limited to, field notes and records of observations, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically-recorded information, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose and in the course of an environmental audit.

“Environmental compliance agreement” means an agreement between the operator and the Authority as provided for by Part VI of these Regulations;

“Environmental enforcement audit” means a compulsory environmental audit required by these Regulations;

"Environmental impact" means any positive or negative impact, on the natural and/or environment, on any form of life, on the social, economic and/or cultural conditions that influence human life, or on any inter-relationship between these elements or factors, which is, will be, or may be, directly or indirectly caused by a project, policy, plan or programme;

"Environmental impact assessment" means a systematic examination conducted to determine whether or not a project will have any adverse impact on the environment;

“Environmental inspector” means an inspector appointed under section 79 of the Act;

“Environmental management system audits” means audits which are specifically designed to check and evaluate the effectiveness of environmental management systems.

“Environment management system” means a documented system that defines the manner in which a project manages its environmental activities by developing, implementing, reviewing and monitoring compliance to environmental regulations and requirements;

"Environmental monitoring" means the continuous determination of actual and potential effects of any activity or phenomenon on the environment, whether short term or long term;

"Environmental Practitioner" means an environmental auditor or any person authorized by the Authority to conduct environmental audits in accordance with these Regulations;

“Executive Director” has the meaning given to it by the Act and includes, for the purpose of these Regulations, an environmental inspector or any person who is duly authorized by the Executive Director to act on his or her behalf, or who has been delegated to perform the functions of the Authority under section 6(2) of the Act;

"Foreign Environmental Practitioner" means an Environmental Practitioner registered or certified in a country other than Uganda who comes to Uganda to do a single activity of either

undertaking an environmental impact study or an environmental audit in accordance with these Regulations;

“Guidelines” means the guidelines describing the methodology for conduct of an environmental audit or environmental audit requirements by the Act or as issued by the Authority;

"Lead agency" means any Ministry, department, parastatal agency, local government system or public officer in which or in whom any law vests functions of control or management of any segment of the environment;

“Lead auditor” means auditor responsible for the organization and management of the audit and liaises with the client or the contact person in the case of an internal audit. The lead auditor is also responsible for the organization, recruitment and management of the audit team and ensuring that the necessary deliverables from the audit, including the audit report, are delivered according to the agreed timetable and plan.

“Monitor” means to systematically and repeatedly measure a parameter to track changes or establish the baseline or current conditions.

“Project” includes any activity or part of an activity, field, farm, garden, place, premises, facility, vessel, ship, motor vehicle, aeroplane, means of communication, storage facility, factory, production-process or consumption-method which is the subject or potential subject of an environmental audit;

"Proprietary information" means information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law or by international treaties to which Uganda is a party;

“Public” means individual, civil society organizations and institutions, community based organizations, public and private institutions;

“Operation” means the time period that corresponds to any event, process, or activity that occurs during the operation (i.e., fully functioning) phase of the proposed project or development. (The operation phase follows the construction phase, and then terminates when the project or development goes into the decommissioning phase.)

“Operator” means any person operating or responsible for supervising or in charge of an activity or operation of a project and includes a proponent or owner of an activity or project that is a subject of an environmental audit;

“Review” means a process of checking the adequacy of an environmental audit report with a view to ensuring that it meets the legal requirement and ensure wide acceptance of the environmental audit findings;

“Risk” means the probability of occurrence of an adverse effect from a substance on people or the environment combined with the magnitude of the consequence of that adverse effect;

“Scope of the audit” means the extent and boundaries of the audit such as locations; organizational units, activities and processes to be audited; and the time period covered by the audit;

“Standard” means the limits of discharge or emissions established under the Act or any other in the law;

“Technical expert” means a person who assists with understanding and interpreting of the technical aspects of the project being audited and does not necessarily have to be an auditor.

"Voluntary disclosure" means the prompt reporting to the Authority by the operator of a project of the voluntary discovery of a violation of the Act or other regulations promulgated pursuant thereto prior to: the commencement of an inspection or investigation, or the issuance by the Authority of an information request to the operator of the project; the filing of a notice of a public interest action under the law; the filing of a complaint by a third party; the reporting to the Authority of the violation by an employee who is not authorized to speak on behalf of the project; or the imminent discovery of the violation by the Authority.

"Voluntary discovery" means the discovery of a violation of the Act or other regulations promulgated pursuant thereto by the operator of a project if the violation was discovered by an environmental audit; and the violation was not identified through a legally mandated monitoring or sampling requirement prescribed by regulation, permit, judicial or administrative order, or consent agreement.

“Voluntary environmental audit” means an audit carried out by the operator without the demand or direction of the Authority, a lead agency, a third party or an order of a court of law;

“Voluntary environmental audit privilege” has the meaning given to it in regulation 35.

3. Application of Regulations.

These Regulations apply to—

- (a) the enforcement of section 3(3)(c) of the Act;
- (b) all environmental audits required by section 22 of the Act;
- (c) all environmental audits required by the National Environment (Environmental Impact Assessment) Regulations;
- (d) voluntary environmental audits;
- (e) such other environmental audits as may be required or prescribed.

PART II – TIMING OF ENVIRONMENTAL AUDITS

4. Environmental enforcement audit.

The Authority shall at any time, following a petition or at the instance of the Executive Director, the environmental inspector or any other person authorized in writing by the Executive Director,

carry out an environmental enforcement audit for projects that have or may have significant adverse impacts on the environment.

5. Environmental compliance audit.

(1) The operator of a project whose activities are likely to have a significant adverse impact on the environment shall carry out annual environmental compliance audit in respect of the following-

- (a) existing projects in the first schedule commenced prior to the coming into force of the Act, these Regulations, or other environmental regulations and laws; or
- (b) any other projects undertaken after completion of an environmental and social impact Assessment.

(2) An operator of a project that has undergone an environmental and social impact assessment shall within a period of twelve months of the issuance of the Environmental and Social Impact Assessment certificate, or a period of not more than twenty four months after the commencement of project activities whichever is earlier, undertake an environmental compliance audit of the project.

(3) Projects with a record of compliance may after the initial audit period of five years be audited only once every two years with periodic monitoring at the discretion of the Executive Director, unless the project consequently becomes non-compliant.

(4) An environmental compliance audit shall be required after half of the project's life and a closure audit not more than one month after project completion if the life of the project is shorter than 12 months for all projects in the first schedule to these Regulations.

6. Initiating voluntary environmental audit.

(1) The operator of a project whose activities are likely to have a significant impact on the environment may, at any time, carry out a voluntary environmental audit of the facility to determine its compliance with the Act, these Regulations and other relevant laws.

(2) The voluntary environmental audit shall not replace the requirement for an environmental compliance audit.

PART III – ENVIRONMENTAL ENFORCEMENT AUDITS

7. Petition for environmental enforcement audit.

(1) A person desiring an environmental enforcement audit to be carried out on a project may petition the Executive Director in writing to determine whether an environmental enforcement audit should be carried out.

(2) The petition referred to in subregulation (1) shall contain—

- (a) the name(s), signature(s) and address(es) of the petitioner(s);
- (b) the location of the project complained of;
- (c) the reasons why the petitioner requires the project to be the subject of an environmental enforcement audit; and
- (d) any other matter relevant to the petition.

(3) The Executive Director, environmental inspector or any other person authorized in writing by the Executive Director shall inspect the project to determine whether an environmental enforcement audit should be carried out.

(4) This regulation does not affect the right of a person under the Constitution to petition a court of law or to bring an action under the Act.

8. Determination of environmental enforcement audit.

(1) The Executive Director shall, where he or she determines, in accordance with regulation 7 (3), that—

- (a) there is sufficient cause to believe that a project has or may have significant adverse impacts on the environment, order an environmental inspector to carry out the environmental enforcement audit, and the operator shall bear the cost of carrying out the audit;
- (b) there is evidence of violations or a danger to the public and the environment, order the operator to carry out an environmental enforcement audit within a specified period determined by the Executive Director;
- (c) there is no cause to believe that a facility has or may have significant adverse impacts on the environment, reject the petition and give reasons in writing for the rejection within one month.

9. Audits by environmental inspectors.

(1) An environmental inspector may conduct or cause to be conducted an environmental enforcement audit on any project where there is reasonable cause to believe that—

- (a) the activities being carried out at the project violate or are likely to violate the Act or Regulations made under the Act;
- (b) the activities being conducted at the project are likely to cause immediate danger and harm to human health, or have undesirable and irreversible impacts on the environment;
- (c) a violation of any other law relating to the environment, other than one referred to in paragraph (a), is taking place.

(2) An environmental inspector shall—

- (a) in the case of subregulation (1)(a) or (b), serve the operator of the project with notice in writing, at least forty-eight (48) hours before conducting the enforcement audit;
- (b) in the case of subregulation (1)(c), serve the operator of the project with a notice in writing, requiring the operator of the project to carry out an environmental compliance audit within a period determined by the inspector.

10. Powers of environmental inspector upon entry of project.

An environmental inspector may, upon entering a project for the purpose of carrying out an environmental enforcement audit, and in addition to the powers prescribed by section 80 of the Act—

- (a) order persons at the project to assist in the carrying out of the audit;
- (b) have uninterrupted access to, and interview any staff employed at the project;
- (c) examine, make copies of or retain all or any documents and records relating to the design, performance and effects of the activities of the project;
- (d) take samples for analysis and photographs and make audio or visual recordings; and
- (e) carry out any other activity necessary for the carrying out of the audit.

11. Public involvement in environmental enforcement audits.

An environmental inspector may, in the affected or conduct of an environmental enforcement audit, consult the members of the public likely to be affected by the audited project.

12. Environmental enforcement audit report.

(1) An environmental inspector shall on completion of an environmental enforcement audit, submit an environmental enforcement audit report to the Executive Director and the report shall comply with the requirements of regulation 24(1).

(2) An environmental inspector shall, in making an environmental enforcement audit report—

- (a) discuss with the owner or operator, the environmental issues identified at the project;
- (b) make available to the owner or operator, a draft report of the audit and require him or her to make written comments within seven days after receipt of the draft report; and
- (c) take into account the comments of the owner or operator and attach the comments as an annex to the final report.

13. Recommendations of environmental inspector.

An environmental inspector may, in the environmental enforcement audit report, recommend—

- (a) where he or she suspects that the operator has committed a criminal offence, that the operator be prosecuted;
- (b) that the operator enters into an environmental compliance agreement in accordance with regulation 32; or
- (c) that the operator in addition to entering into an environmental compliance agreement executes a refundable performance deposit bond to guarantee environmental compliance in accordance with section 94 of the Act.
- (d) any other action as may be deemed necessary.

PART IV– SELECTION OF AUDIT TEAM FOR COMPLIANCE AND VOLUNTARY AUDITS

14. Registered environmental auditors to conduct audits.

(1) A person shall not carry out an environmental compliance audit unless that person has been duly certified and registered as an environmental practitioner in accordance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003.

(2) The employees of the operator or hired environmental auditor may carry out a voluntary audit.

(3) The operator may seek guidance from the Executive Director on the selection of environmental auditors and the Executive Director may upon request recommend a list of environmental auditors based on the nature and scope of the audit.

(4) The environmental auditor selected by the operator shall —

- (a) be free from any potential conflict of interest such as serving on the operator's environmental monitoring team or otherwise; and
- (b) exercise full independence and a high level of objectivity in the conduct of the audit.

15. Lead auditor and composition of audit team.

(1) The lead environmental auditor shall lead the conduct of the environmental compliance audit and shall determine the composition and ensure the overall competence of the environmental audit team.

(2) The lead environmental auditor shall as appropriate utilize technical experts to provide specialist knowledge and to assist with understanding and interpreting technical aspects of the project to be audited.

(3) The technical experts may accompany the audit team during the audit if required or may be referred to when necessary.

16. Restriction of audit period for environmental auditor.

An environmental auditor or firm of environmental auditors shall not conduct environmental compliance audits for the same operator for a continuous period exceeding five years.

17. Outsourcing of environmental auditor.

(1) An operator may seek the consent of the Executive Director in writing to outsource an environmental compliance audit and the Executive Director may grant such consent where Ugandan environmental auditors do not possess the required competence to adequately carry out the audit.

(2) An outsourced environmental audit shall be conducted in accordance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003 and may include Ugandan environmental auditors for purposes of knowledge transfer.

PART V—TERMS AND SCOPE OF COMPLIANCE AND VOLUNTARY AUDITS

18. Terms of reference for environmental compliance audit.

An environmental compliance audit specified under these Regulations shall be conducted in accordance with the terms of reference developed by the operator together with the environmental audit team and approved by the Authority.

19. Environmental compliance audit plan and audit checklist.

(1) The environmental auditor shall prepare an environmental audit plan for the conduct of an environmental compliance audit in accordance with the Environmental Audit Guidelines issued by the Authority.

(2) Prior to the conduct of the environmental compliance audit, the environmental auditor shall prepare and use a customized audit checklist that is relevant to the project to be audited.

20. Factors to consider in the conduct of an audit.

(1) In carrying out an environmental audit, the environmental auditor shall assess compliance with any existing national environmental regulations and standards, in addition to applicable conditions in the relevant permits, licenses and approvals.

(2) An environmental auditor may, in the conduct of an environmental audit, consult the members of the public affected or likely to be affected by the activities of the project.

(3) The operator may seek technical advice from the Executive Director on how to conduct an voluntary environmental audit and the technical advice may include the scope and terms of reference for the audit.

PART VI— PREPARATION AND CONTENT OF AUDIT REPORTS

21. Preparation of environmental audit report.

(1) An environmental audit report shall be prepared under the general leadership of the lead auditor who shall head a team of environmental auditors.

(2) Any changes in the scope of the environmental audit shall be agreed upon by the operator and the environmental audit team.

22. Content of environmental audit report.

(1) An environmental audit report shall include the following—

- (a) the names and composition of the environmental audit team, including their qualifications, specific skills and relevance to specific subject matter;
- (b) the identity of the project audited and its physical location;
- (c) the identity of the operator or his or her representatives who took part in the environmental audit and their specific roles;
- (d) the person who commissioned the environmental audit;
- (e) the criteria, objectives, scope, protocols and methodology used during the conduct of the environmental audit and any obstacles encountered, including gaps in knowledge and any other limitations encountered;
- (f) the period covered by the environmental audit and the dates on which the audit was conducted;
- (g) the date and issues raised in the previous environmental audit as point of reference, where applicable;
- (h) copies of all relevant approval certificates, permits and licenses;
- (i) a description of the audited project and the environmental management system in place;
- (j) root causes of non compliance where observed;
- (k) a description of the observable impacts of the audited project, including both qualitative and quantitative data and information.
- (l) environmental, health and social safeguards associated with the project;
- (m) consultations made with relevant stakeholders.
- (n) a statement of the confidential nature if any, of the contents of the information obtained or parts of the information;
- (o) An audit conclusion that states as to how far, in the opinion of the environmental audit team, the activities of the audited project comply with the Act and with other relevant laws of Uganda
- (p) the recommended corrective measures identified by the operator for restoring, eliminating or minimizing the undesirable environmental impacts of the audited project, and to bring the project to full compliance;
- (q) the audit findings and a summary of any references to supporting evidence;
- (r) an implementation plan proposed by the operator in consultation with the auditor team that addresses the correction of past environmental non-compliance, the improvement of current environmental compliance and prevention of future non-compliance; and
- (s) the resources required and the optimum time for introduction, monitoring and implementing the recommended corrective measures;
- (t) any other matter which may be identified in the terms of reference agreed between the operator and the environmental audit team and, where relevant—

- (i) any matter determined by the environmental inspector, in the case of an environmental enforcement audit.
- (ii) any matter agreed between the operator and the Executive Director, in the case of a voluntary environmental audit.

(2) An environmental audit report shall contain a declaration, dated and signed by all members of the environmental audit team, stating that the environmental audit was conducted in accordance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003, these Regulations and other relevant laws.

(3) The lead auditor shall ensure that the environmental audit report contains all the matters required by subregulation (1).

23. Compliance with content of environmental audit report.

(1) An environmental auditor who fails to comply with regulation 24(1) shall be in breach of the Code of Practice and Professional Ethics prescribed by the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003, and shall be subject to disciplinary action as prescribed by those Regulations.

(2) An environmental auditor is under a duty to disclose all facts pertinent to the environmental performance of the audited project and to disclose the state of affairs of the project in the course of the audit.

(3) A voluntary environmental audit shall comply with the requirements of regulation 23.

PART VII – SUBMISSION OF COMPLIANCE AND VOLUNTARY AUDIT REPORTS

24. Submission of environmental compliance audit report.

(1) An environmental auditor shall submit an environmental compliance audit report to the operator of the project within fourteen days after the completion of the audit.

(2) Upon receipt of the audit report whose findings deem the project to be noncompliant, the operator shall conduct a root cause analysis of the identified audit findings, as appropriate, and shall investigate all areas of concern.

(3) The operator shall submit the environmental compliance audit report to the Executive Director of the Authority in quadruplicate or as specified in the terms of reference within thirty (30) days after receiving the report from the environmental auditor.

(4) Where the audit findings indicate violations, the operator shall submit an audit correction action plan together with the environmental compliance audit report to bring the project into full compliance and to fully address all areas of concern.

(5) The corrective action plan referred to in subregulation (4) shall contain —

- (a) the result of any root cause analysis referred to in subregulation (2);
- (b) actual actions, specific deliverables, responsibility assignments and an implementation schedule with time frames, acceptable to the Executive Director, for correcting any violations; and
- (c) an undertaking that the operator shall adopt an improved environmental management system or other measures, to avoid the recurrence of the violations disclosed in subregulation (4).

25. Submission of additional information.

The Executive Director may require an environmental auditor to—

- (a) submit such additional information in relation to the environmental audit as the Authority shall deem necessary;
- (b) carry out any other special investigation;
- (c) carry out any further investigation;
- (d) submit a report on any of the matters referred to in paragraphs (a), (b), and (c); and the operator concerned shall remunerate the environmental auditor in respect of the discharge by him or her of all or any of such additional duties.

26. Submission and effect of voluntary environmental audit report.

(1) A voluntary environmental audit report is a confidential document belonging to the operator and the operator is not required to submit it to the Authority or to a lead agency.

(2) Notwithstanding subregulation (1), an operator who wants to benefit from the compliance agreement regime provided for by regulation 32 shall, within thirty (30) days after completion of the voluntary environmental audit, submit a voluntary environmental audit report to the Executive Director.

(3) A voluntary environmental audit report shall be accompanied by a statement summarizing the violations of the Act and of any other law, and an audit corrective action plan indicating the manner in which the operator proposes to correct the violations.

(4) The audit corrective action plan referred to in subregulation (3) shall contain matters referred to in regulation 24(5).

27. Disclosure of proprietary information.

The operator shall indicate to the Authority on submission of a voluntary audit report any information which the operator considers should not be made public on the basis that it is commercially confidential or proprietary, and shall indicate the grounds for maintaining the confidentiality of the information.

28. Fees on submission of environmental audit report.

The Authority shall, on submission of the environmental audit report and depending on the level of risk of a particular project, charge an audit report administration fee prescribed in the second schedule to these Regulations.

PART VIII– REVIEW OF COMPLIANCE AND VOLUNTARY AUDIT REPORTS

29. Review of environmental audit report by Executive Director.

(1) The Authority shall evaluate the environmental audit report submitted and inform the operator of its adequacy in terms of content and corrective measures to ensure compliance.

(2) The Authority may, if dissatisfied with the standard or quality or both, of the environmental audit report, reject the environmental audit report and call for a fresh environmental audit at the expense of the operator concerned, the lead auditor or firm of environmental auditors or both.

(3) Where the Authority rejects an environmental audit report, it may upon request recommend an environmental auditor or firm of environmental auditors for the operator to conduct a fresh environmental audit.

(4) Without prejudice to subregulation (3), the operator shall have a right to choose an auditor of his or her choice to conduct a fresh audit.

30. Review of environmental audit report by lead agency or other stakeholder.

(1) The Authority may within a period of 14 days upon receipt and acceptance of the environmental audit report, transmit for review a copy of the report or, in addition, the audit correction action plan to:

- (a) the relevant lead agencies;
- (b) the relevant district environmental officers;
- (c) the relevant trade or industry associations;
- (d) any other relevant stakeholder

(2) Where the environmental audit report and the audit correction action plan are reviewed in accordance with sub-regulation (1), written comments shall be submitted to the Authority within 30 days from the date of receipt of the environmental audit report by the respective reviewers.

31. Evaluation of environmental audit report by the Authority.

(1) On receipt of comments referred to in regulation 29(2) or where no comments have been received, the Authority shall evaluate the audit report and the audit correction action plan and give feedback to the operator within 60 days of receipt and acceptance of the report and audit correction action plan.

(2) The Authority may outsource review of audit reports as may be necessary for the completion of the audit process.

PART IX—ENVIRONMENTAL COMPLIANCE AGREEMENTS AND AUDIT ACTION PLANS

32. Final correction action plan and environmental compliance agreement.

(1) Where the Authority reviews the audit correction action plan or where the operator indicates in a voluntary environmental audit an intention to comply with the law, the Executive Director and the operator shall agree on a written final correction action plan for implementation by the operator and may enter into an environmental compliance agreement, specifying –

- (a) the measures required to bring the audited project into compliance with the Act and these Regulations;
- (b) the time frame within which the measures will be undertaken;
- (c) the compensation to be paid to persons injured by the activities of the audited project;
- (d) the restoration measures that must be undertaken to redress environmental damage in accordance with Part IX of the Act;
- (e) a refundable performance bond, if required, and the nature of the bond;
- (f) the frequency of periodic reports to be submitted to the Executive Director; and
- (g) any other matter which the Executive Director may consider necessary.

(2) The Authority shall, upon being satisfied by inspection and verification that the operator has acted in accordance with the audit correction action plan, issue the operator with a letter indicating fulfillment of the audit correction action plan within 21 days from the date of inspection and verification.

33. Effect of an environmental compliance agreement.

(1) An environmental compliance agreement made under these Regulations has the same effect as an environmental improvement order within the meaning of sections 80 and 95 of the Act.

(2) Failure by an operator of a project who has entered into an environmental compliance agreement to comply with the agreement shall constitute a waiver of the voluntary environmental audit privilege provided for by regulation 35.

34. Repeat violations within two years.

Where the operator has entered into an environmental compliance agreement, the occurrence of a repeat violation at the audited project within a period of two years shall constitute a waiver of the privilege referred to in regulation 35.

PART X—PREVILEGES OF VOLUNTARY AUDIT REPORTS

35. Privilege of voluntary environmental audit report.

(1) A voluntary environmental audit report is a privileged report and is not admissible as evidence in any civil, criminal or administrative proceeding, except as provided by subregulations (2) and (3).

(2) The privilege for a voluntary environmental audit report provided for in subregulation (1) does not apply where—

- (a) it is waived expressly or by implication by the operator of the project, or by a court;
- (b) The operator of a project or person conducting an activity seeks to introduce an environmental audit report or any part of it as evidence in a suit;
- (c) the report is released by the operator to any buyer or seller or to a lead agency for purposes of negotiating, arranging or facilitating the sale, lease or financing of the project, or a portion of the project;
- (d) information in the report relating to the project is obtained from a document, communication, data, report or other information required to be collected, developed, maintained, reported or otherwise made available to the Authority or to a lead agency or from an independent source in accordance with any law, permit or order; or
- (e) the information in the report is obtained by observation, sampling or monitoring by a lead agency or the Authority.

(3) A court or administrative tribunal shall require the disclosure of material for which the privilege referred to in subregulation (1) is asserted where the court or administrative tribunal determines that—

- (a) the privilege is asserted for a fraudulent purpose;
- (b) the material is not subject to the privilege;
- (c) the material shows evidence of non-compliance with any law; or
- (d) the material contained, in the case of criminal proceedings is evidence relevant to the commission of an offence under the laws of Uganda.

(4) A party asserting privilege of the voluntary environmental audit report under subregulation (1) has the burden of proving the privilege, including adducing evidence of—

- (a) non-compliance with any law; and
- (b) proof that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence.

(5) A party seeking disclosure of the contents of a voluntary environmental audit report under these Regulations has the burden of proving that the privilege is asserted for a fraudulent purpose.

PART XI—ENVIRONMENTAL MANAGEMENT SYSTEMS

36. Establishment of environmental management system.

(1) An operator whose activities are likely to have an impact on the environment shall establish, maintain at all times and ensure availability and accessibility to an environmental management system in accordance with the Act and these Regulations.

(2) An environmental management system shall include, among other matters that the Executive Director may prescribe—

- (a) an environmental management policy, which shall include a commitment by the operator to implement it and shall be communicated to all employees;
- (b) a documented plan with clear objectives, timelines, roles and responsibilities of employees or agents, targets and documented activities and procedures for the implementation of the environmental management policy;
- (c) a mechanism for developing capabilities and support systems necessary to achieve the objectives of the environmental management policy; and
- (d) a mechanism for reporting, reviewing, monitoring and evaluating the environmental performance of the project to ensure the suitability, adequacy and effectiveness of the environmental management system in place.
- (e) a mechanism to ensure compliance with laws, regulations, permits etc.

(3) A copy of the environmental management policy shall be displayed in a conspicuous place in the project area to which it applies or it shall be readily available upon request by the environmental auditor or inspector.

37. Projects to have environmental management systems.

(1) Without prejudice to regulation 42(1), the Executive Director may, from time to time, publish, by notice in the *Gazette* and in a newspaper with national circulation in Uganda, a list of categories or types of projects that are required to have environmental management systems.

(2) The Executive Director may, in the notice referred to in subregulation (1), specify the name and location of every project required to have an environmental management system, and the time frame for the establishment of the system.

38. Guidelines for development of environmental management systems.

The Executive Director may issue guidelines for the establishment of environmental management systems and where such guidelines are absent, the operator shall adopt any other guidelines that can serve to establish the same environmental management system required under subregulation (2)

39. Powers of environmental inspectors in relation to environmental management systems.

An environmental inspector, acting within the powers prescribed by section 80 of the Act, may access any project to determine whether the project has an environmental management system and whether it is functioning well.

PART XII: ENVIRONMENTAL MONITORING

40. Monitoring by operator.

(1) The operator of a project shall be responsible for carrying out monitoring of his project on a regular and timely manner;

(2) The operator of a project shall submit monitoring reports to lead agencies and the Authority at least once a year.

41. Monitoring by Authority.

(1) The Authority may?? and where necessary in consultation with lead agencies—

- (a) monitor all environmental phenomena including the social, health and safety components with a view to making an assessment of any possible changes in the environment and possible impacts arising from the activities of a project;
- (b) monitor the activities of any project with a view to determining its immediate and long-term effect on the environment;
- (c) cause the operator to carry out a baseline survey to identify basic environmental parameters in the project area before implementation;
- (d) determine the parameters and measurable indicators to be used in monitoring of projects; and
- (e) conduct measurement of environmental changes that have occurred during and after the project implementation including long-term impacts

(2) The Authority may where necessary in consultation with the lead agencies monitor existing projects on a continuous basis using parameters and indicators developed under this regulation.

(3) The Authority may upon detection of non- compliance with the conditions of the relevant permits, licenses and approvals, compel the operator to institute remedial action.

42. Information provided by environmental auditor.

(1) If an environmental auditor, acting in good faith and not negligently or with wrongful intent, furnishes to the Authority any information or opinion on a matter to which these Regulations or the Act applies and which is relevant to the supervisory function of the Authority whether or not in response to a request by it, such actions by the environmental auditor shall not—

- (a) constitute a breach of any duty which the environmental auditor may owe to any person,
or

- (b) constitute a contravention of any code of professional conduct to which the environmental auditor may be subject.

(2) Subregulation (1) shall apply to any matter of which the environmental auditor becomes aware in his or her capacity as an environmental auditor or in the discharge of his or her duties under these Regulations and the Act and which relates to the activities of the operator.

PART XIII: VOLUNTARY DISCLOSURE

43. Disclosure of information by operator.

(1) An operator responsible for the release of a substance into the environment that has caused, is causing, or may cause an adverse effect, shall forthwith, as soon as the operator knows or ought to know of the release, report it to the Authority within 7 days.

(2) An operator who voluntarily provides the Authority with detailed information about non-compliance with the requirements of the Regulations or standards by the operator may be assisted to comply with these Regulations.

(3) Disclosure shall be deemed voluntary if—

- (a) the disclosure is made within seven days following a reasonable investigation;
- (b) the disclosure is made to the Authority or its representative;
- (c) the operator making the disclosure initiates an action to resolve the violation identified in the disclosure in a diligent manner;
- (d) the operator making the disclosure cooperates with the Authority in connection with investigation of the issues identified in the disclosure; and
- (e) the operator making the disclosure diligently pursues compliance and promptly corrects the noncompliance within a reasonable time.

(4) A disclosure shall not be voluntary if —

- (a) specific permit, license or approval conditions require monitoring and maintenance of and submission of monitoring records to the Authority;
- (b) specific permit, license or approval conditions or environmental laws require notification of such releases to the environment;
- (c) the violation was committed intentionally, willfully, or through criminal negligence by the operator making the disclosure;
- (d) the violation was not corrected in a diligent manner;
- (e) significant environmental harm or a public health threat was caused by the violation;
- (f) the violation occurred within one year of a similar prior violation at the same project;
- (g) the violation has resulted in a substantial economic benefit which gives the violator a clear economic advantage over its business competitors; or
- (h) the violation is a violation of the specific terms of a judicial or administrative order.

PART XIV— OFFENCES AND PENALTIES

44. Offences

(1) A person who without reasonable excuse contravenes any directive issued under these Regulations commits an offence and is liable on conviction-

- (a) in the case of an individual, to a fine not exceeding ten thousand currency points or imprisonment not exceeding twenty four months or both; or
- (b) in the case of a body corporate, to a fine not exceeding fifty thousand currency points.

(2) An operator who fails to commission an environmental audit within the period prescribed in these Regulations shall pay a fine of not less than one hundred currency points for every month on which the default continues.

(3) An operator or a member of an environmental audit team who—

- (a) fraudulently utters or presents an environmental audit report;
- (b) fraudulently alters any report made under these Regulations;
- (c) withholds information from an environmental inspector in the course of an audit; or
- (d) knowingly makes a false environmental audit report, commits an offence contrary to section 97 of the Act (?) and is liable on conviction, to a fine of not less than one thousand currency points or to imprisonment for a term of not less than twenty four months, or both.

(4) A person who—

- (a) withholds information from an environmental inspector or Executive Director,
- (b) knowingly gives false information to an environmental inspector or to the Executive Director, commits an offence contrary to section 95 of the Act and is liable on conviction, to a fine of not less than one thousand currency points or to imprisonment for a term of not less than twelve months, or both.

(5) An operator who fails to implement the compliance agreement or audit correction action plan as agreed with the Authority commits an offence and is liable on conviction, to a fine of not less than one thousand currency points or to imprisonment for a term of not less than twelve months, or both.

(6) An operator who fails to establish and maintain at all times an environmental management system commits an offence and is liable on conviction, to a fine of not less than fifty currency points or to imprisonment for a term of not less than six months, or both.

45. Order of forfeiture.

Where a person is convicted of an offence under these Regulations, the court may, in addition to any other penalty imposed, make an order for the forfeiture of any funds, money instruments, documents, facilities, vehicles, crafts, vessels or equipment used in the commission of the offence.

46. Administrative measures.

Without prejudice to penalties imposed by judicial process, the Authority may administer other measures which may include the following –

- (a) closure of the project where there is persistent breach of audit requirements, including failure to put in place corrective measures to the satisfaction of the Authority;
- (b) administrative penalties;
- (c) surcharge of five percent of the amount required to be paid which is in default for each day of default; and
- (d) confiscation of property or equipment.

47. Appeals from an administrative decision.

A person aggrieved by the decision of the Executive Director or an environmental inspector may appeal to an administrative tribunal established under the Act or to the High Court within a period of thirty days after the date on which the decision was communicated to him or her.

PART XVI– GENERAL MATTERS

48. Repeals

The National Environment (Audit) Regulations, 2006 are revoked.

49. Transitional Provisions

(1) Any application made, audit conducted, report or document submitted, approval given, or environmental compliance agreement issued, under the National Environment (Audit) Regulations, 2006, shall be deemed to have been made, conducted, submitted, given, or issued under these Regulations.

(2) Notwithstanding sub-regulation (1), any person who made an application or submitted documents to the Authority for approval prior to the commencement of these Regulations shall be exempted from paying any fees which would have been payable had the application been made or the documents been submitted after the commencement of these Regulations.

SCHEDULES

First Schedule.

Reg. 5.

Timing and projects to carry out audits

Different types of projects are required to be audited as follows –

1. Existing projects for which mandatory annual compliance audits are required, including –
 - (a) Industries, foundries, factories and manufacturing or processing entities
 - (b) Large-scale agriculture
 - (c) Abattoirs and meat-processing
 - (d) Sewage disposal works
 - (e) Fuel depots and stations
 - (f) Maintenance/service and repair garages and workshops
 - (g) Airports
 - (h) Hotels
 - (i) Shopping Malls
 - (j) Beaches
 - (k) Storage of hazardous materials and waste
 - (l) Landfills
2. Short-term projects, including -
 - (a) Seismic surveys;
 - (b) Oil well drilling;
 - (c) Construction of roads;
 - (d) Short-term Quarry sites;
 - (e) Borrow Pits;
 - (f) Temporary camps including for refugees or internally displaced people;
 - (g) Pest, diseases and vector control projects that utilize use of chemicals;
 - (h) Projects for waste handling, transport, storage, treatment and disposal;
 - (i) Parking yards;
 - (j) Any pilot, testing or research projects likely to affect the environment;
 - (k) Any other similar project.
3. Projects for which closure audits are required, including –
 - (a) Projects for which a certificate of environmental impact assessment was issued by the Authority.

(b) Projects to which environmental audits or monitoring were mandatory during the project's life

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Second Schedule.

reg. 28.

Audit administration fees.

1. The operator shall pay an audit administrative fee for any project located within a single district as below.

| Audit Type | Risk Level | Submission Fees |
|-------------------|-------------------|------------------------|
| Compliance audit | High | 400,000 |
| Compliance audit | Medium | 300,000 |
| Compliance audit | Low | 200,000 |
| Enforcement audit | High | 500,000 |
| Enforcement audit | Medium | 400,000 |
| Enforcement audit | Low | 300,000 |

2. For a project located in more than one district such as a road project, the operator shall pay the fees in paragraph 1 for every district in which the project exists or extends.

3. Environmental risk levels of facilities

| Risk Level | Project Categories |
|-------------------|---|
| High Risk | Oil and gas, chemical, power generation, paper mill, metal foundry, mining, cement plant, scheduled waste prescribed premises, development or construction sites involving sensitive areas. |
| Medium Risk | Semiconductor plant, manufacture of electrical household appliances, pharmaceutical, development or construction sites in non-sensitive areas, palm oil mill, metal fabrication, rubber glove, food and beverage processing, textile. |
| Low Risk | Plantations, plastic injection moulding, packaging manufacturers |

Third Schedule.

reg. 46.

Administrative penalties for violations.

| Violation | Category | Penalty/Fine |
|-----------|----------|--------------|
| | | |
| | | |

History: S.I. 12/2006.

Cross References

National Environment Act, Cap. 153.
Environmental Impact Assessment Regulations, S.I. 153-1.

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Minister of Water and Environment
